AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10–6–94
Vol. 59 No. 193

# federal register

Thursday
October 6, 1994

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

10–6–94
Vol. 59 No. 193
Pages 50813–51080

# federal register

Thursday
October 6, 1994

**Briefings on How To Use the Federal Register**
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 59 FR 12345.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | 202–512–1800 |
| Assistance with public subscriptions | 512–1806 |

**Online:**

Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

| | |
|---|---|
| Assistance with online subscriptions | 202–512–1530 |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | 512–1800 |
| Assistance with public single copies | 512–1803 |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | 523–5243 |
| Assistance with Federal agency subscriptions | 523–5243 |

**For other telephone numbers, see the Reader Aids section at the end of this issue.**

### THE FEDERAL REGISTER

### WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

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

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**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:** October 25 at 9:00 am and 1:30 pm

**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

Printed on recycled paper containing 100% post consumer waste

# Contents

**Federal Register**

Vol. 59, No. 193

Thursday, October 6, 1994

**Advisory Council on Historic Preservation**
*See* Historic Preservation, Advisory Council

**Agricultural Marketing Service**
RULES
Oranges and grapefruit grown in Texas, 50824–50826
NOTICES
Milk for manufacturing purposes; production and processing; recommended State requirements, 50894–50897

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Animal and Plant Health Inspection Service
*See* Food and Nutrition Service
*See* Forest Service

**Air Force Department**
RULES
Freedom of Information Act; implementation, 50834–50844

**Animal and Plant Health Inspection Service**
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Equine infectious anemia, 50860–50861
Virus, serums, toxins, etc.:
Animal rabies vaccines, 50861–50864

**Civil Rights Commission**
NOTICES
Meetings; State advisory committees:
California, 50898
New Mexico, 50898

**Coast Guard**
RULES
Merchant marine officers and seamen:
Five-year term of validity for certificates of registry and merchant mariner's documents
Correction, 50964
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 50955
National Boating Safety Advisory Council, 50955–50956

**Commerce Department**
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 50898–50899

**Commodity Futures Trading Commission**
NOTICES
Meetings; Sunshine Act, 50963

**Defense Department**
*See* Air Force Department
RULES
Acquisition regulations:
Small purchases for contingency operations, 50851
Stevedoring services; best value, 50851–50852
NOTICES
Meetings:
Dependents' Education Advisory Council, 50903
Science Board task forces, 50903
Strategic Command Strategic Advisory Group, 50903

**Education Department**
NOTICES
Agency information collection activities under OMB review, 50903–50904

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Meetings:
Human Radiation Experiments Advisory Committee, 50904–50905
Natural gas exportation and importation:
Bay State Gas Co., 50912
Greenfield Fuel Oil Co., Inc., 50912
Louis Dreyfus Energy Corp., 50912
Northern Utilities, Inc., 50912
Portland General Electric Co., 50912–50913

**Environmental Protection Agency**
RULES
Air programs:
Outer Continental Shelf regulations—
Consistency update, 50845–50848
Air quality implementation plans; approval and promulgation; various States:
Michigan, 50844–50845
Air quality planning purposes; designation of areas:
New Jersey and New York, 50848–50850
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Michigan, 50884
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 50884–50886
NOTICES
Clean Air Act:
Acid rain provisions—
State permits, 50913

**Executive Office of the President**
*See* Management and Budget Office

**Farm Credit Administration**
RULES
Farm credit systems:
Loan policies and operations—
Collateral evaluation requirements, actions on applications, review of credit decisions, and releasing information; correction, 50964
NOTICES
Receiver discharge and release, charter cancellation, etc.:
Coleman Production Credit Association, 50913–50914

**Federal Aviation Administration**
PROPOSED RULES
Class E airspace, 50865–50866
Rulemaking petitions; summary and disposition, 50864–50865
NOTICES
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 50956
Meetings:
Rotorcraft local differential global positioning system precision approach project, 50957
Passenger facility charges; applications, etc.:
Killeen Municipal Airport, TX, 50957–50958

**Federal Communications Commission**
RULES
Radio stations; table of assignments:
North Dakota, 50850
South Dakota, 50850–50851
PROPOSED RULES
Radio stations; table of assignments:
Missouri, 50886–50887
Virginia, 50887
NOTICES
Radio services, special:
Intrastate cellular service rates; petition draft protective orders—
California, 50914–50915
Rulemaking proceedings; petitions filed, granted, denied, etc., 50915

**Federal Deposit Insurance Corporation**
RULES
Practice and procedure:
Forms, instructions, and reports—
Insured banks; planned rapid growth; required notice, 50826–50828

**Federal Election Commission**
PROPOSED RULES
Presidential primary and general election candidates; public financing, 51006–51028

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Vista Energy, L.P., et al., 50905–50907
Environmental statements; availability, etc.:
O'Brien, Michael P., et al., 50907
Natural gas certificate filings:
Koch Gateway Pipeline Co. et al., 50907–50910
Preliminary permits surrender:
Anaheim, CA, et al., 50910
*Applications, hearings, determinations, etc.:*
Algonquin Gas Transmission Co., 50910
Colorado Interstate Gas Co., 50910–50911
Columbia Gas Transmission Corp., 50911
Holyoke Water Power Co., 50911
National Fuel Gas Supply Corp., 50911–50912

**Federal Highway Administration**
PROPOSED RULES
Motor carrier safety standards:
Driver qualifications; vision deficiencies; waivers, 50887–50893
NOTICES
Engineering and traffic operations:
Truck size and weight—
Vehicle size and weight limits in metric units; interpretation, 51060–51063
Environmental statements; notice of intent:
Russell County, AL, 50958
Meetings:
Intelligent Transportation Society of America, 50958

**Federal Maritime Commission**
NOTICES
Freight forwarder licenses:
Jeuro-Pak et al., 50915–50916

**Federal Reserve System**
NOTICES
Meetings:
Consumer Advisory Council, 50916
*Applications, hearings, determinations, etc.:*
Firstar Corp., 50917
First Commerce Corp. et al., 50916–50917
Foxdale Bancorp, Inc., et al., 50917–50918
Goodman, Jerome S., et al., 50918
GP Financial Corp., 50918
M&L Holding Co. et al., 50919
Manteno Bancshares, Inc., 50918–50919
Nationsbank Corp. et al., 50919–50920
NBD Bancorp, Inc., et al., 50920
Old Kent Financial Corp., 50920
Posevitz, Laszlo, 50920

**Federal Retirement Thrift Investment Board**
RULES
Conflict of interests, 50816–50818

**Federal Transit Administration**
NOTICES
Environmental statements; availability, etc.:
Northeast Corridor Project, TX, 50958–50960

**Financial Management Service**
*See* Fiscal Service

**Fiscal Service**
PROPOSED RULES
Treasury certificates of indebtedness, notes, and bonds; State and local government series, 50874–50884

**Fish and Wildlife Service**
RULES
Endangered and threatened species:
Small whorled pogonia, 50852–50857
NOTICES
Endangered and threatened species permit applications, 50923
Environmental statements; availability, etc.:
Incidental take permits—
Barton Creek Development, TX; golden-cheeked warbler, 50923–50924

**Food and Drug Administration**
RULES
Animal drugs, feeds, and related products:
Ivermectin, 50829–50830
Penicillin G potassium
Correction, 50829
Sponsor name and address changes—
Premiere Agri Technologies, Inc., 50828–50829

Food for human consumption:
Food labeling—
Nutrient content claims; "healthy" definition; correction, 50828
PROPOSED RULES
Food for human consumption:
Food labeling—
Iron-containing supplements and drugs; warning statements and unit-dose packaging requirements, 51030–51058

**Food and Nutrition Service**
RULES
Child nutrition programs:
Women, infants, and children; special supplemental food program—
Food funding formula, 50818–50824 Foreign Assets Control Office
RULES
Haitian transactions regulations:
Suspension of unilateral sanctions, 51066–51080

**Forest Service**
NOTICES
Environmental statements; availability, etc.:
Allegheny National Forest, PA, 50897–50898

**Health and Human Services Department**
*See* Food and Drug Administration
*See* National Institutes of Health

**Historic Preservation, Advisory Council**
NOTICES
Meetings, 50894

**Housing and Urban Development Department**
PROPOSED RULES
Public and Indian housing and Section 8 rental certificate, voucher, and moderate rehabilitation programs; required family data electronic transmission, 50870–50874

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau

**Interstate Commerce Commission**
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Niagara Frontier Tariff Bureau, Inc., 50924
Environmental statements; availability, etc.:
Norfolk & Western Railway Co. et al., 50924–50925
Rail carriers:
Waybill data; release for use, 50925
Railroad operation, acquisition, construction, etc.:
Blue Mountain Railroad, Inc., 50925

**Justice Assistance Bureau**
RULES
State criminal alien assistance program; implementation, 50830–50834

**Justice Department**
*See* Justice Assistance Bureau

**Land Management Bureau**
NOTICES
Closure of public lands:
Oregon, 50921
Opening of public lands:
Nevada, 50921–50922
Realty actions; sales, leases, etc.:
Arizona, 50922
Survey plat filings:
California, 50922–50923

**Libraries and Information Science, National Commission**
*See* National Commission on Libraries and Information Science

**Management and Budget Office**
RULES
Organization, functions, and authority delegations:
Federal Communications Commission, Managing Director, 50813–50816

**National Aeronautics and Space Administration**
NOTICES
Meetings:
Advisory Council, 50925

**National Commission on Libraries and Information Science**
NOTICES
Meetings; Sunshine Act, 50963

**National Institutes of Health**
NOTICES
Meetings:
National Eye Institute, 50921
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 50921

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 50858–50859
Pacific Coast groundfish, 50857–50858
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 50893
NOTICES
Grants and cooperative agreements; availability, etc.:
Private Enterprise Government Interactions Task Group fellowship program, 50899–50900
Marine mammals:
Public display; education and conservation programs; professional standards, 50900–50902
Permits:
Marine mammals, 50902–50903

**National Science Foundation**
NOTICES
Meetings:
Biochemistry and Molecular Structure and Function Advisory Panel, 50925–50926
Cell Biology Advisory Panel, 50926
Chemistry Special Emphasis Panel, 50926
DOE/NSF Nuclear Science Advisory Committee, 50926
Genetics and Nucleic Acids Advisory Panel, 50926–50927
Mathematical Sciences Special Emphasis Panel, 50927
Neuroscience Advisory Panel, 50927

Physiology and Behavior Advisory Panel, 50927–50928

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Northeast Nuclear Energy Co. et al., 50928–50929
Meetings:
Nuclear Waste Advisory Committee, 50929
*Applications, hearings, determinations, etc.:*
Philadelphia Electric Co. et al., 50929–50931
Western Industrial X-Ray Inspection Co., Inc., 50931–50932
Wicks, Larry D., 50932–50935

**Office of Management and Budget**
*See* Management and Budget Office

**Personnel Management Office**
RULES
Employment:
Temporary and excepted service employment
Correction, 50813

**Physician Payment Review Commission**
NOTICES
Meetings, 50935–50936

**Public Health Service**
*See* Food and Drug Administration
*See* National Institutes of Health

**Resolution Trust Corporation**
NOTICES
Coastal Barrier Improvement Act; property availability:
Fox Meadow, NY, 50936–50937

**Securities and Exchange Commission**
PROPOSED RULES
Securities:
Customer limit orders, 50866–50870
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 50937–50938
Boston Stock Exchange, Inc., 50938–50939
Chicago Board Options Exchange, Inc., 50939–50943
National Association of Securities Dealers, Inc., 50943–50949
National Securities Clearing Corp., 50949–50950
Pacific Stock Exchange, Inc., 50950–50951
*Applications, hearings, determinations, etc.:*
Great Hall Value Ten Trust, Series 1, et al., 50951–50952
Norwest Bank Minnesota, N.A., et al., 50952–50953

**Small Business Administration**
RULES
Small business size standards:
Environmental remediation services
Correction, 50964
NOTICES
Disaster loan areas:
Georgia, 50953–50954
Small business investment companies:
Maximum cost of money; debenture rate, 50954

**State Department**
NOTICES
Meetings:
International Telecommunications Advisory Committee, 50954
Shipping Coordinating Committee, 50954–50955

**State Justice Institute**
NOTICES
Grants, cooperative agreements, and contracts; guidelines, 50966–51004

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Transit Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Capitol Air, Inc., 50955

**Treasury Department**
*See* Fiscal Service
NOTICES
Agency information collection activities under OMB review, 50960–50962
Organization, functions, and authority delegations:
Deputy Assistant Secretary (Information Systems), 50962

---

**Separate Parts In This Issue**

**Part II**
State Justice Institute, 50966–51004

**Part III**
Federal Election Commission, 51006–51028

**Part IV**
Department of Health and Human Services, Food and Drug Administration, 51030–51058

**Part V**
Department of Transportation, Federal Highway Administration, 51060–51063

**Part VI**
Department of the Treasury, Foreign Assets Control Office, 51066–51080

---

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

---

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**5 CFR**
213.....50813
316.....50813
1320.....50813
1633.....50816
Ch. LXXVI.....50816

**7 CFR**
246.....50818
906.....50824

**9 CFR**
**Proposed Rules:**
75.....50860
102.....50861

**11 CFR**
**Proposed Rules:**
9003.....51006
9004.....51006
9006.....51006
9007.....51006
9033.....51006
9034.....51006
9037.....51006
9038.....51006

**12 CFR**
304.....50826
614.....50964

**13 CFR**
121.....50964

**14 CFR**
**Proposed Rules:**
Ch. I (2 documents).....50864
71.....50865

**17 CFR**
**Proposed Rules:**
240.....50866

**21 CFR**
101.....50828
510.....50828
520.....50829
556.....50829
**Proposed Rules:**
101.....51030
170.....51030
310.....51030

**24 CFR**
**Proposed Rules:**
813.....50870
905.....50870
908.....50870
913.....50870

**28 CFR**
82.....50830

**31 CFR**
580.....51066
**Proposed Rules:**
344.....50874

**32 CFR**
806.....50834

**40 CFR**
52.....50844
55.....50845
81.....50848
**Proposed Rules:**
52.....50884
300.....50884

**46 CFR**
10.....50964

**47 CFR**
73 (2 documents).....50850
**Proposed Rules:**
73 (2 documents).....50886, 50887

**48 CFR**
213.....50851
247.....50851

**49 CFR**
**Proposed Rules:**
391.....50887

**50 CFR**
17.....50852
663.....50857
675.....50858
**Proposed Rules:**
675.....50893

# Rules and Regulations

Federal Register
Vol. 59, No. 193
Thursday, October 6, 1994

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 213 and 316

RIN 3206–AF55

### Temporary and Excepted Service Employment; Correction

**AGENCY:** Office of Personnel Management.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to the final regulations which were published Tuesday, September 13, 1994, (59 FR 46895). The regulations related to the service limits for temporary appointments.

**EFFECTIVE DATE:** October 13, 1994.

**FOR FURTHER INFORMATION CONTACT:** Tracy E. Spencer, (202) 606–0830, or fax (202) 606–2329.

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations that are the subject of this correction revise OPM's time limits for temporary appointments (i.e., appointments limited to 1 year or less) to set a uniform limit for such appointments in both the competitive and the excepted service at 1 year with no more than one 1-year extension (24 months total service). This change is intended to ensure that temporary appointments, under which employees receive no benefits, are used to meet truly short-term needs.

#### Need for Correction

As published, the final regulations show the effective date of the new time limits as 60 days following publication. However, OPM had intended to make the regulations effective 30 days following publication, the earliest date permitted by law. In view of Congressional and employee concerns and evidence that under existing limits some employees have, indeed, served for years under a succession of temporary appointments, we believe it is critical to make the revised limits effective as soon as possible.

The final regulations also listed contact for further information as Tracy Spencer on (202) 606–0960. Her telephone number is now (202) 606–0830.

#### Correction of Publication

Accordingly, the publication on September 13, 1994, of the final regulations, which were the subject of FR Doc. 94–22447, is corrected as follows:

**EFFECTIVE DATE:** October 13, 1994.

**FOR FURTHER INFORMATION CONTACT:** Tracy E. Spencer, (202) 606–0830, or fax (202) 606–2329.

Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 94–24823 Filed 10–5–94; 8:45 am]

BILLING CODE 6325–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### 5 CFR Part 1320

### Control of Paperwork Burdens on the Public; Delegation of Review and Approval Authority to the Managing Director of the Federal Communications Commission (FCC)

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Final rule.

**SUMMARY:** This Rule delegates to the Managing Director of the Federal Communications Commission (Commission) the authority, under the Paperwork Reduction Act of 1980, as amended (the Act), and 5 CFR 1320.9, to reauthorize information collection requests, information collection requirements, and collections of information in current rules conducted or sponsored by the Commission. This delegation applies to collections of information that have been initially approved by the Office of Management and Budget (OMB) and have an annual total public burden that is 5,000 hours or less and an estimated burden per respondent of less than 500 hours. In exercising this delegated authority, the Commission is to afford the public an opportunity to participate in the reauthorization review process. Commission-reauthorized collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A report of delegated approval for each information collection reauthorized by the Commission will be placed in OMB's public docket files when that approval is made. Under the Act, OMB may limit, condition, or rescind this delegation at any time, but it is intended that OMB will exercise this authority only rarely and in unusual circumstances.

**EFFECTIVE DATE:** October 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Timothy R. Fain, Policy Analyst, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, 725 17th Street N.W., Washington DC 20503, (202) 395–7231.

**SUPPLEMENTARY INFORMATION:** Section 3507(e) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.9 authorize OMB to delegate its authority to approve collections of information to an agency's designated senior official for paperwork reduction or to the agency head if certain conditions are met. The Act and OMB's implementing regulations require OMB to comply with the notice and comment procedures of title 5, United States Code, chapter 5, before providing delegation to any agency. Following extensive consultation with the Commission, OMB preliminarily determined that the FCC met all of the requirements for delegation of the authority requested. Following this determination, OMB published proposed changes to 5 CFR part 1320 in a Notice of Proposed Rulemaking (NPRM) on June 9, 1994 (59 FR 29738). No comments were received from Federal agencies or members of the public.

With one exception, this final rule adopts the NPRM. OMB has added, as new section 2.(a)(3)(v), a requirement that the FCC hold periodic training on meeting the requirements of the Act and 5 CFR part 1320 for the members of the functional bureaus and offices (B/Os) responsible for sponsoring information collections.

The delegation is granted to the Commission's Managing Director who, as the Commission's designated senior

official, has the authority to reauthorize the Commission's extension of collections of information, subject to the Paperwork Reduction Act. OMB approval will still be required for new, revised, and expired information collections or those collections that represent more than a total annual burden of 5,000 hours or an individual respondent's burden of greater than 500 hours.

Under the terms of the delegation, each quarter, the agency clearance officer will identify the information collections that will need to be reauthorized during the next quarter and notify the appropriate functional Bureau and Office (B/O) of the Commission. Sponsoring B/Os will analyze each of these collections and consider: the continued need for the information, including the need for individual report items; how the Commission has used this information in the past; the reporting frequency; and selection of the reporting instrument. The review will cover clarity of format and instructions, reporting deadlines, costs and burdens, any public comments the Commission received during the previous clearance period, and other relevant items. For those eligible collections that the B/Os choose to extend, the reauthorization process would be initiated by B/O preparation of a "request for extension of an information collection." This request, and the accompanying supporting statement, will be submitted to the agency clearance officer in the Office of the Managing Director. After screening by the agency clearance officer, a **Federal Register** notice and a **FCC Public Notice** will be issued requesting public comment during a 30-day review period beginning on the date of publication of the notice. Public comments will be evaluated and, where appropriate, incorporated into the collection. The agency clearance officer will provide written responses to all public comments. The Managing Director will not reauthorize collections with substantive changes. Finally, when appropriate, the Managing Director will reauthorize the collection for use and submit a report of delegated approval to OMB.

This entire process will occur under the general direction of the Managing Director in his capacity as the Commission's designated senior official. The Commission's clearance process will be under the day-to-day supervision and management of the agency clearance officer who reports to the Managing Director and is outside and independent of any program office that would originate requests to extend information collections. The agency clearance officer would maintain administrative control throughout the review process regardless of how or where the request for extension originates. Each B/O will designate staff to act as liaison with the review structure described above and to help ensure their organization's adherence to the paperwork clearance standards and procedures. This staff will receive periodic training from the agency clearance officer on the Act and the requirements and procedures contained in 5 CFR part 1320. The agency clearance officer will ensure public access to the Commission's information collection files in compliance with approved retention and disposition schedules. Over the longer term, the agency clearance officer will work towards making summary information available electronically.

OMB believes that this review and reauthorization process meets the requirements for a delegation of OMB's Paperwork Reduction Act approval authority. These requirements and the reasons why OMB believes that the Commission fully meets them follow.

(1) The agency review process must exhibit independence from program office responsibility.

Virtually all of these collections are contained in regulatory requirements. The Commissioners generally establish overall policies with the functional B/Os responsible for the decisions to initiate or sponsor a collection of information. The Commission's Managing Director serves as the senior official for management and administrative matters and is independent of and separate from the functional B/Os. The Managing Director will serve as the final approval authority on all FCC decisions to reauthorize information collections. The agency clearance officer in the Office of the Managing Director will review each information collection to determine if the original purpose and intent of the collection warrants its continued existence. This review will also assess whether the collection remains necessary for the Commission to perform its duties and responsibilities as identified in the Communications Act of 1934, as amended, and the relevant parts of the Code of Federal Regulations.

(2) The agency must have sufficient resources to carry out paperwork responsibilities.

OMB believes that the Managing Director has demonstrated a commitment to conduct reviews of information collections that include the use of resources and personnel from all areas within the Commission. Each functional B/O having programmatic responsibilities will provide staff resources to prepare the analytical materials described above. This staff will receive periodic training from the agency clearance officer on the Act and the procedures and requirements contained in 5 CFR part 1320. The agency clearance officer in the Office of the Managing Director will then conduct the reviews identified above. To ensure that the agency clearance officer can perform an adequate review of each information collection, the records management division in the Office of the Managing Director has been assigned a staff of two senior analysts. These individuals, under the direct supervision of the agency clearance officer, each have extensive experience in addressing issues related to the Paperwork Reduction Act and information collections. Finally, the resources of the Office of General Counsel will be available if additional assistance is needed to evaluate the necessity of an information collection in its current form. The Managing Director of the FCC has requested a delegation to review and reauthorize collections of information that represent a narrow scope of the Commission's collections. We believe that the limited number and relative lack of complexity of these collections will not overburden the ability of the agency clearance officer to perform these reviews.

(3) The agency review process must evaluate fairly whether the proposed collections of information should be approved.

OMB believes that the Commission has developed a process that ensures that the Office of the Managing Director can fairly evaluate and reauthorize collections of information. The Office of the Managing Director has assembled an experienced staff under the direction of a paperwork clearance officer who is independent from the program B/Os. Additionally, the Managing Director has proposed a process for reauthorizing extensions to approved information collections that will: maintain public participation; allow OMB the opportunity to consult during the review process; ensure prompt notification of OMB concerning decisions made about individual information collections and any public comments received during this process; and provide OMB with information necessary to maintain its inventory of approved collections. Under the proposed delegation, the Commission would continue to request OMB approval for new, expired, or revised information collections.

The Commission recognizes that OMB can and will continue to have a consultative role in the approval process. The Commission will work closely with OMB should an assessment of the existing information collection indicate that a modification would benefit the Commission or the public.

(4) Evidence of successful performance of paperwork review activities.

Despite a dynamic regulatory environment that has resulted in the creation of numerous new information collection requirements, the Commission has been actively working to reduce its overall paperwork burden. The FCC has been working closely with the public to improve its ability to collect and evaluate information, particularly in the use of information technology to reduce or minimize the reporting burden of its information collections. Recent FCC innovations include: (a) use of "800" telephone lines to provide direct access to program experts who provide advice on completing the collection; (b) providing forms that can be faxed by the respondents directly to the program office for FCC advice or action; and (c) allowing submission of certain financial information in electronic format. The FCC is aggressively pursuing other applications of information technology to reduce the burden placed on the public.

In May 1990, the FCC erred in implementing the Paperwork Reduction Act when rules prescribing an information collection entitled "Authorization to Construct a Cellular Telephone System" were found to have been ambiguous concerning submission of certain documents required to be filed in support of an application. The Commission concurred with OMB's finding concerning this ambiguity and reopened the proceeding involving this collection. Since then, the Commission has upgraded the training of both the program B/Os and the Office of the Managing Director, and the Commission has been conscientious in managing its information collections. The Commission will develop a program of periodic training sessions to improve and maintain the knowledge of those individuals in the program B/Os responsible for managing information collections.

Summary

Based on these facts, OMB grants the Managing Director of the FCC a delegation to reauthorize its approved information collections subject to three exclusions.

The first exclusion would apply to changes to an existing collection. Any change, revision, or modification, other than non-substantive clarifications or corrections of spelling or grammatical errors, would cause a collection of information to be submitted to OMB for review and approval.

The second exclusion would apply to new collections of information or reauthorization of collections for which approval has lapsed. New or lapsed collections of information would continue to be submitted to OMB for review and approval.

The third exclusion would apply to the reauthorization of information collections employing statistical methods. Because OMB believes that the agency clearance officer lacks the resources required to effectively evaluate such collections, these collections would continue to be submitted to OMB for review and approval. Voluntary customer surveys will be treated under streamlined procedures established by OMB Memorandum M-93-14 dated September 29, 1993.

The Commission will continue to follow OMB rules with respect to information collections excluded from this delegation. The Commission may also, at its option, request OMB to conduct any delegated review.

The Commission's final action on the reauthorization of a collection of information would be taken after the public has a reasonable opportunity to comment through notice in the **Federal Register** and **FCC Public Notice.** The comment period will extend for at least 30 days following publication of the notice in the **Federal Register.** These notices will advise the public that a copy of comments may also be submitted to the OMB/Office of Information and Regulatory Affairs (OIRA) desk officer for the Commission.

**Sally Katzen,**

*Administrator, Office of Information and Regulatory Affairs.*

**List of Subjects in 5 CFR Part 1320**

Collection of information, Delegated review authority, Paperwork, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, OMB amends 5 CFR part 1320 as follows:

## PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

1. The authority citation for part 1320 continues to read as follows:

**Authority:** 31 U.S.C. sec. 1111 and 44 U.S.C. chs. 21, 25, 27, 29, 31, 35.

2. The authority citation at the end of appendix A—"(31 U.S.C. sec. 18a and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35"—is removed.

3. Appendix A to part 1320 is amended by adding a new entry at the end of the appendix to read as follows:

**Appendix A to Part 1320—Agencies With Delegated Review and Approval Authority**

* * * * *

2. The Managing Director of the Federal Communications Commission.

(a) Authority to review and approve currently valid (OMB-approved) collections of information, including collections of information contained in existing rules, that have a total annual burden of 5,000 hours or less and a burden of less than 500 hours per respondent is delegated to the Managing Director of the Federal Communications Commission.

(1) This delegation does not include review and approval authority over any new collection of information, any collections whose approval has lapsed, any substantive or material modification to existing collections, any reauthorization of information collections employing statistical methods, or any information collections that exceed a total annual burden of 5,000 hours or an estimated burden of 500 hours per respondent.

(2) The Managing Director may ask that OMB review and approve collections of information covered by the delegation.

(3) In exercising delegated authority the Managing Director will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action on reauthorizing an existing collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** and an **FCC Public Notice** informing the public that a collection of information is being extended and announcing the beginning of a 30-day comment period, notifying the public of the "intent to extend an information collection," and providing the public with the opportunity to comment. Such notices shall advise the public that they may also send a copy of their comments to the OMB/Office of Information and Regulatory Affairs desk officer for the Commission.

(A) Should the Managing Director determine that a collection of information that falls within the scope of this delegation must be reauthorized quickly and that public participation in the reauthorization process interferes with the Commission's ability to perform its statutory obligation, the Managing Director may temporarily reauthorize the extension of an information collection, for a period not to exceed 90 days, without providing opportunity for public comment.

(B) At the earliest practical date after granting this temporary extension to an information collection, the Managing Director will conduct a normal delegated review and publish a **Federal Register** Notice soliciting public comment on its intention to

extend the collection of information for a period not to exceed 3 years.

(ii) Assure that approved collections of information are reviewed not less frequently than once every 3 years and that such reviews are conducted before the expiration date of the prior approval. When the review is not completed prior to the expiration date, the Managing Director will submit the lapsed information collection to OMB for review and reauthorization.

(iii) Assure that each reauthorized collection of information displays an OMB control number and, except for those contained in regulations or specifically designated by OMB, displays the expiration date of the approval.

(iv) Transmit to OMB for incorporation into OMB's public docket files, a report of delegated approval certifying that the Managing Director has reauthorized each collection of information in accordance with the provisions of this delegation. Such transmittal shall be made no later than 15 days after the Managing Director has taken final action reauthorizing the extension of an information collection.

(v) Ensure that the personnel in the Commission's functional bureaus and offices responsible for managing information collections receive periodic training on procedures related to meeting the requirements of this rule and the Act.

(b) OMB will:

(1) Provide notice to the Commission acknowledging receipt of the report of delegated approval and its incorporation into OMB's public docket files and inventory of currently approved collections of information.

(2) Act upon any request by the Commission to review a collection of information referred by the Commission in accordance with the provisions of section 2(a)(2) of this Appendix.

(3) Periodically assess, at its discretion, the Commission's paperwork review process as administered under the delegation. The Managing Director will cooperate in carrying out such an assessment. The Managing Director will respond to any recommendations resulting from such a review and, if it finds the recommendations to be appropriate, will either accept the recommendation or propose an alternative approach to achieve the intended purpose.

(c) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances.

[FRDoc. 94–24677 Filed 10–5–94; 8:45 am]

BILLING CODE 3110–01–F

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1633

### 5 CFR Chapter LXXVI

RIN 3209–AA15

## Supplemental Standards of Ethical Conduct for Employees of the Federal Retirement Thrift Investment Board

**AGENCY:** Federal Retirement Thrift Investment Board (Board).

**ACTION:** Final rule.

**SUMMARY:** The Federal Retirement Thrift Investment Board, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Board that supplement the Standards of Ethical Conduct for Employees of the Executive Branch, as issued by OGE, with a requirement to obtain prior approval for outside employment. The Board also is repealing its remaining old conduct standards which were retained on an interim basis pending issuance of the Board's supplemental regulations and is inserting in their place a cross-reference to the new provisions.

**EFFECTIVE DATE:** These regulations are effective October 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Gray, Deputy Assistant General Counsel for Administration, (202) 942–1662, FAX (202) 942–1676.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with an additional grace period extension at 59 FR 4779–4780. Codified at 5 CFR part 2635, the new standards became effective on February 3, 1993. On June 2, 1993, the Board issued a final rule (58 FR 31332) which replaced all of the provisions of its prior standards of conduct regulations at 5 CFR part 1633 that had been superseded by part 2635, or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. The Board preserved only those provisions that were specifically grandfathered under the notes following 5 CFR 2635.403(a) and 2635.803.

With the concurrence of OGE, 5 CFR 2635.105 authorizes agencies to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Board, with OGE's concurrence, has determined that the following supplemental rules, being codified in new chapter LXXVI of 5 CFR, are necessary to the success of its ethics program. The Board is simultaneously repealing the remaining provisions of 5 CFR part 1633, which are superseded upon issuance of the Board's supplemental regulations, and is replacing those provisions with a single section that provides cross-references to 5 CFR parts 2634 and 2635, as well as to the Board's new supplemental regulations.

### II. Analysis of the Regulations

*Section 8601.101 General*

Section 8601.101 explains that these regulations supplement the executive branch-wide standards of ethical conduct and reminds Board employees, including Board members, that they are subject to these regulations and the executive branch-wide financial disclosure regulations. However, because Board members are special Government employees, the requirement for prior approval of outside employment in section 8601.102 does not apply to them.

*Section 8601.102 Prior Approval for Outside Employment*

5 CFR 2635.803 authorizes individual agencies to issue supplemental regulations to require agency employees to obtain prior approval before engaging in outside employment, with or without compensation. The Board has long had a prior approval requirement to ensure that any problems relating to an employee's outside employment are resolved before an employee begins such an undertaking. Section 8601.102 continues that prior approval requirement, but differs from the old Board requirement because it contains a definition of employment that clarifies the circumstances under which prior approval must be obtained. The outside employment must be approved by the employee's office director. In the written request, the employee is required to describe the organizations, duties, hours of work, and remuneration pertaining to the outside employment. An employee must submit the written request through his or her immediate supervisor, unless the immediate supervisor is the employee's office director.

In addition to approval by the employee's office director, if the outside employment involves teaching, speaking, or writing that relates to the employee's official duties, the employee must also obtain the advance written approval of the Executive Director of the

Board. The Executive Director may approve or disapprove such outside employment, or may permit the performance of the teaching, speaking, or writing as an official duty (for which no compensation may be received). This requirement does not apply to teaching, speaking, or writing that relates to the purely private interests of the employee that are nonwork-related.

**III. Repeal of Board Standards of Conduct Regulations**

Because the Board's retained Standards of Conduct at 5 CFR part 1633 are superseded by the supplemental regulations contained in new 5 CFR part 8601, the Board is repealing all of existing 5 CFR part 1633. To ensure that employees are on notice of the ethical standards to which they are subject, the Board is replacing its old standards at 5 CFR part 1633 with a provision that cross-references 5 CFR parts 2634 and 2635 and the Board's new supplemental regulations at 5 CFR part 8601.

**IV. Matters of Regulatory Procedure**

*Administrative Procedure Act*

The Board has found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and repeals. The supplemental regulations are essentially a restatement of rules previously contained in the standards of conduct, and the Board believes that it is important to a smooth transition from the Board's standards of conduct to the executive branch standards that these rules become effective as soon as possible. Furthermore, this rulemaking is related to the Board's organization, procedure and practice.

*Regulatory Flexibility Act*

The Board has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only Board employees.

*Paperwork Reduction Act*

The Board has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

*Environmental Impact*

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

**List of Subjects**

*5 CFR Part 1633*

Conflict of interests, Government employees.

*5 CFR Part 8601*

Conflict of interests, Government employees.

Dated: September 21, 1994.

**Roger W. Mehle,**

*Executive Director, Federal Retirement Thrift Investment Board.*

Approved: September 30, 1994.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Federal Retirement Thrift Investment Board, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations as follows:

**TITLE 5—[AMENDED]**

**5 CFR CHAPTER VI—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

1. Part 1633 of 5 CFR Chapter VI is revised to read as follows:

## PART 1633—STANDARDS OF CONDUCT

**§ 1633.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.**

Employees of the Federal Retirement Thrift Investment Board (Board) are subject to the executive branch-wide Standards of Ethical conduct at 5 CFR part 2635, the Board regulations at 5 CFR part 8601 which supplement the executive branch-wide standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

Authority: 5 U.S.C. 7301.

2. A new chapter LXXVI, consisting of part 8601, is added to title 5 of the Code of Federal Regulations to read as follows:

**5 CFR CHAPTER LXXVI—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

## PART 8601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sec.

8601.101 General.
8601.102 Prior approval for outside employment.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

**§ 8601.101 General.**

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Federal Retirement Thrift Investment Board (Board) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition, Board employees are subject to the executive branch financial disclosure regulations at 5 CFR part 2634.

**§ 8601.102 Prior approval for outside employment.**

(a) Before engaging in outside employment, with or without compensation, an employee, other than a special Government employee, must obtain written approval from his or her office director. The written request shall be submitted through the employee's immediate supervisor, unless the supervisor is the employee's office director, and shall identify the employer or other person for whom the services are to be provided, as well as the duties, hours of work, and compensation involved in the proposed outside employment.

(b) Approval under paragraph (a) of this section shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) In addition to the approval required by paragraph (a) of this section, an employee whose outside employment involves teaching, speaking, or writing that relates to his or her official duties within the meaning of 5 CFR 2635.807(a)(2) shall obtain approval from the Executive Director of the Board to engage in the activity as an outside activity, rather than as part of the employee's official duties.

(d) For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civil

organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

[FR Doc. 94–24791 Filed 10–5–94; 8:45 am]
BILLING CODE 6760–01–M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 246

### Special Supplemental Food Program for Women, Infants and Children (WIC); Food Funding Formula Rule

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations governing funding and funds allocation procedures for the Special Supplemental Food Program for Women, Infants and Children (WIC) in order to simplify and update the funding process in anticipation of a fully funded program. The amendments provide a greater share of funds to State agencies receiving comparatively less than their fair share of funds based on their WIC income eligible population, provide all State agencies with stability funding, adjusted for inflation, to the extent funds are available, and simplify the food funding allocation process by eliminating obsolete features.

**EFFECTIVE DATE:** This rule is effective on October 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2710.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant impact on a substantial number of small entities. The rule affects how the Department will calculate food grant allocations for WIC State agencies.

#### Paperwork Reduction Act

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paper Reduction Act of 1980 (44 U.S.C. 3501 through 3502) are included in this final rule.

#### Executive Order 12372

The Special Supplemental Food Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

#### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR § 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR § 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR § 246.19—administrative appeal in accordance with 7 CFR § 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR § 3016.36.

#### Background

The WIC Program has consistently demonstrated its effectiveness in promoting the health and nutritional well-being of low-income women, infants and children at nutritional or medical risk, and has experienced large increases in its appropriation for the last several years. Due to its success, the WIC Program is likely to soon achieve "full funding" whereby it is estimated that all eligible women, infants and children who apply could obtain program benefits. In moving toward the full funding objective, the Department finds that its current food funding formula presents impediments to funding equity and is so complex it is difficult to execute and predict its results.

Historically, WIC has never had enough funds to serve all who are in need of, and eligible for, its benefits. Certain State agencies receive levels of funding that allow them to serve more of their eligible populations than others. The concept of full funding for WIC, as set forth by the Administration, does not guarantee unlimited funds nor does it establish the WIC Program as a federal entitlement program. As before, WIC must manage within a finite appropriation level. However, a fully funded WIC Program implies that the appropriation level will more adequately provide for all eligible persons who apply for benefits, and that each State agency should have an equal chance to serve their eligible population. Currently, many State agencies are serving lesser proportions of their WIC-eligible population than other State agencies. Therefore, the formula must support growth among State agencies which are now funded to serve a lesser proportion of their eligible population, as well as allocate funds fairly among all State agencies under a stable, fully funded program.

Therefore, to better prepare the WIC Program for full funding, the Department published a proposed rule on June 8, 1994 to revise the food funding formula in order to meet three major objectives: 1) to provide a greater share of funds to State agencies receiving comparatively less than their fair share of funds based on their WIC income eligible population; 2) to simplify the food funding formula and delete obsolete components; and 3) to maintain current services to eligible participants that State agencies are serving to the extent funds are available.

The proposed rule provided for a 60-day comment period, which ended on August 8, 1994. Thirty-six comment letters were received from a variety of sources, including State and local agencies, advocacy groups and other public interest groups. The Department has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal.

#### Assumptions Under Full Funding

As explained in the preamble to the proposed rule, full funding is not intended to replace or discourage efficient and effective program management. Accordingly, mandatory

cost containment efforts recently undertaken must continue, and additional voluntary cost containment efforts are encouraged. Funds will continue to be allocated based on a national average food package cost as an incentive for State agencies to manage their food package costs more efficiently to serve more eligibles. Finally the commitment to WIC full funding can only be met if States continue to utilize risk-related eligibility criteria that are based on sound medical, nutritional and preventive health research. Income eligibility alone is not a sufficient condition for program eligibility.

**Funding Formula Objectives**

The funding process should assure each State agency a grant that allows it an equal opportunity to serve its fair share of eligible persons seeking WIC service by providing a food package suited to the participant's unique nutritional deficiencies, not to exceed the maximum food benefit allowed under regulations. This rule establishes a funding formula to meet this overall goal. The following is a discussion of each provision, as proposed, comments received on the proposal, and an explanation of the provisions set forth in this final rule.

*1. Section 246.16(c)(1) Allocation Formula—Use of participation data in the formula.*

The Department proposed to revise Section 246.16(c)(1) to eliminate the use of priority participation data or data reflecting State-funded participation for imputing the figures needed for the targeting components of the formula described in Section 246.16 (c)(3)(ii) and (c)(1)(ii)(A).

All commenters on this provision supported it as proposed. Therefore, the provision remains unchanged from the proposed rule.

*2. Section 246.16(c)(3)(i) Allocation of stability funds.*

Currently, in allocating funds to State agencies, first priority is given to maintaining each State's operating level as "stability funding". The stability component of a State agency's allocation is initially based on the amount of food funds received by each State agency in the prior fiscal year, adjusted to restore 50 percent of any grant funds voluntarily returned in the prior year. This base level is then adjusted to account for a portion of the inflation estimated for the upcoming fiscal year (except that Indian State agencies receive a full inflation adjustment).

The proposed formula retained this component with some modification. The principle of stability was maintained to help assure that each State agency would receive enough funds to support its current participation level. However, the proposed rule deleted the provision allowing a State agency the option to retain 50 percent of funds it returns before July 16 of any given year as a part of its stability grant the next fiscal year.

The majority of commenters addressing this issue opposed the provision and stated that the current 50 percent recovery credit should be maintained. The commenters indicated that eliminating the credit would be a disincentive for State agencies to return funds, thereby delaying the reallocation of unspent funds. Several commenters suggested maintaining the 50 percent credit for one year only. A few commenters were strongly in support of the provision to delete the 50 percent recovery credit.

The 50 percent credit was originally intended as an incentive for a State agency to return food funds that it could not spend, thereby making those funds available for reallocation to State agencies that needed additional funds. However, almost all State agencies which have elected to return funds under this provision have been those which were in danger of failing to spend at least 95 percent of their allocated food funds. Failure to achieve this expenditure level results in a specific decrease in the amount of food funds in the subsequent fiscal year. In these instances, State agencies simply returned the amount of funds necessary to ensure expenditures of at least 95 percent of their adjusted food grants. The Department no longer believes restoration of 50 percent of returned funds to State agencies in the next year is prudent. The restoration of these funds makes it possible for a State agency already receiving its fair share funding to retain funds it does not need. In addition, the credit effectively increases stability grants in the subsequent year by 150 percent of the amount of funds returned, since the State agencies returning funds receive a 50 percent credit in the subsequent year's stability grant, while the State agencies to which the returned funds are reallocated have their subsequent year's stability grants increased by the full amount of the reallocation. If there are increases in appropriation levels for the subsequent year, this additional liability can be funded. However, if funds in the subsequent year are not adequate to meet all stability grants, all State agencies share in a grant decrease to accommodate the 50 percent credit. Accordingly, to ensure equity, the 50 percent recovery credit is deleted in this rule.

*3. Section 246.16 (c)(3)(i)(A) Inflation adjustment.*

The current food funding formula uses a calculation referred to as the "targeted inflation factor". It was designed to provide an inflation adjustment proportionate to a State agency's service to the highest priority participants. Under this process, the full inflation increase is adjusted according to each State agency's percentage of participants in the top three priority level categories (Priority I-III women, infants and children at nutritional or medical risk). For instance, if 75 percent of a State agency's participation was in the Priority I to III participation categories, and the full inflation rate was 4 percent, that State agency would receive a targeted inflation rate of 3 percent applied against its prior year grant to determine its stability grant. An exception is made for Indian State agencies which receive full inflation.

The proposed rule took a more straight-forward approach by providing all State agencies with a full inflationary increase as long as funds are adequate to do so. If, however, the appropriation for any given year is insufficient to support prior year grant levels plus full inflation, the proposed funding formula would reduce State agency grants to allow for funds allocation within available funding. Those State agencies with under fair share allocations would receive first priority for any available inflationary increases, and State agencies at or above their fair share allocation for that fiscal year would receive second priority. The proposal sought to assure continued progress in increasing the grants of States that are under their fair share.

All of the commenters addressing this issue were opposed to this provision. The consensus was that if funds were insufficient to provide full inflationary increases, then all State agencies should take a prorata reduction for that fiscal year. The commenters were opposed to the two-tier concept and stated that small reductions in all State agency grants would be less disruptive to WIC operations than large cuts to a few State agencies.

The Department is persuaded by the concerns raised by commenters on this aspect of the proposed rule. Therefore, Section 246.6 (c)(3)(ii) in this final rule provides that in the event that funds are insufficient to support prior year grant levels plus full inflation, all state agencies would take a prorata reduction for that fiscal year.

*4. Section 246.16 (c)(3)(i)(B) Migrant set-aside.*

Section 17(g)(4) of the Child Nutrition Act of 1966 (42 U.S.C.

1786(g)(4)) provides that not less than 9/10 of one percent of the funds appropriated for the WIC Program be available first for services to migrant women, infants and children. The current regulations stipulated that the full 9/10 of one percent set-aside is to be subtracted from all States' stability grants and then added to stability grants of States that report serving migrants. Because these adjustments for the migrant set-aside become part of the base grant of stability funds for the next fiscal year, FNS found that stability grants were skewed over time, directly causing some State agencies to receive more than their fair share of funds while preventing other States from receiving their fair share. This distorting effect becomes even larger as over-all funding increases.

The rule proposed that for State agencies that serve migrants, a portion of the grant be designated for service to the migrant population. The designated amount would be based on prior year migrant participation reported by each State agency. By designating a target funding level, the migrant grant will not distort subsequent grant allocations, yet will establish service to this needy population as a priority. This is an approach similar to the one employed to target expenditures for breastfeeding promotion and support.

The Department believes that State agencies must estimate and accommodate such changes according to the information available from State and local sources. Therefore, it was proposed that, for planning purposes, expenditure targets would be established for both food grants and nutrition services and administration grants to insure that 9/10 of one percent of the appropriation is *made available* for service to migrants. State agencies would be expected to plan for migrant participants as now required in their State Plan of Operation and give priority service to migrant participants that arrive from another State agency seeking WIC services.

Most of the commenters supported this provision. However, two commenters thought the proposed change was unclear and implied additional reporting requirements. In addition, it was suggested that the methodology to be used be clarified.

The Department is not imposing any additional reporting requirements regarding migrant participants. State agencies will continue to report migrant participation as in past years. For purposes of clarity, the Department has deleted the last sentence in section 246.16(c)(3)(iv) of the proposed regulation which erroneously implied that migrant funds would be deducted from the State agency's stability allocation. Since this was not the intent of the regulation, this language was removed for clarification. The remainder of section 246.16(c)(3)(iv), which designates a migrant service expenditure target, is adopted final as proposed.

*5. Section 246.16(c)(3)(ii) Allocation of residual funds.*

Under the current rule, any funds remaining after stability grants are allocated are "residual funds". Residual funds are allocated under two components—"targeting" and "growth". The Department proposed eliminating the targeting component and modifying the growth component as discussed below.

**"Targeting" Component for Food Funds (Section 246.16(c)(3)(ii)(A))**

As explained in detail in the preamble, the targeting component is no longer needed to encourage service to Priority I participants, and is a barrier to achieving funding equity among State agencies. Therefore, the Department proposed the elimination of the targeting component to simplify the formula, and ensure greater funding equity based on each State agency's eligible population.

All of the commenters on this provision supported it, and the final rule retains the provision that would eliminate targeting as a consideration in funds allocation. However, five commenters stated that they would oppose the provision unless all States were guaranteed prior year funding levels plus full inflation if funds are available. In the event that funds are insufficient, the commenters wanted a prorata reduction for all States. These concerns were addressed above in the discussion of the stability allocation (Section 246.16(c)(3)(ii)).

**"Growth" Component for Food Funds (Section 246.16(c)(3)(ii)(B))**

Under the current formula, after targeting funds are allocated, the remaining half of residual funds are allocated for "growth" within State agencies that have less opportunity to serve their eligible population compared to other State agencies. Growth funds are allocated based primarily on a "fair share" concept similar to that discussed earlier. To determine fair share funding, FNS used a mathematical equation to create an estimate of each State's eligible WIC population. The estimate began with each State agency's number of income eligibles, currently extracted from decennial census data. The estimate is adjusted slightly to account for State agency variations in infant mortality and low birth weight rates ("health indicators"). Also, women, infants and children served by the Commodity Supplemental Food Program (CSFP) are subtracted from this estimate for those States in which CSFP operates.

As explained below, the Department proposed retaining the "growth" component of the formula using only the estimate of income eligibles (with some adjustments) and deleting the use of health indicators. It was believed that this best defines each State agency's actual need for program funds and greatly simplifies the "fair share" equation. Each component and revision of the eligibles database for the fair share allocation provided in Section 246.16(c)(3)(ii) is discussed below.

*Income Eligibles.* Each State agency's estimate of WIC income eligible persons is based on data from the 1990 Decennial Census, which reflects population characteristics as of 1989. Although the Census data provides the most current State-by-State information, the Department recognizes that data which describe a population at a fixed point in the past may not accurately reflect recent and future socioeconomic and demographic trends. Accordingly, the Department is currently exploring other potential data sources for the state-level income eligibles estimates. The proposed rule did not establish or define the exact source of the eligibles database in order to allow for the use of the most timely and reliable data as it becomes available. This was supported by the majority of commenters who commented on the eligibles data.

Under the proposed rule, fair share funding allocations would be based on estimates of the State agency's eligible population at or below 185 percent of poverty rather than estimates of the fully-eligible population (persons income eligible and at nutritional risk). Unlike the national estimate of eligibles, State agency allocations are not adjusted for an estimate of fully eligible persons as nutritional risk standards vary by State agency and application of a "national" estimate would serve no useful purpose for funding allocation purposes. The State level income-eligible estimates were used to determine each State's proportion of the national total of WIC income-eligibles. Funding allocations are based on this *proportion*—not on the absolute number of estimated income eligibles in each State. Each State agency's fair share allocation thus depends on both its proportion of income eligibles and the

total amount of funds available nationally.

Most commenters stated that they concur with the proposed "fair share" concept, but that more timely updates of eligibles data are critical. Commenters consistently stated that the current data seriously under counts the number of WIC eligibles and they strongly encourage FNS to continue working on obtaining new and better estimates. However, two commenters stated that FNS should withdraw the current proposal until better data is obtained. One commenter maintained that Medicaid participants should be included in the estimates. One commenter proposed an alternative approach similar to fair share using a "full funding" concept. However, after much consideration of this particular alternative, the Department believes that it would impede under fair share State agencies progress in moving towards full funding. The Department will retain the fair share principle as proposed, using the best available indicators to determine each State agency's population of income eligibles. At the same time, the Department continues its commitment to develop more timely and accurate estimates of eligibles to be used in the WIC food funding formula.

*Health Indicators.* In the current formula, the calculation of each State's eligible WIC population, used to compute its fair share allocation, includes an adjustment for certain health indicators (infant mortality and low birth weight rates) in the food funding formula. As explained in the preamble to the proposed rule, the population targeted by the health indicators is now largely served. Moreover, as service to the highest risk participants has increased, the overall impact of the health indicators on the amount of food funds received by States has become negligible. Furthermore, the inclusion of the health indicators unduly complicates and reduces understanding of the food funding formula. Therefore, the Department proposed to eliminate the use of the health indicator adjustments. All commenters who commented on this provision were supportive of removing the health indicators from the formula. Therefore, this final rule retains the provision as proposed.

*Adjustments for Higher Cost Areas.* The current growth component also makes an adjustment for the higher food costs of four specific State agencies located outside of the continental United States (or Indian State agencies located within their borders). These State agencies currently are Alaska, Hawaii, Guam, and the Virgin Islands. The Department proposed to retain this adjustment, but to allow more flexibility than the current regulation. The majority of commenters supported the proposed provision. However, some commenters misinterpreted this provision to mean that State agencies or portions of State agencies (urban areas, rural areas, Indian Tribal organizations) within the continental United States (i.e., within the 48 contiguous States and the District of Columbia) that can document higher food costs should receive an adjustment. Other commenters specifically stated that Puerto Rico should be considered as an outlying State agency.

This rule retains the provision as proposed. However, the Department would like to clarify that the proposed provision was not intended to expand the adjustment for higher cost in areas to those State agencies located *within* the continental United States. At this time, there is no data to support adjustments for areas within the continental United States. With regard to Puerto Rico, although it is potentially eligible for this adjustment under the new provision, it must still demonstrate that it meets the requisite requirements set forth in Section 246.16(c)(3)(i)(B). In particular, it must document that economic conditions result in higher food costs, and that it has successfully implemented *voluntary* cost containment measures.

**Adjustments for Indian Tribal Organizations (ITOs)**

The growth allocation for the Indian Tribal Organizations has traditionally presented problems due to inadequate data regarding eligibles. The Department knows of no data source to resolve this problem. Therefore, it proposed to give FNS the authority to oversee negotiations between one or more ITOs and the geographic State agency or agencies in which the ITO is located. FNS could, acting independently or at the request of a State agency, involve affected State agencies in an agreement on the temporary or permanent transfer of funds. Negotiations could be conducted to shift funds among these State agencies to better reflect the actual service being provided by each of the State agencies.

Only a few commenters addressed this provision. The commenters were generally in favor of the provision but stressed that caution must be used in shifting funds from one State agency to another, particularly based on eligibles data that is questionable. In addition, there may be a misunderstanding that such grant adjustments will occur without input from all affected State agencies. The Department would like to clarify that any grant adjustments must be agreed upon by all State agencies involved, and by FNS. At no time would any affected State agency be left out of the negotiation process.

Additionally, since the proposed rule was published, it has been brought to our attention that negotiations may need to also take place between two or more ITOs not just between ITOs and geographic State agencies. The final rule has been modified to reflect this. In all other respects, it remains as proposed.

**Commodity Supplemental Food Program**

The Commodity Supplemental Food Program's (CSFP) service to low-income women, infants and children contributes to the Administration's goal of fully funding the WIC Program by the end of fiscal year 1996. The fiscal year 1995 budget request and out year budget targets assume CSFP women, infants and children participation will equal the authorized caseload level.

In those States where both CSFP and WIC operate, the current rule requires the subtraction from the WIC income eligible database of those participants (based on actual, average CSFP participation in the prior fiscal year) who are estimated as eligible for the WIC Program, but elect to receive benefits under CSFP. As CSFP is currently authorized to serve, in addition to WIC eligibles, 5 year old children and postpartum women from 6 months to 1 year postpartum, not all CSFP participants are categorically eligible for the WIC Program. Therefore, FNS assumes that one-fourth of the children and one-half of the postpartum women participating in CSFP are not eligible for the WIC Program. The balance of CSFP participants are subtracted from the WIC eligibles estimate.

The Department proposed to make three changes to this deduction from the WIC eligibles database. First, it proposed to modify the method for determining the number of CSFP women, infants and children to subtract from the WIC eligibles database. It proposed to base the deduction upon the authorized caseload for CSFP women, infants and children, rather than actual participation. Second, it proposed to base the deduction on the CSFP *caseload* authorized at the beginning of the caseload cycle of the prior fiscal year (generally announced on December 1). Finally, it proposed that the adjustment described above for those CSFP participants who are not also categorically eligible for WIC (postpartum women from 6 months to 1

year postpartum and 5 year old children) would no longer be made. The Department believed that utilizing the total CSFP caseload level for women, infants and children, rather than actual participation, more equitably accounts for the resources provided to a State agency to serve the WIC target population under CSFP. These changes were intended to ensure that States that do not have access to CSFP were not disadvantaged in their access to WIC funds when compared with States that operate both programs.

Uniformly, commenters were strongly opposed to reducing the WIC eligibles data by the CSFP caseload, particularly with no reduction for non-WIC eligibles participating in CSFP. Commenters felt that deducting CSFP caseload from the WIC eligibles would improperly reduce estimates of income eligibles. They also stated that it was inequitable to no longer adjust the deduction to account for non-WIC eligible CSFP recipients. Most commenters suggested retaining the method used in the current formula. However, several commenters suggested perhaps there are States that could report WIC eligibles actually served by CSFP and then that data could be used to determine income eligibles.

In view of the concerns raised by commenters, the Department has decided not to adopt the proposed rule. Instead, the method used in the current regulations for deducting the CSFP participants eligible for WIC from the WIC income eligible data base will be retained.

**Performance Standard**

The Department also proposed to revise the 95 percent performance standard which reduces the current year grant for any State agency that does not spend at least 95 percent of its food grant. The Department is concerned that expenditure of only 95 percent of the grant is too generous in the context of a fully funded program. While the Department is sympathetic to the difficulties of rapidly growing States in meeting the 95 percent expenditure level, State agencies with relatively stable funding and participation do not face the same difficulties. For State agencies at or exceeding their fair share level, expending less than the 95 percent of allocated food funds is likely to indicate they have funds they cannot use. The Department proposed to retain the 95 percent standard for State agencies receiving less than their fair share allocation, and to increase the performance standard to 98 percent for those at or over their fair share level.

The majority of commenters were adamantly opposed to two different performance standards for over and under fair share State agencies. Additionally, most commenters felt the 98 percent performance standard was much too stringent and unrealistic due to food cost fluctuations, infant formula rebates, variations in participation and other factors not directly controlled by the WIC State agency. In view of these comments, the final rule deletes the proposed two-tier performance standard for over and under fair share State agencies. However, the Department continues to be concerned that unspent funds be directed to States with documented need, especially as State demographic and socioeconomic situations fluctuate from year to year. This is particularly critical in a full funding environment. Therefore, the Department has decided to retain a uniform performance standard, and to gradually increase it over time. Accordingly, paragraph 246.16 (e)(2)(i) in the final rule establishes a 96 percent performance spending standard in fiscal years 1995 and 1996, and a 97 percent standard for fiscal year 1997 and beyond for all WIC State agencies.

Additionally, prior to applying the performance standard, the current regulations in section 246.16(e)(3)(i) allow for exclusion from the grant of food funds that are spent forward into a succeeding fiscal year as authorized by section 246.16(b)(3)(ii), and (iv) and (v). Since spentforward funds are merely unspent funds that the State agency can retain, the Department proposed that they should no longer be excluded when assessing spending performance. A few commenters opposed this provision, but the Department continues to believe that spendforward funds should not be deducted when calculating the performance standard. This deduction has led to the current situation in which there are significant amounts of unspent money moving from one fiscal year to another. If not rectified, this will compound the extreme pressure that will be placed on all Departmental discretionary spending in order to meet the commitment to WIC full funding. Therefore, the final rule retains this provision as proposed. Any food funds backspent under section 246.16(b)(3)(i) or converted to nutritional services and administration (NSA) funds under section 246.16(g) will continue to be excluded from the food grant for purposes of applying the performance standard. These two reductions are appropriate in that they reflect food funds actually expended in the current year, and not merely reserved for future use.

**Summary of the Final Food Funding Formula**

The foregoing has described the decisions reached on the proposed provisions. To ensure that the new formula in this final rule is fully understood, the following describes the allocation process and provides simplified examples of the funding process.

*Fair Share Allocation Objective*

The funding objective is to give each State agency its fair share allocation of funds to the extent funds are available. Funds available include funds appropriated for the fiscal year as well as unspent funds carried over from the prior fiscal year that State agencies have not retained under spendforward authority as provided in section 246.16 (b)(3)(ii). An example of a simplified fair share allocation is shown below. This example assumes that available funds total $5000, and the total number of income eligibles is 1000 persons.

| State agency | Eligibles No. | Fair share percentage | Fair share allocation |
|---|---|---|---|
| A | 200 | 20 | $1,000 |
| B | 500 | 50 | 2,500 |
| C | 300 | 30 | 1,500 |
| Total | 1,000 | 100 | 5,000 |

*Stability Allocation*

Recognizing that State agencies may already have participants on the program supported with the grant funds each State agency received in the prior year, the formula strives to protect this service depending on total funds available. A stability allocation is provided to protect prior year grant levels contingent on availability of funds.

If funds are not adequate to fully fund prior year grants, all State agencies will receive a prorata reduction from their prior year grant level commensurate with the shortfall of available funds. If funds are available, each State agency would receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year. If funds are still available, all State agencies will receive an inflation adjustment.

This inflation adjustment will reflect the anticipated rate of food cost increases as determined by the Department. Should funds be inadequate to fully meet this adjustment, each State agency will receive an equal percent inflation

increase as permitted by the amount of funds available.

*Growth Allocation*

If funds remain after the stability allocation, then these funds are provided for a "*growth allocation*". The growth allocation gives additional funds to each State agency which has an inflation-adjusted stability allocation which is less than its fair share allocation. The formula subtracts each State agency's current year stability allocation from its fair share allocation to determine the dollar shortfall. Each State agency's shortfall, as a percent of all State agency's shortfalls, yields its percent share of the funds available for the growth allocation.

*Example of Formula Allocation Process*

The example below describes allocation steps for stability and growth. First, all State agencies have received at least their prior year final grant, which totaled $4,500. As $5,000 is available to allocate in this case, funds are sufficient to do both stability and growth allocations.

1. *Stability Allocation.* All State agencies receive an inflationary increase, based on full inflation, to the extent permitted by available funding. In this example, available funding permits the entire inflationary increase:

| State agency | Fair share | Prior year final grant | Inflation 3% | Stability grant |
|---|---|---|---|---|
| A | $1,000 | $1,100 | 33 | $1,133 |
| B | 2,500 | 2,000 | 60 | 2,060 |
| C | 1,500 | 1,400 | 42 | 1,442 |
| Total | 5,000 | 4,500 | 135 | 4,635 |
| Funds remaining=$365 | | | | |

2. *Growth Allocation.* Under fair share State agencies get a proportion of remaining funds based on the shortfall between their fair share allocation and stability grant. In the example below, the $365 available for growth funding is shared by States B and C according to their respective shortfalls from their fair share allocations.

| State agency | Fair share | Stability grant | Shortfall | $$ / Pct. | Funds rec'd | Final grant |
|---|---|---|---|---|---|---|
| A | $1,000 | $1,133 | NA | NA | NA | $1,133 |
| B | 2,500 | 2,060 | $440 | 88 | $322 | 2,382 |
| C | 1,500 | 1,442 | 58 | 12 | 43 | 1,485 |
| Total | 5,000 | 4,635 | 498 | 100 | 365 | 5,000 |
| Funds remaining=$0 | | | | | | |

If any funds allocated in the two steps above cannot be used and are declined by one or more State agencies, then these funds are allocated, using the method in Step 2, to the under fair share State agencies which have the ability to use more funds. If all funds are still not distributed, then these remaining funds would be allocated to State agencies which have a stability allocation which is *at or greater* than its fair share allocation. Each of these State agencies which can document the need for additional funds will be eligible to receive additional funds based on the difference between its stability allocation level and fair share allocation. State agencies closest to their fair share allocation shall receive first consideration. The Department recognizes that being at or over fair share is a statistical definition that may or may not accurately indicate the actual need for funding to serve all eligibles within that State. Therefore, over fair share States must have the opportunity to receive additional funds, should the funding be available.

For instance, in the example above, State A would be able to receive funds declined by State B or C. In this way, the precedence for funding will be to increase funding to under fair share State agencies to the extent possible, while still allowing State agencies that are over their fair share level to receive additional funds when a documented need for additional funds exists. Additionally, over fair share States must demonstrate effective efforts to control food package costs. All grants awarded through this process would become the basis of the following year's stability allocation.

**List of Subjects in 7 CFR Part 246**

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is amended as follows:

## PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

2. In § 246.16:

a. Paragraphs (c)(1), (c)(3) and (e)(2)(i) are revised; and

b. Paragraph (r) is redesignated as paragraph (p) and all internal references to the redesignated paragraph are revised. The revisions read as follows:

**§ 246.16 Distribution of funds.**

* * * * *

(c) *Allocation formula.* * * *

(1) *Use of participation data in the formula.* Wherever the formula set forth in paragraphs (c)(2) and (c)(3) of this section require the use of participation data, the Department shall use participation data reported by State agencies according to § 246.25(b).

* * * * *

(3) *Allocation of food benefit funds.* In any fiscal year, any amounts remaining from amounts appropriated for such fiscal year and amounts appropriated from the preceding fiscal year after making allocations under paragraph (a)(6) of this section and allocations for nutrition services and administration (NSA) as required by paragraph (c)(2) of this section shall be made available for food costs. Allocations to State agencies

for food costs will be determined according to the following procedure:

(i) *Fair share allocation.* (A) For each State agency, establish a fair share allocation which shall be an amount of funds proportionate to the State agency's share of the national aggregate population of persons who are income eligible to participate in the Program based on the 185 percent of poverty criterion. The Department will determine each State agency's population of persons categorically eligible for WIC which are at or below 185% of poverty, through the best available, nationally uniform, indicators as determined by the Department. If the Commodity Supplemental Food Program (CSFP) also operates in the area served by the WIC State agency, the number of participants in such area participating in the CSFP but otherwise eligible to participate in the WIC Program, as determined by FNS, shall be deducted from the WIC State agency's population of income eligible persons.

(B) The Department may adjust the respective amounts of food funds that would be allocated to a State agency which is outside the 48 contiguous states and the District of Columbia when the State agency can document that economic conditions result in higher food costs for the State agency. Prior to any such adjustment, the State agency must demonstrate that it has successfully implemented voluntary cost containment measures, such as improved vendor management practices, participation in multi-state agency infant formula rebate contracts or other cost containment efforts. The Department may use the Thrifty Food Plan amounts used in the Food Stamp Program, or other available data, to formulate adjustment factors for such State agencies.

(ii) *Stability allocation.* If funds are available, each State agency shall receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year plus a full inflation increase. The inflation factor shall reflect the anticipated rate of food cost increases as determined by the Department. If funds are not available to provide all State agencies with their full stability allocation, all State agencies shall receive a prorata reduction from their full stability allocation as required by the short fall of available funds.

(iii) *Growth allocation.* (A) If additional funds remain available after the allocation of funds under (c)(3)(ii) of this section, each State agency which has a stability allocation, as calculated in paragraph (c)(3)(ii) of this section, which is less than its fair share allocation shall receive additional funds based on the difference between its stability allocation and fair share allocation. Each State agency's difference shall be divided by the total of the differences for all such State agencies, to determine the percent share of the available growth funds each State agency shall receive. In the event a State agency declines any of its allocation in paragraph (c)(3)(ii) of this section or this paragraph, the funds declined shall be allocated to the remaining State agencies which are still under their fair share.

(B) In the event funds still remain after completing the distribution in paragraph (c)(3)(iii)(A) of this section, these funds shall be allocated to all State agencies including those with a stability allocation at, or greater than, their fair share allocation. Each State agency which can document the need for additional funds shall receive additional funds based on the difference between its prior year grant level and its fair share allocation. State agencies closest to their fair share allocation shall receive first consideration.

(iv) *Migrant services.* At least 9/10 of one percent of appropriated funds for each fiscal year shall be available first to assure service to eligible members of migrant populations. For those State agencies serving migrants, a portion of the grant shall be designated to each State agency for service to members of migrant populations based on that State agency's prior year reported migrant participation. The national aggregate amount made available first for this purpose shall equal 9/10 of one percent of all funds appropriated each year for the Program.

(v) *Special provisions for Indian State agencies.* The Department may choose to adjust the allocations and/or eligibles data among Indian State agencies, or among Indian State agencies and the geographic State agencies in which they are located when eligibles data for the State agencies' population is determined to not fairly represent the population to be served. Such allocations may be redistributed from one State agency to another, based on negotiated agreements among the affected State agencies approved by FNS.

* * * * *

(e) *Recovery and reallocation of funds.*

* * * * *

(2) *Performance standards.* * * *

(i) The amount allocated to any State agency for food benefits in the current fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year do not equal or exceed 96 percent of the amount allocated to the State agency for such costs for fiscal year 1995 and fiscal year 1996 and 97 percent for fiscal year 1997 and beyond. Such reduction shall equal the difference between the State agency's preceding year food expenditures and the performance expenditure standard amount. For purposes of determining the amount of such reduction, the amount allocated to the State agency for food benefits for the preceding fiscal year shall not include food funds expended for food costs incurred under the spendback provision in paragraph (b)(3)(i) of this section or conversion authority in paragraph (g) of this section. Temporary waivers of the performance standard may be granted at the discretion of the Department.

* * * * *

Dated: September 30, 1994.

**Ellen Haas,**

*Assistant Secretary for Food and Consumer Services.*

[FR Doc. 94–24673 Filed 10–4–94; 11:08 am]

BILLING CODE 3410–30–U

---

## Agricultural Marketing Service

## 7 CFR Part 906

**[Docket No. FV94–906–2FR]**

## Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of Special Purpose Exemption Provisions

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the administrative rules and regulations in effect under the Texas citrus marketing order. The revision eliminates the provision which exempts fruit handled for home use from the order's grade, size, pack, container, inspection and assessment requirements. This rule will help prevent unauthorized shipments of uninspected citrus from being shipped out of the production area. Individuals will continue to be able to handle up to 400 pounds of citrus per day exempt from order requirements which should be sufficient for fruit purchased for home use.

**EFFECTIVE DATE:** November 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–3670.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 906 [7 CFR part 906] regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 15 handlers of oranges and grapefruit regulated under the order each season and approximately 750 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

Section 906.40 of the order authorizes the establishment of grade, size, quality, maturity, pack and container requirements for fresh shipments of Texas oranges and grapefruit. Whenever such requirements are in effect, oranges and grapefruit are required to be inspected and certified as meeting applicable standards in accordance with § 906.45 of the order. The program is financed through handler assessments, established pursuant to § 906.34.

The order provides, in § 906.42, that regulations issued under §§ 906.34, 906.40, and 906.45 may be modified, suspended or terminated to facilitate the handling of citrus fruit for certain purposes. Under this authority, § 906.120 of the order's rules and regulations provides that oranges and grapefruit may be handled for relief, charity or home use exempt from order requirements. Handlers desiring to utilize this exemption are required to apply to the Texas Valley Citrus Committee (committee), the agency established to administer the order locally. In making an application, the handler is required to submit information such as the quantity of fruit to be handled under the exemption and its intended destination. Based on the information provided, the committee determines whether to approve the application and issue the handler a certificate of privilege.

The committee met on May 10, 1994, and unanimously recommended revising paragraph (c)(1) of § 906.120 by deleting "home use" from the provision which allows fruit to be handled exempt from regulation. Current regulations allow for an unlimited amount of fruit to be shipped for home use (not for resale) exempt from all marketing order requirements. The committee recommended this amendment to reduce the potential for abuse of the home use exemption. The committee has had difficulty in verifying the final disposition of exempted fruit.

This final rule revises § 906.120(c)(1) by deleting the phrase "home use". The committee expressed concern that bulk loads of uninspected fruit may enter fresh, commercial markets and prove detrimental to producer returns if the exemption is not removed.

Other exemptions from order requirements remain unchanged. Under paragraph (a) of § 906.120, individuals will continue to be able to handle up to 400 pounds of citrus per day exempt from order requirements. The committee believes that this minimum quantity exemption is sufficient to cover fruit purchased for home use and not for resale. Thus, it is not expected that this action will adversely impact those persons who purchase Texas oranges and grapefruit directly from handlers for their own use.

A proposed rule concerning this revision was issued on July 21, 1994, and published in the **Federal Register** on July 27, 1994, [59 FR 38138]. That rule provided a 30-day comment period which ended August 26, 1994. No comments were received.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0581–0068 for Texas oranges and grapefruit.

This rule reduces the reporting burden on approximately 6 handlers of oranges and grapefruit who have been completing the Special Purpose Shipments Form (Application for fundraiser-specialty pack), taking about 5 minutes to complete each report.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 906**

Grapefruit, Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 906.120 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

**§ 906.120 Fruit exempt from regulation.**

(a) * * *

(b) * * *

(c) Special purpose shipments and safeguards.

(1) Fruit may be handled for relief or charity exempt from the requirements of §§ 906.34, 906.40, and 906.45 and the regulations issued thereunder: *Provided*, That the fruit shall not be offered for resale, and the handler submits, prior to any such handling, an application to the committee on forms provided by the committee. * * *

* * * * *

Dated: October 3, 1994.

**Eric M. Forman,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–24776 Filed 10–5–94; 8:45 am]

BILLING CODE 3410–02–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 304

**RIN 3064–AB33**

### Forms, Instructions, and Reports

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rescission of rule.

**SUMMARY:** On April 5, 1994, the FDIC published for comment a proposal to rescind a section of its regulations on notification of rapid growth. The FDIC is publishing herewith a final rule to rescind this section.

The section, known as the "rapid growth rule," currently requires all insured banks, with the exception of insured bankers' banks, to give the FDIC prior notice of planned rapid growth as a result of any "special funding plan or arrangement." For purposes of this requirement, such a funding plan is any effort to increase the assets of a bank through the solicitation and acceptance of fully insured deposits obtained from or through the mediation of brokers or affiliates (which would include insured brokered deposits); the solicitation of fully insured deposits outside a bank's normal trade area; or secured borrowings, including repurchase agreements.

This rescission is intended to lessen the regulatory burden on banks which are currently also required to comply with the FDIC's brokered deposit regulation and the prompt corrective action rule, both of which were designed in part to address the same risks resulting from rapid growth.

**EFFECTIVE DATE:** November 7, 1994.

**FOR FURTHER INFORMATION CONTACT:** William G. Hrindac, Examination Specialist, (202) 898–6892, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429, or Adrienne George, Attorney, (202) 898–3859, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### Background

Although rapid growth is not necessarily an indicator of unsafe or unsound banking practices, and many banks have been able to manage rapid growth safely, rapid growth does present special risks to a bank (and to the FDIC's insurance fund). Because these risks warrant special monitoring, the FDIC adopted a rule requiring advance notice to the FDIC of planned rapid growth. That provision of the FDIC's regulations, 12 CFR 304.6, known as "the rapid growth rule," states that an insured bank may not undertake any special funding plan or arrangement designed to increase its assets by more than 7.5 percent during any consecutive three-month period without first notifying the appropriate FDIC regional director for supervision in writing at least 30 days before the implementation of the special funding plan or arrangement. A special funding plan or arrangement is defined as any effort to increase the assets of a bank through (1) the solicitation and acceptance of fully insured deposits obtained from or through the mediation of brokers or affiliates (which would include insured brokered deposits), (2) the solicitation of fully insured deposits outside a bank's normal trade area (depending upon the circumstances, these may be insured brokered deposits) or (3) secured borrowings, including repurchase agreements.

In regulating rapid growth, the rapid growth rule in part overlaps both the FDIC's brokered deposit regulation, 12 CFR 337.6, and its prompt corrective action regulation, 12 CFR 308.200 *et seq.* and 325.101 *et seq.* With the rescission of the rapid growth rule, the brokered deposit and prompt corrective action regulations are now the principal means by which rapid growth will be regulated. In deciding whether to rescind the rapid growth rule, the FDIC examined the rationale and history behind all three regulations, to see if the FDIC's safety-and-soundness concerns will be satisfied without the rapid growth rule.

The rapid growth rule, adopted in 1990, replaced a regulation that called for the reporting of fully insured brokered deposits and fully insured deposits placed directly by other depository institutions. In the preamble to the proposed rapid growth rule, the FDIC stated that its intention was to broaden the prior regulation's focus from brokered deposits to other funding of rapid growth, including brokered deposits:

> Since a bank may obtain its funding from a variety of sources in addition to brokered deposits, the FDIC believes that any effort to monitor and control rapid growth in insured banks should not focus solely or even principally on brokered deposits. Instead, the focus should be on rapid growth *per se* as an indication of the need for close monitoring and supervisory oversight.

54 FR 13693, April 5, 1989. The proposed rapid growth rule stated that

> An insured bank may not undertake any special funding plan or arrangement designed to increase its assets by more than nine percent during any consecutive three-month period without first notifying the appropriate FDIC regional director for supervision in writing at least 30 days in advance of the implementation of the special funding plan or arrangement. For purposes of this requirement, a special funding plan or arrangement is any effort to rapidly increase the assets of the bank by any means.

*Id.* at 13695. The final rule changed the 9 percent to 7.5 percent, making the rule more stringent in that respect, but it narrowed the scope of the rule by making the notice necessary only if there was 7.5 percent growth resulting from one or more of the following activities: (1) The solicitation and acceptance of fully insured deposits obtained from or through the mediation of brokers or affiliates (which would include insured brokered deposits); (2) the solicitation of fully insured deposits outside a bank's normal trade area (this category would also include some insured brokered deposits); or (3) secured borrowings, including repurchase agreements. Thus, while it is not the sole aim of the rapid growth rule to curb the rapid growth that may result from the acceptance of brokered deposits, controlling a bank's acceptance of brokered deposits is one of the primary aims of that rule.

Although the rapid growth rule was not mandated by any statute, the history of the present brokered deposit regulation involves two statutes, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). In 1989, FIRREA amended the Federal Deposit Insurance Act (FDI Act),

prohibiting an undercapitalized institution from accepting funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts except upon specific application to, and waiver of the prohibition by, the FDIC. Section 224 of FIRREA, adding section 29 to the FDI Act, 12 U.S.C. 1831f. In addition to deposits obtained through the mediation of third-party brokers, the definition of "brokered deposits" included deposits on which an institution offers or has agreed to pay rates of interest that are "significantly" higher than the prevailing rates of interest offered by other depository institutions with the same type of charter in the first institution's normal market area.

Two years later, the FDI Act was amended again. This time, FDICIA rewrote section 29 of the Act to restrict the acceptance of brokered deposits by certain institutions on the basis of their capital levels. Section 301 of FDICIA, amending section 29 of the FDI Act and adding section 29A thereto, 12 U.S.C. 1831f, 1831f–1. According to FDICIA and the brokered deposit regulation implementing it, 12 CFR 337.6, undercapitalized institutions may not accept brokered deposits at all, and adequately capitalized institutions must obtain a waiver from the FDIC before they can accept brokered deposits. Further, FDICIA limits the interest rates which adequately capitalized institutions can pay on brokered deposits. Well-capitalized insured depository institutions, however, can accept, renew or roll over brokered deposits without first obtaining a waiver from the FDIC, and without being limited in the interest rates they can pay.

In addition to these restrictions on brokered deposits, FDICIA also established a comprehensive regulatory scheme for insured depository institutions based on their capital levels. Section 131 of FDICIA, adding section 38 to the FDI Act, 12 U.S.C. 1831o. Under the "prompt corrective action" provisions of FDICIA, the statute places severe constraints on what undercapitalized institutions can do, including severe restrictions on asset growth. As explained in the regulation which implements section 131 of FDICIA, 12 CFR 308.200 *et seq.* and 325.101 *et seq.*, and which took effect on December 19, 1992, as soon as a bank receives notice, or is deemed to have received notice, that it is undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank must restrict the growth of its assets as set forth in section 38(e)(3) of the FDI Act. That section of the Act states that an undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless: (1) The appropriate Federal banking agency has accepted the institution's capital restoration plan; (2) any increase in total assets is consistent with the plan; and (3) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the institution to become adequately capitalized within a reasonable time. 12 U.S.C. 1831o(e)(3).

In view of the above statutes and regulations, the FDIC considered whether there was a continuing need for the rapid growth rule. Under the rule, the FDIC, upon being informed by a bank that it is about to undergo rapid growth, can engage the institution in a dialogue as to whether such growth would be prudent and should be pursued. Under the brokered deposit and prompt corrective action regulations, restrictions on brokered deposits and rapid growth attach automatically to certain banks having an insufficient capital level. Thus, although the rapid growth rule operates somewhat differently from the brokered deposit and prompt corrective action regulations, the FDIC felt that the rapid growth rule is no longer necessary given the existence of those other two regulations. For this reason, the FDIC proposed (59 FR 15869, April 5, 1994) that the rapid growth rule be rescinded. This action would ease the regulatory burden on those institutions now subject to all three rules.

While the rapid growth rule overlaps the brokered deposit regulation and the prompt corrective action regulation, this overlap is only partial. For instance, rescinding the rapid growth rule would mean that an insured bank would no longer have to notify the FDIC before it either solicited fully insured deposits outside its normal trade area, or when it acquired secured borrowings, including repurchase agreements, if one or a combination of both of these activities were designed to increase the bank's assets by more than 7.5 percent during any consecutive three-month period. And while a well-capitalized bank planning to accept brokered deposits on a large scale would no longer have to inform the FDIC of this fact in advance once the rapid growth rule is rescinded, that bank still must report the amount of brokered money it has accepted after the fact in its quarterly Report of Condition and Income ("Call Report"). Also, deposit brokers must continue to register with the FDIC, and, if requested, could be required to provide data on the extent of a given bank's brokered deposit activities, under the brokered deposit regulation. With rescission of the rapid growth rule, some of the rapid growth resulting from rapid growth rule activities will continue to be detected by the FDIC's Growth Monitoring System (a system administered by the FDIC's Division of Supervision which identifies rapid growth over a single quarter in assets or loans and long-term securities and any related deterioration in key performance ratios), some rapid growth will be controlled or prohibited by the brokered deposit rule, and some will be prohibited by the regulation on prompt corrective action, but a small part of rapid growth might not be controlled or detected at all. Thus, comment was sought on whether the rescission of the rapid growth rule would create a regulatory gap that would have harmful effects on banking.

**Public Comment**

The FDIC received only four comment letters on the proposal, three from banking trade associations and one from the parent company of several insured banks. All four comment letters enthusiastically supported the rescission of the rapid growth rule.

One commenter acknowledged that the rescission would create a regulatory gap—in that neither the brokered deposit rule nor the prompt corrective action rule limits the activities of well-capitalized institutions—but the same commenter believed that this gap would not pose a significant supervisory risk due to the FDIC's system of Call Reports and its Growth Monitoring System. A second commenter echoed these sentiments, adding that rescission would reduce an unnecessary regulatory burden. The third commenter opined that rescission of the rapid growth rule would have no negative impact on the banking system; on the contrary, rescission would remove unnecessary reporting burdens and marketing restrictions. The fourth commenter added that, given the trend toward consolidation in the banking industry, most institutions will soon be so big that fewer and fewer of them will ever achieve the percentage of rapid growth necessary to trigger the rapid growth rule.

After considering these comments and staff analysis of the issues noted above, the FDIC has decided to rescind the rapid growth rule. (In rescinding the rapid growth rule, 12 CFR 304.6, the FDIC will also rescind the line on the table in 12 CFR 304.7, which pertains to

the Office of Management and Budget's Control Number for the rapid growth rule.)

**Paperwork Reduction Act**

The collection of information contained in the rapid growth rule, which consists of the required written notice of rapid growth, has been approved by the Office of Management and Budget under Control Number 3064–0074, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The current estimate of annual reporting burden for the collection of information in this regulation is 1,625 burden hours. Rescission of the rapid growth rule will result in a saving of 1,625 burden hours a year.

**Regulatory Flexibility Act**

The FDIC's Board of Directors has concluded that the final rule will not impose a significant economic hardship on small institutions. The rule does not establish any recordkeeping or reporting requirements that necessitate the expertise of specialized accountants, lawyers or managers. The rule would, in fact, reduce the reporting requirements to which banks are presently subject. Rescinding the rapid growth rule will afford some insured banks the opportunity to conduct activities previously prohibited unless notice were given in accordance with the rule (for instance, the solicitation of fully insured deposits outside a bank's normal trade area, or the acquisition of secured borrowings, including repurchase agreements, such that one or a combination of both activities were designed to increase the bank's assets by more than 7.5 percent during any consecutive three-month period).

The FDIC's Board of Directors therefore certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**List of Subjects in 12 CFR Part 304**

Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FDIC hereby amends Part 304 of chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 304—FORMS, INSTRUCTIONS AND REPORTS

1. The authority citation for part 304 continues to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820; Public Law 102–242, 105 Stat. 2251 (12 U.S.C. 1817 note).

**§ 304.6 [Removed and reserved]**

2. Section 304.6 is removed and reserved.

**§ 304.7 [Amended]**

3. In § 304.7, the entry in the table for § 304.6 is removed.

By Order of the Board of Directors.

Dated at Washington, D.C. this 27th day of September, 1994.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 94–24606 Filed 10–5–94; 8:45 am]

BILLING CODE 6714–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 101

**[Docket No. 91N–384H]**

**RIN 0905–AD08**

### Food Labeling: Nutrient Content Claims, Definition of Term: Healthy; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of May 10, 1994 (59 FR 24232). The document amended the food labeling regulations to establish a definition for the term "healthy" and provide for its use on the food label under the Federal Food, Drug, and Cosmetic Act. The document was published with some typographical and editorial errors. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

In FR Doc. 94–11140, appearing on page 24232 in the Federal Register of Tuesday, May 10, 1994, the following corrections are made:

1. On page 24242, in the first column, in the first full paragraph, in the sixth line, the word "require" is corrected to read "provide".

2. On page 24247, in the third column, in the second full paragraph, in the first line, the words "cost-benefit for" are corrected to read "cost-benefit analysis for", and in the second line, the words "regulations in January 1993," are corrected to read "regulations published in the Federal Register of January 6, 1993,".

**§ 101.65 [Corrected]**

3. On page 24249, in § 101.65 *Implied nutrient content claims and related label statements*, in the first column, in paragraph (d)(2)(ii)(A), in the seventh line, and in the second column, in the sixth line of paragraphs (d)(2)(ii)(C)(*1*) and (d)(3)(ii)(A), and in the third column, in paragraph (d)(3)(ii)(C)(*1*), i. the sixth line, the words "consumed, per labeled" are corrected to read "consumed, and per labeled"; and in the second column, in paragraph (d)(2)(iv), in the sixth line, and in the third column, in paragraph (d)(3)(iii), beginning in the third line, the words ", per labeled serving" are removed.

Dated: September 29, 1994.

**William K. Hubbard,**

*Interim Deputy Commissioner for Policy.*

[FR Doc. 94–24827 Filed 10–5–94; 8:45 am]

BILLING CODE 4160–01–F

### 21 CFR Part 510

### New Animal Drugs; Change of Sponsor

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for 13 new animal drug applications (NADA's) from Central Soya Co., Inc., to Premiere Agri Technologies, Inc.

**EFFECTIVE DATE:** October 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

**SUPPLEMENTARY INFORMATION:** Central Soya Co., Inc., P. O. Box 1400, Fort Wayne, IN 46801–1400, has informed FDA that it has transferred ownership of, and all rights and interests in, approved NADA 91–582 (Tylosin) to Premiere Agri Technologies, Inc., P.O. Box 2508, Fort Wayne, IN 46801–2508.

Included in the sale were all of the assets of the following wholly-owned subsidiaries or divisions of Central Soya Co., Inc.; these subsidiaries will continue to operate under their current sponsor name and drug labeler code:

| NADA Number | Drug | Sponsor |
|---|---|---|
| 48–480 | Chlortetracycline | Feed Specialties Co., Inc., 1877 NE. 58th Ave., Des Moines, IA 50313 |
| 65–256 | Chlortetracycline hydrochloride | Feed Specialties Co., Inc. |
| 107–957 | Tylosin and sulfamethazine | Feed Specialties Co., Inc. |
| 108–484 | Tylosin and sulfamethazine | Feed Specialties Co., Inc. |
| 110–045 | Tylosin | Good-Life, Division of Central Soya Co., Inc., Good-Life Dr., P.O. Box 687, Effingham, IL 62401 |
| 110–439 | Hygromycin B | Feed Specialties Co., Inc. |
| 118–877 | Pyrantel tartrate | Feed Specialties Co., Inc. |
| 128–411 | Tylosin and sulfamethazine | Good-Life, Division of Central Soya Co., Inc. |
| 131–956 | Tylosin and sulfamethazine | MAC-PAGE, Inc., 1600 S. Wilson Ave., Dunn, NC 28334 |
| 132–448 | Bambermycins | Feed Specialties Co., Inc. |
| 133–490 | Pyrantel tartrate | MAC–PAGE, Inc. |
| 140–842 | Hygromycin B | MAC–PAGE, Inc. |

Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2). The sponsor labeler code of Central Soya Co., Inc. is being retained as the labeler code for the new company.

**List of Subjects in 21 CFR Part 510**

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

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 part 510 is 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, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Central Soya Co., Inc.," and by alphabetically adding a new entry for "Premiere Agri Technologies, Inc.," and in the table in paragraph (c)(2) in the entry for "012286" by revising the sponsor name and address 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 |
|---|---|
| * * * * * | |
| Premiere Agri Technologies, Inc., P.O. Box 2508, Fort Wayne, IN 46801–2508 | 012286 |

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 012286 | Premiere Agri Technologies, Inc., P.O. Box 2508, Fort Wayne, IN 46801–2508. |
| * * * * * | |

Dated: September 28, 1994.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 94–24749 Filed 10–5–94; 8:45 am]

BILLING CODE 4160–01–F

## 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Penicillin G Potassium in Turkey Drinking Water; Correction.

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 18, 1994 (59 FR 42493). The document amended the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by I. D. Russell Co. Laboratories. The document was published with an incorrect office name for Richard H. Teske who signed the document for FDA. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20879, 301–443–2994.

In FR Doc. 94–20260, appearing on page 42493 in the **Federal Register** of Thursday, August 18, 1994, the following correction is made:

On page 42493, in the second column, the office name "Pre-market Surveillance and Compliance" is corrected to read "Pre-market Review".

Dated: September 29, 1994.

**Richard H. Teske,**

*Deputy Director, Pre-market Review, Center for Veterinary Medicine.*

[FR Doc. 94–24826 Filed 10–5–94; 8:45 am]

BILLING CODE 4160–01–F

## 21 CFR Part 556

### Tolerances for Residues of New Animal Drugs in Food; Ivermectin

**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 a supplemental new animal drug application (NADA) filed by Merck Research Laboratories, Division of Merck & Co., Inc. The NADA provides for use of a 1 percent ivermectin injection for cattle for the treatment and control of gastrointestinal roundworm, lungworm, grub, lice, and mange mite infections. The supplement provides for revised tolerances for residues of ivermectin in cattle tissues.

**EFFECTIVE DATE:** October 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

**SUPPLEMENTARY INFORMATION:** Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, is sponsor of NADA 128–409 that provides for the use of

Ivomec® 1 percent Injection (ivermectin) for cattle for the treatment and control of gastrointestinal roundworm, lungworm, grub, lice, and mange mite infections. The supplement provides for revised tolerances for residues of ivermectin in cattle liver of 100 parts per billion (ppb) and revised safe concentrations in cattle muscle of 120 ppb, in liver of 240 ppb, in kidney of 360 ppb, and in fat of 480 ppb. The supplement is approved as of September 12, 1994, and the regulations in 21 CFR 556.344 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Currently, § 556.344(a) (21 CFR 556.344(a)) provides identical tolerances for ivermectin residues in cattle and reindeer. With the approval of this supplement, those tolerances will no longer be identical. Therefore, § 556.344(a) will reflect the revised cattle tolerances and new § 556.344(d) is established to reflect the reindeer tolerances.

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.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(i) 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.

**List of Subjects in 21 CFR Part 556**

Animal drugs, Foods.

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 part 556 is amended as follows:

## PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

**Authority:** Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

2. Section 556.344 is amended by revising paragraph (a) and by adding new paragraph (d) to read as follows:

**§ 556.344 Ivermectin.**

* * * * *

(a) *Cattle.* The marker residue used to monitor the total residues of ivermectin in cattle is 22,23-dihydro-avermectin $B_1a$. The target tissue selected is liver. A tolerance is established for 22,23-dihydro-avermectin $B_1a$ in cattle of 100 parts per billion in liver. A marker residue concentration of 100 parts per billion in liver corresponds to a concentration for total residues of ivermectin of 240 parts per billion in liver. The safe concentrations for total residues of ivermectin in uncooked, edible tissues of cattle is 120 parts per billion in muscle, 240 parts per billion in liver, 360 parts per billion in kidney, and 480 parts per billion in fat.

* * * * *

(d) *Reindeer.* The marker residue used to monitor the total residues of ivermectin in reindeer is 22,23-dihydro-avermectin $B_1a$. The target tissue selected is liver. A tolerance is established for 22,23-dihydro-avermectin $B_1a$ in reindeer of 15 parts per billion in liver. A marker residue concentration of 15 parts per billion in liver corresponds to a concentration for total residues of ivermectin of 50 parts per billion in liver. The safe concentrations for total residues of ivermectin in uncooked, edible tissues of reindeer are 25 parts per billion in muscle, 50 parts per billion in liver, 75 parts per billion in kidney, and 100 parts per billion in fat.

Dated: September 29, 1994.

**Robert C. Livingston,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 94–24825 Filed 10–5–94; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF JUSTICE

### Bureau of Justice Assistance

### 28 CFR Part 82 [New]

### State Criminal Alien Assistance Program

**AGENCY:** Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA).

**ACTION:** Interim rule.

**SUMMARY:** The Department of Justice Appropriations Act, 1995, Title VIII of Public Law 103–317, allocates $130 million for the State Criminal Alien Assistance Program which provides federal assistance to the States for costs incurred for the imprisonment of any illegal alien who is convicted of a felony by the State. The Act also prescribes that regulations governing this program should be promulgated. This interim final rule provides information regarding State eligibility and guidelines for the program.

**DATES:** This Interim Rule is effective on October 6, 1994; comments on this rule must be received on or before December 5, 1994.

The initial application from those States eligible for a preliminary award must be submitted by November 30, 1994. Final applications from all States must be submitted by September 30, 1995.

**ADDRESSES:** Comments may be mailed to: The Office of Justice Programs, Office of the General Counsel, 633 Indiana Avenue NW., Rm. 1245, Washington, DC 20531. Applications and all accompanying data should be sent to the Bureau of Justice Assistance Control Desk, 633 Indiana Avenue, NW., Washington, DC 20531. All data must be transmitted either electronically or in hard copy.

**FOR FURTHER INFORMATION CONTACT:** Curtis H. Straub, Bureau of Justice Assistance, State and Local Assistance Division, Office of Justice Programs, 633 Indiana Avenue NW., 10th Floor, Washington, DC 20531, (202) 514–6638.

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

**Statutory Authority**

This interim rule provides regulatory guidance in accordance with the Department of Justice Appropriations Act, 1995, Title VIII of Pub. L. 103–317, 108 Stat. 1724, 1778 ("Appropriation Act"), which provides $130 million for the State Criminal Alien Assistance Program for Fiscal Year 1995. Section 501 of the Immigration Reform and

Control Act of 1986 (IRCA), as amended (8 U.S.C. 1365), authorizes the Attorney General to reimburse the States for costs associated with the incarceration of illegal criminal aliens.

Title II, subtitle C, section 20301, of the Violent Crime Control and Law Enforcement Act, Pub. L. 103–322, which amends section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), also authorizes reimbursement to State and local governments for the costs associated with incarceration of undocumented criminal aliens, and authorizes, as well, the option of federal incarceration of such criminals.

The program authorized by the Crime Bill, though similar to section 501 of IRCA, differs in certain respects. One issue raised by the differences among the two statutes is whether local governments can apply for reimbursement. The Crime Bill language authorizes reimbursement to State and local governments. However, the Appropriations Act only provides reimbursement to States. The Appropriations Act provided funding for FY 1995 only for State reimbursement pursuant to section 501 of IRCA. No funding has yet been provided for the program authorized by the Crime Bill. Accordingly, the interim rule only implements the Appropriations Act and section 501 of IRCA. When funding is made available in the future to implement the Crime Bill Program, this rule will be amended to effectuate it.

The Appropriations Act provides that one-third of the funds must be distributed within 120 days of the start of the fiscal year and that final applications be received from all States by September 30, 1995. In addition, regulations prescribing the distribution of these sums must be promulgated to govern the process. These regulations must:

(a) Prescribe requirements for program participation eligibility for States;

(b) Require verification by States of the eligible incarcerated population with the Immigration and Naturalization Service (INS);

(c) Prescribe a formula for distributing assistance to eligible States; and,

(d) Award assistance to eligible States.

**Background**

The presence of illegal criminal aliens in this country has presented a formidable challenge to State law enforcement officials and policy makers. Some States with disproportionate numbers of undocumented aliens have been particularly challenged by this population in light of crowded State prison facilities, which have made it exceedingly difficult to keep up with the burdens of incarcerating these individuals.

BJA commissioned a study, conducted by the Urban Institute, entitled "Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States" (1994), which focused on the seven States in which the largest majority of aliens are concentrated (Arizona, California, Florida, Illinois, New Jersey, New York, Texas) and that are most affected by illegal immigration. The study estimates that incarcerated illegal aliens number 21,215 in these States. California alone, according to this study, had 71% of all these incarcerated aliens. The Urban Institute study also estimates the numbers and costs per State of incarcerating illegal criminal aliens. The Study will be used to make preliminary distribution of funds as is explained below.

Aliens covered by the program are defined within the authorizing legislation and this regulation in some detail. Essentially the term refers to foreign-born persons who entered the United States without inspection or who entered the United States legally as non-immigrants, but whose period of authorized stay expired before commission of the crime for which they are incarcerated. Only those illegal aliens convicted of a felony are included.

In keeping with the mandate that one-third of the funds be distributed within the first 120 days, BJA will make an initial award to the seven States covered in the Urban Institute Study based on the estimates contained in the study. The rationale for this initial procedure, described in more detail hereafter, is that use of an independent estimate of number of aliens and cost of incarceration will allow an equitable but quick calculation of partial award amounts for these States, without need to await the type of substantial documentation necessary for final awards, as described herein. The known burden upon their correctional systems due to criminal aliens justifies immediate assistance to these seven States.

No reliable estimates are available for other potential applicants, but the overall administration plan described herein will result in an equitable distribution of FY 1995 funds to all eligible applicants on a reimbursement basis.

Final awards will be made to all States after the close of FY 1995 based on verified numbers of illegal criminal aliens and costs. All States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands (hereafter included in the term "State") would be eligible for these final awards. All awards will be calculated against the total amount of $130 million (as a proportion of actual cost) with any amounts initially awarded being subtracted from final awards to the same applicants.

In following years, when appropriations are made, one award cycle after the close of the fiscal year will be based on each State's documentation of that year's number of illegal criminal aliens and costs of incarceration.

Each State is asked to designate an administrative agency, which would presumably be their Department of Corrections, but can be any other State agency. All States must submit applications within the prescribed time periods to receive awards pursuant to this program. The application must conform with the requirements set out below. Each State will receive a proportion of total costs expended each year on the incarceration of an illegal alien. The formula will be based on the number of States that wish to participate in this program and the figures submitted in their applications.

BJA, in cooperation with INS, will work together to ensure that all information submitted is verified and supports the final awards made.

Comment is particularly solicited on the issue of whether or not the definition of custody in § 82.3 should be expanded to include local/county facilities which are housing criminal alien felons as defined herein. Should the coverage of this program be so expanded, the State would remain the primary Grantee and would be responsible for administering or sub-granting funds to local entities for program purposes. Also, comments on the verification provisions in Section 82.8 are especially welcomed.

**Administrative Requirements**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Director, BJA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number for this collection is 1121–0183.

This regulation is being published as an interim final rule, without prior publication of notice and comment, and is made effective immediately, for good cause as explained below. Under 5 U.S.C. 553(a)(2), matters relating to grants are exempted from notice and comment requirements. Moreover, in this case, advance notice and comment would be impractical, unnecessary, and contrary to the public interest in the prompt implementation of this grant program. The Appropriations Act requires that the first one-third of the available funds must be distributed by January 1995. In order to comply with that requirement, these regulations must be effective immediately so that eligible states can apply for the preliminary grants. Publishing a notice of proposed rulemaking and awaiting receipt of comments would delay significantly the implementation of this grant program. Such delay would be contrary to the public interest and would contradict the Congressional intent to provide immediate grant assistance to the states most impacted by the cost of incarcerating illegal aliens. However, BJA is very interested in receiving public comment on all aspects of this program and will consider all such comments fully in preparing a final rule.

**List of Subjects in 28 CFR Part 82**

Grant programs—aliens, Prisons.

For the reasons set out in the preamble, Title 28, Chapter I, of the Code of Federal Regulations is amended by adding a new part 82 as set forth below.

## PART 82—STATE CRIMINAL ALIEN ASSISTANCE PROGRAM REGULATIONS

Sec.

82.1 Purpose.
82.2 Reimbursement of States.
82.3 Definitions.
82.4 Allocation and use of funds.
82.5 Method for calculating distribution of funds.
82.6 Preliminary awards.
82.7 Full application and final award process.
82.8 Verification of applicant information and monitoring.

**Authority:** 8 U.S.C. 1365, Public Law 103–317.

### § 82.1 Purpose.

The purpose of this part is to set out regulations and procedures governing the distribution of funds appropriated by Congress pursuant to the standards of Public Law 103–317 and to section 501 of the Immigration Reform and Control Act of 1986 (IRCA), (8 U.S.C. 1365), to provide assistance to the States for the cost of incarceration of illegal criminal aliens.

### § 82.2 Reimbursement of States.

Under section 501 of IRCA, the Attorney General shall reimburse any State which applies for a grant for the costs incurred by the State for the incarceration of any illegal criminal alien who is convicted of a felony by such State, to the extent an appropriation is made for such a purpose for any fiscal year. This program will be administered by the Bureau of Justice Assistance (BJA).

### § 82.3 Definitions.

(a) *Illegal criminal alien* means an alien who has been convicted of a felony and is in the custody of a State; and who:

(1) Entered into the United States without inspection or at any time or any place other than as designated by the Attorney General; or

(2) Was admitted as a nonimmigrant and before the date of the commission of the crime had failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248 of Immigration and Nationality Act (8 U.S.C. 1258), or to comply with the conditions of any such status; or

(3) Is a Mariel Cuban as defined in Section 501 of IRCA.

(b) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands of the United States.

(c) *Compensation* means the pro-rata average cost of incarcerating the alien in the relevant State as documented by the State.

(d) *Cost* means routine operating expenses, as generally defined and used by the Bureau of the Census and the Bureau of Justice Statistics (BJS) for reporting purposes. See, e.g., "Census of State and Federal Correctional Facilities, 1990." Capital expenses, expenses reimbursed by other Federal funds, and other non-routine costs should be eliminated from the baseline for per bed estimates.

(e) *Custody* means any State correctional facility for the confinement or rehabilitation of individuals convicted of criminal offenses within the State.

(f) *Reimbursement period* means the federal fiscal year, October 1 through September 30, for which an appropriation is made.

### § 82.4 Allocation and use of funds.

(a) The program will reimburse the States for partial expenses incurred by them for criminal aliens incarcerated in facilities within the State during the reimbursement period. The State shall designate an administrative agency to administer the program. A budget or expenditure plan is not required, as the award will be used solely for reimbursement purposes. Matching funds are not required.

(b) Awards will be based on the average number of aliens incarcerated by each applicant during the reimbursement period multiplied by the average inmate cost per year, divided into the appropriation for that reimbursement period. Each State will receive the same percentage of actual cost. In FY 1995, Congress has appropriated a total of $130 million for the purpose of making grants to States.

(c) Reimbursement will be based on an average of four one-day counts of individual aliens housed by the State during the reimbursement period (i.e., one year). These four counts must fall within the period from October 1 through September 30 of the reimbursement year and be evenly spaced. For example, for this fiscal year 1995, counts could be November 15, 1994 and February 15, May 15 and August 15, 1995 or December 23, 1994, and March 24, June 23, and September 22, 1995.

(d) Applicants are expected to provide some narrative explanation of the method used for these counts and the type of records underlying the counts. BJA will consult with the Immigration and Naturalization Service (INS) in determining the validity of the applicant's average alien count.

(e) Each State's application narrative must also provide an average cost per bed space, per year, supported by descriptive information indicating how these actual costs of incarceration, incurred during the period for which they are seeking reimbursement, were derived. This method takes into account the widely varying costs of incarceration in the different States. BJA will consult with BJS in determining the validity of applicant's average inmate costs per year.

(f) If a State uses a fiscal year different than the Federal fiscal year (October 1 to September 30), the State may use cost of incarceration calculations based upon

its own fiscal year calculations. The reimbursement period, however, will still be based on the Federal fiscal year, and the four one-day counts of individual aliens pursuant to paragraph (c) of this action should fall within the reimbursement period.

(g) In addition each State will be asked to provide specific information on each individual alien included in any one of the four one-day counts. An unduplicated listing containing this information must be provided in hard copy and should also be provided in an automated data entry format, if possible. The following information should be provided:

(1) Name (last name first).
(2) AKA (also known as) and full surnames.
(3) Alien Identification number (e.g., A24 456 789) if any.
(4) Social Security number, if any.
(5) Inmate Number.
(6) Date of Birth.
(7) Place of Birth.
(8) Primary Conviction Offense and Longest Sentence Imposed.
(9) Probable Earliest Release Date.
(10) Incarcerating Facility.
(11) INS Detainer Number, if any.

**§ 82.5 Method for calculating distribution of funds.**

(a) Assistance amounts will be calculated on a pro rata or proportional share of actual costs of incarceration as borne by the State. That is, there will not be a national average payment per alien or bed space, but rather a percentage, applied across the board, to each State's actual costs for each bed space filled. This percentage will depend on the total amount of the appropriation by Congress for the fiscal year and the total amount of actual costs incurred by all applying States during the reimbursement period.

(b) The "formula" thus becomes: State A's average number of aliens incarcerated that year times its average cost for a bed space filled by any prisoner during that year *plus* State B's average number of aliens incarcerated that year times its average cost for a bed spaces filled by any prisoner during that year *plus* State C's * * *, etc., for all applicant States. This provides a total dollar amount of all assistance requested. The actual appropriation provided for the fiscal year divided by that total dollar amount provides a ratio or percentage, e.g., 15% or 25%, which is then applied to each State's total request to calculate their actual award amount. It is not anticipated that the FY 1995 appropriation will allow 100% reimbursement of actual costs. However, each State will receive the same percentage of actual costs as all others.

**§ 82.6 Preliminary awards.**

(a) During FY 1995, this first year of the program, in keeping with the Congressional directive to make one-third of the funds available as soon as possible, a preliminary award will be made to some States. A preliminary award amounting to approximately one-third of the funds available will be made to applicants from the States named below, if their applications are received by BJA by November 30, 1994. Application should be made on the Federal Standard Form 424, and include all assurances and certifications required by law. BJA will provide applicants with these forms as necessary. An original and three copies of the application are required.

(b) While the amount of these preliminary awards will not be based on actual information provided by the seven States, applicants are requested to provide in their application brief descriptive information on: Their overall alien problem as it burdens their correctional system; their method of determining which inmates are undocumented aliens within the meaning of this regulation; currently available estimates of the incarcerated criminal aliens population, in terms of bed spaces, if possible; currently available cost per bed figures; and, the methods to be used to provide inmate specific information, as described in these regulations, to the granting agency. In particular, the applicant should address its ability to provide the types of data elements for individual aliens that are specified in the regulation, and its ability to provide this information in electronic form.

(c) These types of information will enable BJA to plan with greater certainty for the final award process and to work with INS and these applicant States during the period of time between preliminary and final award to establish verification mechanisms which will ensure a proper final distribution of funds.

(d) The amounts of these preliminary awards have been calculated solely on estimates of eligible aliens and costs provided in the recently released Urban Institute report, "Fiscal Impact of Undocumented Aliens: Selected Estimates for Seven States," (1994), which was commissioned by BJA. This report contains reliable estimates for the numbers and costs of incarcerating illegal criminal aliens in the seven States with the highest percentage of illegal aliens. Reliance on this report enables BJA to award the one-third of the $130 million, as is statutorily required to be distributed within 120 days from the start of the fiscal year, in a timely and reasonable fashion. However, the final awards for these, and any other applicant, States will be based on actual counts and other information provided by the applicant States themselves, as verified by BJA and INS.

(e) Preliminary awards, in the following amounts, calculated from estimates in the Urban Institute Study using the method described previously in this regulation, will be made to the following States no later than January 27, 1995:

| State | Award amount | Aliens in custody |
|---|---|---|
| Arizona | $991,900 | 950 |
| California | 33,460,700 | 15,109 |
| Florida | 1,073,800 | 758 |
| Illinois | 564,200 | 348 |
| New Jersey | 600,600 | 285 |
| New York | 4,085,900 | 2,158 |
| Texas | 2,120,300 | 1,607 |

(f) These awards total $42,897,400, or one-third of the available appropriation. The Urban Institute estimates of costs incurred by the seven States is $471.4 million, which when divided into one-third of the available appropriation gives a distribution percentage of 27.3%. The preliminary awards are based solely on the Urban Institute estimates for the seven States and do not take into account the possible distributions to other States, which may together constitute 10–15% of all incarcerated criminal aliens eventually identified for which reimbursement will

be made. Accordingly, this preliminary calculation is not predictive of the percentage of total costs which will be reflected in final award for these States.

(g) At the end of the reimbursement period, recipients of the initial round of awards will be expected to file all information described within this regulation, based on actual full year counts and averaged costs. The final award amount for these seven States will be adjusted to subtract their preliminary award amounts from remaining funds.

**§ 82.7 Full application and final award process.**

(a) A final application cut-off date of September 30, 1995, will be used for applications seeking full year reimbursement for FY 1995 funds. All interested States, including the seven receiving the preliminary distribution, must make application by this date to receive an award. An original and three copies of the application are required. However, only one hard copy report of the inmate identification measures described herein need be submitted. If possible, the inmate identification data should also be submitted in machine readable form, with necessary documentation to assist BJA and INS in using this electronic data.

(b) States not eligible for a preliminary award that do want to participate in this assistance program should provide BJA with a Notice of Intent to Apply, by letter or preliminary application, no later than April 30, 1995. Preliminary estimates of numbers of bed slots and costs and brief descriptive information such as described for the initial applications from the seven named States would be appreciated, as this will allow BJA to better plan for the final award process.

(c) As soon as possible after all final applications are received, BJA will determine award amounts for each applying State, based upon the available funds and the costs incurred by the States, pursuant to § 82.5. For FY 1995, the final percentage will be applied to the full appropriation of $130,000,000 (less one percent administrative costs) made available for the fiscal year, and the amount of the preliminary awards to the States pursuant to § 82.6 will be subtracted from the final award to those States. Awards will be made as expeditiously as possible, dependant on the verification process as described herein.

(d) All State applicants must submit Standard Form 424 (Application for Federal Assistance), including all necessary assurances and certifications and a certified listing of incarcerated illegal criminal alien prisoners. Participants in this program will be required to provide: information on average number of aliens incarcerated, actual identifiers for these aliens, and average cost per bed space for the period for which assistance is being sought.

(e) Each application must contain all the information discussed in this regulation. A certification form, available from BJA, will be used to provide the total numbers and average per bed costs upon which the final application for reimbursement is based. This certification does not relieve the applicant from providing sufficient narrative detail about its recordkeeping and cost calculation processes to support and justify the amount of assistance sought. The certification will be sent to all potential applicants who file a Notice of Intent to Apply with BJA as well as to the initial seven applicants.

(f) In addition to certification of some information and description of the methods for calculations made, the applicant is expected to provide both hard copy and, if possible, electronically readable information on all aliens included in the one detailed listing pursuant to § 82.4(g) reimbursement counts. This unduplicated listing of all aliens identified must be certified by the head of the designated State agency or one of his or her authorized representatives.

(g) All applicants should be aware that the percentage used in making the preliminary awards to the seven States will not be the same as that determined after all States' applications are received, total requests based on final inmate counts and bed space calculations are made, and the BJA/INS verification process is concluded. At that point, the percentage upon which final distribution is made is expected to be significantly lower than 27%.

**§ 82.8 Verification of applicant information and monitoring.**

(a) In reviewing the applications from the States, numbers and cost figures given, as documented by the State's procedures used to obtain that information, will be subject to verification and possible adjustment by BJA. BJA will consult with INS on cost calculations and on both overall counts of the average number of aliens and on adequacy of individual inmate identifiers. BJA will share both application information and inmate information with INS to allow INS to work directly with the applicant agencies to assure proper identification of criminal aliens and to begin deportation procedures, as appropriate. Award acceptance will be conditioned on the applicant's agreement to cooperate fully with INS in matters related to this assistance program.

(b) It is anticipated that INS field staff, with or independently of BJA staff, will undertake on-site reviews with selected applicant agencies, to assist in properly identifying aliens as defined in the regulations and statutes. Applicants will be expected to provide documentation on inmates counted whose status is questioned.

(c) It is unlikely that INS verification will be fully developed prior to the distribution of the preliminary awards pursuant to § 82.6. Rather, this will be an ongoing process in which developing better systems of alien identification and making individual verifications will be a major goal.

(d) The application should contain an official designation from the chief executive officer of the State naming the applicant as the State agency to receive the award.

**Jack A. Nadol,**

*Acting Director, Bureau of Justice Assistance.*

[FR Doc. 94–24674 Filed 10–5–94; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF DEFENSE

## Department of the Air Force

## 32 CFR Part 806

## Air Force Freedom of Information Act Program

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force revised its rule to update Air Force procedures for the Air Force Freedom of Information Act (FOIA) Program. This revision provides guidance for making records public. It tells how to process FOIA requests and tells the public how to request copies of Air Force records using the FOIA. It outlines requirements for For Official Use Only (FOUO) material. The intended effect is to provide current information on Air Force policy and procedures for the disclosure of records to the public under the Freedom of Information Act.

**EFFECTIVE DATE:** March 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne P. Rollins, SAF/AAIQ, 1610 Air Force Pentagon, Washington DC 20330–1610, telephone (703) 697–3492.

**SUPPLEMENTARY INFORMATION:** This rule implements 5 U.S.C. 552, as amended, and DODD 5400.7 (32 CFR Part 285) and DOD 5400.7–R (32 CFR Part 286).

Because this part implements a higher authority directive, it is not published as a proposed rule for comment.

The Department of the Air Force has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more. The Secretary of the Air Force has certified that this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because this rule does not have a significant economic impact on small entities as defined by the Act, and does not impose any obligatory information requirements beyond those imposed by DoD. This rule revises Air Force Regulation (AFR) 4–33, Air Force Freedom of Information Act Program, 31 July 1992.

**List of Subjects in 32 CFR Part 806**

Freedom of information, Classified information, Records.

Accordingly, 32 CFR Part 806 is revised as follows:

## PART 806—AIR FORCE FREEDOM OF INFORMATION ACT PROGRAM

Sec.

806.0 Purpose.
806.1 General guidance.
806.2 Responsibilities.
806.3 Material not covered by the FOIA.
806.4 FOIA requests.
806.5 Submitting FOIA requests.
806.6 Processing requests under FOIA and Privacy Act (PA).
806.7 Describing records.
806.8 Creating a record.
806.9 Special disclosure procedures.
806.10 FOIA exemptions.
806.11 FOIA exclusions.
806.12 Denials.
806.13 Freedom of Information Act annual report.
806.14 Host-tenant relationship.
806.15 Processing FOIA requests.
806.16 Referrals.
806.17 Categorizing requesters.
806.18 Fee assessment.
806.19 Aggregating requests.
806.20 Fee waivers.
806.21 Transferring fees to accounting and finance offices.
806.22 Fee rates.
806.23 Technical data.
806.24 Technical data fee rates.
806.25 Appeals.
806.26 For Official Use Only (FOUO).
Appendix A to Part 806—Glossary of Terms
Appendix B to Part 806—Requirements of 5 U.S.C. 552(b)(4)

**Authority:** 5 U.S.C. 552.

### § 806.0 Purpose.

This part implements Department of Defense (DoD) Directive 5400.7, 13 May 1988, DoD Freedom of Information Act Program; and DoD Regulation 5400.7–R, 3 October 1990, DoD Freedom of Information Act Program, 10 May 1991, with Change 1 (32 CFR Parts 285 and 286). It provides guidance for making records public and for the Air Force Freedom of Information Act (FOIA) Program. It tells how to process FOIA requests and tells the public how to request copies of Air Force records using the FOIA (Title 5, United States Code, Section 552, as amended). It outlines the requirements for For Official Use (FOUO) material. If this part conflicts with other Air Force publications, it takes precedence over those that deal with making records public.

### § 806.1 General guidance.

The Air Force discloses its records in its possession and control to the public, except those records exempt under the FOIA which, if released, would cause an identifiable harm. Make discretionary disclosures of exempt information whenever possible. (Discretionary releases are generally not appropriate for exemptions 1, 3, 4, 6, and 7(C)). A discretionary release to one requester will prevent withholding the same record if someone else requests it. Answer all requests for information and records promptly. Handle requests in a customer-friendly manner. Get misrouted FOIA requests to the FOIA Office immediately. Do not withhold a record simply because it might suggest administrative error or inefficiency or cause embarrassment. Do not deny a request just because the record is stored in a computer.

### § 806.2 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Air Force (SAF/AA) takes overall responsibility for making sure the Air Force complies with the FOIA.

(b) The Office of the General Counsel to the Secretary of the Air Force (SAF/GSA) makes final decisions on appeals.

(c) The Director of Information management (SAF/AAI), through the Access Programs Office of the Administrative Communications and Records Management Division, SAF/AAIQ:

(1) Administers procedures described in this part.

(2) Submits required reports to the Office of the Assistant to the Secretary of Defense (Public Affairs).

(3) Provides guidance and instructions to major commands (MAJCOM) and field operating agencies (FOA).

(d) MAJCOM and FOA commanders implement this part in their commands and agencies.

(e) FOIA managers:

(1) Control and process FOIA requests.

(2) Obtain recommendations from the office of primary responsibility (OPR) for records.

(3) Provide a reading room for inspecting, copying and giving copies of records to requesters.

(4) Provide training.

(5) Review publications to make sure they comply with this part.

(6) Conduct periodic program reviews.

(7) Approve or deny fee waivers.

(8) Assess and collect fees.

(9) Send extension notices to requesters.

(10) Submit required reports.

(11) Make final determinations on "no records" responses.

(f) OPRs:

(1) Coordinate the release or denial with the offices of collateral responsibility (OCR) and with the Staff Judge Advocate (SJA) and FOIA office on proposed denials.

(2) Provide requested records.

(3) Help the disclosure authority determine whether to release record; and act as declassification authority when appropriate.

(g) Disclosure authorities determine whether to release records and provide them to the FOIA office.

(h) Initial denial authorities:

(1) Make final decisions to deny records.

(2) Tell requesters the nature of records or information denied, exemption supporting the denial with reason, and appeal procedures.

### § 806.3 Material not covered by the FOIA.

(a) Objects or articles, such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.

(b) Administrative tools for creating, storing, and retrieving records, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of DoD. Normally computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. This does not include the supported data that is processed and produced by such software an that in some instances may be stored with the software.

(c) Personal notes of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(d) Information stored in a computer for which there is no existing computer program for retrieval of the requested information.

(e) If other procedures for processing requests for material not covered by FOIA exist:

(1) Log the request and refer the request outside of the FOIA to the proper office.

(2) Acknowledge the requester's letter, tell the individual where you referred the request, and that the material is not a record under the FOIA.

(f) If no alternative release procedures exist, process the request under FOIA by advising the requester that materials are not agency records and give the requester appeal rights.

**§ 806.4 FOIA requests.**

(a) Under FOIA, members of the public, including foreign citizens, military and civilian personnel acting as private citizens, organizations and businesses, and individual members of the Congress, for themselves or constituents, may request records in writing. Federal agencies or fugitives from the law cannot make FOIA requests.

(b) Requesters should not use Government equipment, supplies, stationery, postage, telephones, or official mail channels to make FOIA requests. FOIA managers will process such requests and tell requesters that using government resources to make FOIA requests is not an authorized official use.

**§ 806.5 Submitting FOIA requests.**

Submit written requests that reasonably describe the desired records and include a statement on fees. Address letters to the FOIA office of the activity that has the record. List other addressees to save time.

**§ 806.6 Processing requests under FOIA and Privacy Act (PA).**

Process requests under the Act that gives the most information. If the requester cites both Acts, address each in the reply.

**§ 806.7 Describing records.**

The requester is responsible for identifying the desired record. He or she should sufficiently describe the record to help locate it with a reasonable amount of effort. Generally a reasonable description contains enough information for an organized, nonrandom search. Offices must make reasonable efforts to find the records described. This means searching all activities and locations most likely to have the records, including staged or retired records. If the description is unclear, ask for more specific information. When possible, tell the requester what information would help.

**§ 806.8 Creating a record.**

(a) The Air Force is not required to create, compile, or obtain a record from outside the Air Force to fulfill a request. You may want to create a new record when it would be a more useful response to the requester or is less burdensome for the agency than providing an existing record and the requester agrees. Do not charge the requester more for creating a record than you would charge for the existing record.

(b) Apply a standard of reasonableness for electronic data when there is a question on whether you are creating, programming, or formatting a record. If you can respond with a "business as usual" approach, process the request, otherwise offer the requester appeal rights.

**§ 806.9 Special disclosure procedures.**

Some instructions have disclosure procedures for certain types of records. Refer to those instructions for specific disclosure procedures when you process FOIA requests. The only reason to deny a request is a FOIA exemption.

(a) Process FOIA requests from foreign citizens, foreign governments, their representatives, or international commands under this part, and coordinate with your foreign disclosure office. If the command has no foreign disclosure office, refer the request to SAF/AAIS (FOIA) for SAF/IAD coordination through the MAJCOM FOIA office.

(b) If requests from foreign government officials do not cite the FOIA, refer them to your foreign disclosure office and notify the requester.

(c) If you have a non-U.S. Government record, coordinate with the record's originator before releasing it (see § 806.10(e)(1). This includes records created by foreign governments and organizations like the North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). Coordinate release of foreign government records with the U.S. Department of State through the MAJCOM FOIA office. Coordinate release or denial of Letters of Offer and Acceptance (LOA) and SAF/IA through SAF/AAIS (FOIA).

**§ 806.10 FOIA exemptions.**

Denial authorities may withhold records or information when an identifiable harm would result by disclosure, and the records are exempt under 5 U.S.C. 552(b).

(a) Exemption 1—Classified Records. Records properly and currently classified in the interest of national defense or foreign policy, as authorized by executive order and implementing instructions. Apply this exemption when disclosing information by itself or in the context of other information that could reasonably be expected to damage national security.

(1) To make a sound decision, review the record paragraph by paragraph for releasable information. Review all unclassified parts before release to see if they are exempt. Before releasing a reviewed and declassified document, draw a single black line through all the classification markings, so they are still legible and stamp the document "Unclassified." Review material, if appropriate, to determine if it should be classified, even though it was not classified when requested. AFI 31–401, Information Security Program Management (formerly AFRs 205–1 and 205–43), tells how to classify and declassify records. Check to see if information from foreign sources is classified. Delete exempt parts of records and disclose the rest if it does not distort meaning and you can reasonably assume that a skillful, knowledgeable person could not reconstruct the information deleted. Denial letters must say that unauthorized disclosure of such information could reasonably be expected to cause damage to national security and cite the appropriate executive order paragraph(s) as authority for classification. When denying a whole classified record, release all unclassified parts that would cause no identifiable harm. Coordinate with the local information security specialist when invoking this exemption for consistency of classification policy and procedures.

(2) When simply knowing whether a record exists or not reveals classified information, use the "Glomar" (refusal to confirm or deny) response. Apply it consistently, not only when a record exists but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will disclose exempt information. Cite the FOIA exemption when you use the "Glomar" response.

(b) Exemption 2—Internal Personnel Rules and Practices. Exempt information falls in two categories:

(1) "High" 2 protects records which, if disclosed, would substantially hinder the effective performance of a

significant function of the DoD by risking circumvention of a statute or Air Force instruction or policy.

(2) "Low" 2 is for trivial internal administrative matters of no genuine public interest and the process of releasing such records would constitute an unwarranted administrative burden. You can only use the "low" 2 exemption before fully processing the requested records. Otherwise, you may eliminate the administrative burden justification.

(c) Exemption 3—Other Statutes. Records of matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue of withholding or according to defined standards for withholding or referring to particular types of matters we must withhold. When using this exemption, cite both exemption 3 and the specific statute.

(d) Exemption 4—Confidential Commercial Information. Records with trade secrets and commercial or financial information submitted by a person or entity outside the Federal Government on a privileged or confidential basis that, if released, is likely to cause substantial competitive harm to the submitter of the information or impair the government's future ability to obtain necessary information. Examples of exempt information follow:

(1) Trade secrets that are commercially valuable plans, formulas, processes, or devices used for making, preparing, compounding, or processing trade commodities and are the product of innovation or substantial effort and were given in confidence.

(2) Commercial or financial information given in confidence, in connection with loans, bids, contracts, or proposals; or privileged information, such as trade secrets, inventions, discoveries, or other proprietary data.

(3) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and given in confidence by a contractor or potential contractor.

(4) Personal statements made during inspections, investigations, or audits, if such statements are given in confidence by the individual and kept confidential, because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(5) Financial data private employers provide in confidence for local wage surveys, used to set and adjust pay schedules for prevailing wage rate employees of the DoD.

(6) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with a research grant application or with a report during research.

(7) Computer software qualifying as a record under this part that is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely affect its market value.

(8) Technical or scientific data a contractor or subcontractor developed entirely with private funds and technical or scientific data developed with both Federal and private funds, which the contractor or subcontractor legally owns per 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 CFR 227.4. You may withhold technical data developed entirely with Federal funds under Exemption 3 if the data meets the criteria of 10 U.S.C. 130.

(e) Before releasing information submitted from outside the Air Force:

(1) Write to the submitter of the data for views on releasability and include appendix b with your letter.

(2) Tell the requester that we must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information.

(3) Give the submitter a reasonable period of time (no more than 30 calendar days) to object to release and provide justification.

(4) If the submitter does not respond, write that you have not received a reply, tell the submitter of the decision to release with the reason and give the expected release date (at least 2 weeks from the date of your letter).

(5) If the submitter objects, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter a brief explanation and a release date at least 2 weeks from the date of the letter.

(f) Exemption 5—Inter- or Intra-Agency Records. Intra-agency or inter-agency memoranda or letters that, according to recognized legal privileges are not routinely released to a party in litigation with the Air Force or DoD. If such a record or part of such a record would be made available routinely through the discovery process in the course of litigation with the agency, release it. In the discovery process, litigants get from each other information relevant to issues in a trial or hearing. if the information is only made available through the discovery process by special court order, then it is exempt. Release factual records or parts unless the information is privileged or otherwise exempt. Generally, release a direction or order from a superior to a subordinate, though contained in an internal communication, if it forms policy guidance or a decision, but is not a discussion of preliminary or other matters that would compromise decision making. Consult your SJA about whether Exemption 5 material would be routinely available through the discovery process. Here are examples of exempt information.

(1) The deliberative process privilege—those parts of records with internal advice, opinions, evaluations, or recommendations that reveal Air Force or DoD deliberations.

(2) Those nonfactual parts of Air Force personnel evaluations of contractors and their products.

(3) Advance information of a speculative, tentative, or evaluative nature on such matters as proposals to buy, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, if such information gives private personal interests an unfair competitive advantage or impedes legitimate governmental functions. Generally, you cannot use this privilege to withhold factual information. However, you may withhold facts when they are so interconnected with deliberative information that disclosing facts necessarily discloses the Air Force's deliberative process or when facts and deliberative information are so interconnected that separating them would be uninformative or redundant.

(4) Official reports of inspection, audits, investigations, or surveys on safety, security, or internal management, administration, or operation of the Air Force.

(5) The attorney work product privilege—records an attorney prepares, or supervises the preparation of, in contemplating or preparing for administrative proceedings or litigation.

(6) The attorney-client privilege—confidential communication between an attorney and client. For example, a commander expresses concerns in confidence to his or her judge advocate and asks for a legal opinion. The legal opinion and everything the commander tells the judge advocate in confidence qualify.

(7) Unlike deliberative process privilege, you may withhold both facts and opinions in attorney work product or privileged communications.

(8) Trade secrets or other confidential research, development, or commercial information the Air Force or DoD owns, whose premature release probably would affect the Air Force's or DoD's negotiating position or other commercial interests.

(9) Computer software qualifying as a record under this part which is deliberative in nature, if its release would inhibit decisionmaking. In this case, closely examine the use of the software to ensure its deliberative nature.

(10) Planning, programming, and budget information involving defense planning and resource allocation.

(g) Exemption 6—Invasion of Personal Privacy. Personnel, medical, and similar personal information in other files whose release to the public clearly invades personal privacy. To decide whether to release personal information, balance the privacy interest against what its release would tell the public about how the Air Force functions or about the conduct of an Air Force functions or about the conduct of any Air force employee (the public interest). Withhold records only when the privacy interest exceeds the public interest. Do not use this exemption to protect a deceased person's privacy, but you may use it to protect the privacy of the deceased person's family in rare instances. Generally let a person (or their representative) see their own personnel, medical, or similar files and withhold information from the subject only using 5 U.S.C. 552a, The Privacy Act of 1974 (see part 806b of this chapter).

(1) Withhold names and duty addresses of personnel serving overseas or in sensitive or routinely deployable units. Routinely deployable units normally leave their permanent home stations on a periodic or rotating basis for peacetime operations or for scheduled training exercises conducted outside the United States or U.S. territories on a routine basis. Units based in the United States for a long time, such as those in extensive training or maintenance activities, do not quality during that period. Units designated for deployment or contingency plans not yet executed and units that seldom leave the United States or U.S. territories (e.g., annually or semiannually) are not routinely deployable units. However, units alerted for deployment outside the United States or U.S. territories during actual execution of a contingency plan or in support of a crisis operation qualify. The way the Air Force deploys units makes it difficult to determine when a unit that has part of its personnel deployed becomes eligible for denial. The Air Force any consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of its personnel has been either alerted or actually deployed. In this context, alerted means that a unit has received an official written warning of an impending operational mission outside the United States or U.S. territories.

(2) Sensitive units are primarily involved in training for special activities or classified missions, including, for example, intelligence-gathering units that collect, handle, dispose of, or store classified information and materials, as well as units that train or advise foreign personnel.

(3) Each MAJCOM and FOA will establish a system and OPR(s) to identify units in their command qualifying for this exemption. Appropriate OPRs could include Directors of Operations, Plans, and Programs, and Personnel. The resulting list of nonreleasable units will be reviewed and updated in January and July and provided to the MAJCOM or FOA FOIA office. This listing will be in ASCII format on a 3½ or 5¼ inch floppy disk (double sided, high density), which contains the unit's eight-position personnel accounting symbol (PAS) code, with 1 pas code per line (record) (8-byte record). The MAJCOM or FOA FOIA manager will forward an electronic copy of the list of nonreleasonable units to AFMPC/RMI to be included in the personnel data system. The MAJCOM and AFMPC FOIA offices will use it to determine releasable lists of names and duty addresses.

(h) Exemption 7—Investigative Records. Records or information gathered for law enforcement purposes but only when releasing these records would probably:

(1) Interfere with enforcement proceedings.

(2) Deprive a person of the right to a fair trial or an impartial judgment.

(3) Invade personal privacy unnecessarily.

(4) Identify a confidential source, including a state, local, or foreign agency or authority or any private institution that gives confidential information.

(5) Disclose information from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(6) Disclose methods for law enforcement investigation or prosecutions.

(7) Disclose guidelines for law enforcement investigations or prosecutions if the release would probably encourage circumvention of the law.

(8) Endanger an individual's life or physical safety.

(i) You may use this exemption to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(j) Exemption 8—Financial Institutions. Those records contained in or related to examination, operation, or condition reports prepared by, on the behalf of, or for the use of, an agency that regulates or supervises financial institutions.

(k) Exemption 9—Wells. Records with geological and geophysical information and data, including maps, concerning wells.

### § 806.11 FOIA exclusions.

(a) Under two limited situations, requests for law enforcement records are not subject to disclosure under FOIA:

(1) Requests for law enforcement records when the investigation involves a possible criminal violation, the subject is unaware of the investigation, and disclosing the record's existence could interfere with enforcement.

(2) Requests for informant records a criminal law enforcement agency keeps under the informant's name or personal identifier made by a third party using the informant's name or personal identifier, but only when the informant's status as an informant has not been officially confirmed.

(b) In these cases, do not use denial procedures; instead, say you found no records. Coordinate with the SJA on these cases. When you write to the requester, do not give the statutory citation for the exclusion nor state your reliance on an exclusion.

### § 806.12 Denials.

Only denial authorities may withhold information. Denial authority level is at the deputy chiefs of staff and chiefs of comparable offices or higher at HQ USAF, and MAJCOM and FOA commanders. These officials may name an additional official as a denial authority. Send SAF/AAIQ a letter with the position titles only. Only the Administrative Assistant to the Secretary of the Air Force can approve a request for more than one additional denial authority. Send those requests, with justification, to SAF/AAIQ.

(a) When denying information, delete only the exempt parts of a record, release what remains, and let the requester know that you are providing all reasonably segregable, releasable parts of the record. Clearly show the requester where you deleted information.

(b) Denial letters must include the reason for the denial and cite the statutory exemption. Only authorized denial authorities sign denial letters.

FOIA managers may sign "no records" responses. Denial letters and "no records" responses must also include an appeal paragraph that:

(1) Tells the requester to address appeals to the Secretary of the Air Force, through the FOIA office of the activity that issued the denial or "no records" response.

(2) Tells the requester to appeal within 60 calendar days from the date of the letter and to include reasons for reconsideration.

(3) Asks the requester to attach a copy of the response.

**§ 806.13 Freedom of Information Act annual report**

(a) MAJCOM and FOA FOIA managers submit a calendar-year report on 3½- or 5¼-inch disk using the FOIA System. Send the report by 10 January to SAF/AAIQ. The report control symbol (RCS) is DD–PA(A)1365.

(b) SAF/AAIQ submits the report to the Office of the Assistant to the Secretary of Defense (Public Affairs) Directorate for Freedom of Information and Security Review on DD Form 2564, Annual Report—Freedom of Information Act.

**§ 806.14 Host-tenant relationship.**

(a) The host base FOIA manager logs, processes, and reports FOIA requests for tenant units. The host base FOIA office refers all recommended denials and "no records" appeals to the tenant MAJCOM FOIA manager.

(b) This host-tenant relationship does not apply to disclosure authorities for specialized records, such as the Air Force Audit Agency and the Air Force Office of Special Investigations.

**§ 806.15 Processing FOIA requests.**

All FOIA offices use the FOIA system to track and manage FOIA requests. AFM 4–196 is the FOIA System End Users Manual.

(a) After receiving a FOIA request, the FOIA manager:

(1) Records the date and time of receiving the request, logs the request in the FOIA system and sets a suspense date. For more than 10 FOIA requests, sets up a first-in, first-out system to process the requests in the order received.

(2) Considers a request received when the FOIA office responsible for processing the request receives it; and when the requester states a willingness to pay fees set for his or her category (see § 806.17), has paid past FOIA debts, and has reasonably described the requested records.

(3) Determines the fee according to the requester's category, writes to requesters who have not made arrangements to pay for the information and whose fees are more than $15, telling them the category and cost of the request.

(4) Answers fee waiver requests before processing. Asks for more justification, if needed to make a good decision. Do not consider this notice a denial.

(5) Attaches DD Form 2086, Record of Freedom of Information (FOI) Processing Cost, or DD 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, to each request. The OPR must complete and return this form to the FOIA office. These forms give the fees for charging, if any, and processing costs you use to prepare the FOIA annual report.

(6) Writes the requester to acknowledge receipt of the request if the date or postmark (whichever is later) is more than 10 workdays ago and informs the requester of any unusual problems.

(7) Tells the requester if the record is not sufficiently described and asks for more information. If possible, offers to help the requester identify the requested records and tells what kind of information makes searching for a record easier.

(8) Sends the request to the OPR who searches for the record and decides whether to release it.

(9) Sends classified records with no OPR or functional equivalent to SAF/AAIS, through the MAJCOM or FOA FOIA office, for HQ USAF/SP review. Telephones SAF/AAIS before sending the records.

(10) Tells the requester in a letter sent within 10 workdays after receiving the request of the final decision to release or deny the records.

(11) When answering requests for lists of names and duty addresses, tells requesters as early as possible about the mass mailing restrictions outlined in AFI 37–125, Official Mail, Small Parcel and Distribution Management (formerly AFR 4–50).

(12) Grants 10 additional workdays for one or more of three reasons:

(i) All or part of the requested records are not at the installation processing the request.

(ii) Fulfilling the request means collecting and reviewing an enormous number of records.

(iii) Other Air Fore activities or other agencies need to be involved in deciding whether to release the records.

(13) Sends the requester a letter within 10 workdays, giving the reason for the delay and a date (within 20 workdays after receiving the request) when the requester can expect a final decision.

(14) Records extensions and reasons for them in the FOIA system.

(15) Coordinates with the public affairs office if the requested records are potentially newsworthy or if the news media sent the request.

(16) Sends releasable records to requesters with a bill (if appropriate).

(17) Sends a request the OPR wants to deny through the MAJCOM or FOA FOIA office to the denial authority for a decision. The package must include:

(i) The request.

(ii) A copy of the requested records.

(iii) The OPR's and SJA's written recommendations.

(iv) The exemption cited.

(v) The reason for denial.

(b) The OPR locates the information and recommends its release. In cases where several OPRs have functional responsibility for the information, the primary OPR is the one responsible for most of the information in the document. The OPR:

(1) Works with the offices of collateral responsibility (OCR) inside and outside the Air Force, considers the opinions and information they provide, and makes the final release decision.

(2) Forwards records that need coordination with other Air Force functional areas and outside agencies to the MAJCOM or FOA FOIA office, which sends them to the appropriate FOI office for review and return for final decision.

(3) Answers each functional request and follows FOIA denial procedures for records withheld.

**§ 806.16 Referrals.**

A FOIA manager refers requests to another FOIA office after consulting with them when the request asks for records or information originated by someone other than the activity receiving the request or when an OPR finds records in a search that belong to another activity.

(a) Refer FOIA requesters to sources that can provide unaltered publications and processed documents, such as maps, charts, regulations, and manuals to the public, with or without charge. For example, people can obtain documents published in the **Federal Register** without using the FOIA. The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, sells current Air Force standard numbered (departmental) publications, but does not stock superseded, obsolete, rescinded, classified, FOUO, limited (L), or "X" distribution Air Force publications. FOIA requests for these publications go through normal FOIA channels to the OPR for a release recommendation.

(b) Usually, tell the requester about the referral, identify the record referred as security permits, and tell the requester to expect an answer from the agency or activity receiving the referral.

(c) If a request would involve many referrals, tell the requester where to address the request; don't refer it yourself.

(d) Before releasing records or information originated with the National Security Council (NSC) or the White House, refer them through the Office of the Assistant to the Secretary of Defense (Public Affairs) Directorate for Freedom of Information (OATSD[PA]DFOISR), Washington DC 20301. The OATSD(PA) will consult with them and reply back to you.

(e) The General Accounting Office (GAO) is outside the Executive Branch and not subject to the FOIA. However, if the FOIA manager receives a FOIA request directly from the public or referred from GAO for GAO documents that contain Air Force or DoD information, process the request under FOIA.

**§ 806.17 Categorizing requesters.**

(a) Requesters' fees depend on which group they belong to:

(1) Category 1: Commercial. Requesters pay all search, review, and duplication. To decide who belongs in this category find out how these requesters will use the requested documents. If you are unsure how the requester plans to use the records or the request itself does not clearly state plans, seek additional information before you categorize the request.

(2) Category 2: Educational or Noncommercial Scientific Institution or News Media. Requesters get the first 100 copies free and pay for additional copies. These requesters do not pay search or review charges. Requesters who use requested records to write and spread news are not considered commercial requesters.

(3) Category 3: Others. Requesters get the first 2 hours of search and the first 100 copies free. These requesters do not pay review charges.

(b) Analyze each request to categorize the requester. If you think the requester's category differs from what the requester claims, ask the individual for more justification and say you cannot begin searching for records until you have agreed on the category. If the requester does not send the FOIA manager more justification in reasonable time (normally, 30 calendar days), the manager makes a final decision and notifies the requester of the decision and of the right to appeal it.

(c) Tell requesters that you cannot begin to answer their requests until they state they will pay the costs set for their category.

**§ 806.18 Fee assessment.**

The FOIA limits charges to search, review, and duplication based on the requester's category.

(a) Estimate fees if the requester asks. Do not charge an amount more than the estimate or the amount the requester agrees to unless the requester first agrees to pay more.

(b) Search time includes all time spent looking for records to respond to a request. Personnel must search efficiently to minimize both the Air Force's and the requester's costs. Search efforts must be thorough and include all locations and activities most likely to have the requested records. Searches may include retired or staged records. Time spent reviewing documents to decide whether statutory exemptions apply counts as review time, not search time. For computer searches, determine the first 2 free hours against the salary scale of the person operating the computer.

(1) FOIA managers may charge for search time for the appropriate category (and review time for commercial requesters only), if the requester agreed in advance to pay, even if:

(i) A search does not uncover the requested records.

(ii) The records found are entirely exempt from disclosure.

(2) When estimated search charges exceed $25, tell the requester the estimated fees, unless the requester has already indicated a willingness to pay fees as high as the estimate. When feasible, offer the requester the opportunity to restate the request so that the search costs less.

(c) Review is the process of examining documents to determine if one or more of the statutory exemptions allows withholding. It also includes the time it takes to excise information. Review does not include time spent resolving general legal or policy issues on exemptions. FOIA managers may only assess commercial requesters for initial review. This does not include reviews at the appeal stage for exemptions already applied, but it may include review to apply an exemption not previously cited.

(d) Requesters pay only for copies of the records they actually receive. Copies may be on paper, microfiche, audiovisual, or machine-readable magnetic tape or disk, among other media. FOIA managers must try hard to ensure copies are clear. If you cannot possibly provide a clear copy, tell the requester that the copy is the best available and that he or she can make an appointment to review the master copy. For copies of computer tapes and audiovisual material, charge the actual copying cost, including the operator's time.

(e) Before beginning or continuing work on a request, FOIA managers may require advance payment from requesters:

(1) Who have not paid fees on time (usually within 30 calendar days) in the past.

(2) Whose estimated fees are over $250, unless the requester always pays promptly. In that case, give the requester an estimate and ask the requester to ensure full payment.

(f) If the requester has always paid promptly, the FOIA manager sends the records and requests payment at the same time.

(g) If a requester has not paid on time in the past, FOIA managers may ask the requester to:

(1) Pay (or show proof of payment of) outstanding bills, plus interest, for past FOIA requests. Consult 31 U.S.C. 3717 for interest rates and coordinate with your accounting and finance office.

(2) Pay estimated fees in advance.

(h) If a requester has no payment history, or has not paid on time in the past, FOIA managers may ask the requester to pay after processing the request but before sending the records.

(i) When employees with different hourly rates search for information for an "Other" (Category 3) requester, waive the cost of the most expensive 2 hours of search. Requesters receive the first 2 hours search (Category 3 requesters only) and the first 100 pages of duplication (Categories 2 and 3) free only once per request. If you complete your work and refer the request to another FOI office for action, tell that FOI office how much time you spent searching and how many pages you copied for the requester.

**§ 806.19 Aggregating requests.**

A requester may make many requests at once, each seeking parts of a document or documents, just to avoid paying fees. When a requester or a group of requesters breaks a request into many requests to avoid paying, the FOIA manager may combine the requests and charge accordingly. Before combining requests, be sure you have solid evidence that the requesters are trying to avoid fees. Do not combine one requester's multiple requests on unrelated subjects. Contact SAF/AAIQ before taking action.

**§ 806.20 Fee waivers.**

(a) Waive fees for requesters of all categories when:

(1) FOIA costs total $15 or less.

(2) A record is created voluntarily to save the cost of supplying many records.

(3) A record previously withheld is released at small cost (e.g., $15 to $30).

(4) Releasing the information is likely to contribute significantly to public understanding of the operations or activities of the DoD and is not primarily in the commercial interest of the requester.

(b) A waiver in the public interest establishes the two basic requirements below. Both must be met before you waive or reduce fees. Use the following six factors. Begin with the first four factors to determine "public interest" and then use the two remaining factors to decide if release "is not primarily in the commercial interest of the requester."

(1) *Requirement 1.* Is releasing the information in the public interest business it will probably contribute significantly to public understanding of the government's operations or activities?

(i) *Factor 1—Subject of the Request.* Analyze whether the subject matter will significantly contribute to the public understanding of DoD operations or activities. Requests made for records in DoD's possession originated by nongovernment organizations for their intrinsic content rather than informative value will likely not contribute to public understanding of DoD operations or activities. Press clippings, magazine articles, or records expressing an opinion or concern from a member of the public regarding a DoD activity are such records. Releasing older records may be relevant to current DoD activities, so do not discount it under this factor simply because it is old. For example, a requester might want historical records to study how a certain current DoD policy evolved. Review these requests closely, comparing the requester's stated purpose for the records and the potential for public understanding of DoD operations and activities.

(ii) *Factor 2—Informative Value.* Closely analyze a record's substantive contents to determine whether disclosure is meaningful, and will inform the public on DoD operations or activities. While the subject of a request may contain information concerning DoD operations or activities it may not always help people understand these operations or activities. One example is a heavily edited record, containing only random words, fragmented sentences, or paragraph headings. Another example is information already in the public domain.

(iii) *Factor 3—General Public Will Understand the Subject Better.* Will the records' release inform, or have the potential to inform, the public or just the requester or a few interested persons? Knowing the requester's identity is essential to determine whether he or she plans to, and knows how to, communicate information to the public. Plans to write a book, research a subject, work on a doctoral dissertation, or indigency are not reason enough to waive fees. The requester must tell how he or she plans to disclose the information to the general public. You may ask requesters for their qualifications, the nature of their research, the purpose of requesting information, and their plans for making information public.

(iv) *Factor 4—Significance of Public Understanding.* Balance the relative significance or impact of the disclosure against the level of public knowledge or understanding that exists before disclosure. Records released on a subject of wide public interest should contain previously unknown facts that increase public knowledge. They should not duplicate what the general public already knows. Determining the significance of information requires objective judgment. Take care to determine whether disclosure will probably lead to significant public understanding of the issue. Do not judge whether the information is important enough to be public.

(2) *Requirement 2.* Does disclosure of the information primarily mean profit for the requester?

(i) *Factor 5—Commercial Interest.* If you determine the requester will use the records to make a profit, then decide if it's primary, as opposed to a personal or noncommercial interest. In addition to profit-making organizations, individuals, and other organizations may have a commercial interest in certain records. When you have difficulty deciding whether a request is commercial in nature, the requester's identity and the circumstances of the request may help. You may write to the requester and ask for more details.

(ii) *Factor 6—Primary Interest.* After you have determined the requester's commercial interest, decide if it is primary. Commercial interests are primary only if the requester's profit clearly overrides a personal or nonprofit interest. You must decide whether the commercial interest outweighs any benefit to the public as a result of disclosure. Waive or reduce fees when the public gains more than the requester. If the requester's commercial interest is greater than the public interest, do not waive or reduce fees even if public interest is significant. As business organizations, news organizations have a commercial interest; however, you can assume that their primary interest is giving the general public news. Scholars writing books or engaging in other academic research, may profit, either directly or indirectly (through the institution they represent); however, such work is primarily done for educational purposes. Usually you would not assess scholars fees. Assume that brokers or others who compile government information for marketing use the information for profit.

(iii) *Decide each fee waiver case by case.* When you have doubts about waiving or charging a fee, favor the requester.

**§ 806.21 Transferring fees to accounting and finance offices.**

The Treasurer of the United States has two accounts for FOIA receipts. Use account 3210, Sales of Publications and Reproductions, Freedom of Information Act, for depositing fees for publications and forms described in Federal Account Symbols and titles. Use receipt account 3210, Fees and Other Charges for Services, Freedom of Information Act, to deposit fees for searching for, copying, and reviewing records to provide information not in existing publications or forms. Add your disbursing office's prefix to the account numbers. Deposit all FOIA receipts in these accounts except those from industrially funded and nonappropriated funded activities. Deposit these receipts in the applicable fund.

**§ 806.22 Fee rates.**

(a) These fees apply only to FOIA requests. Part 813 of this chapter, Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material, contains the fee schedule for non-FOIA services. Refer to Part 806B of this chapter for guidance on fees for PA requests.

(b) Search and review:

(1) Clerical (E9 and GS–8 and below)—$12 an hour.

(2) Professional (01–06 and GS–9–GS/GM–15)—$25 an hour.

(3) Executive (07 and GS–16/ES1 and above)—$45 an hour.

(c) Computer search fees are based on direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Also include the salary scale (equal to hourly rates above) for the computer operator or programmer who planned and carried out the search.

(d) Duplication:

(1) Preprinted material—$.02 per page.

(2) Office copies—$.15 per page.

(3) Microfiche—$.25 per page.

(4) Computer copies (tapes or printouts)—actual cost of duplicating the tape or printout, including operator's time and tape cost.

(e) Copying cost for audiovisual documents is the actual cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials given to a requester need not be reproducible.

(f) Special Services. Includes certifying that records are true copies and sending records by express mail. You may recover their costs if the requester clearly asks for and agrees to pay for them.

**§ 806.23 Technical data.**

Technical data does not include computer software or data used for contract administration, such as financial and management information. If the FOIA requires, release technical data (not including critical technology with military or space application) after the requester pays all reasonable costs for search, duplication, and review.

**§ 806.24 Technical data fee rates.**

(a) Clerical search and review—$13.25 an hour. Minimum charge—$8.30. Professionals and executives—set rate before beginning at actual hourly rate. Minimum charge is ½ of hourly rate.

(b) Copying rates depend on the type of record. If this list does include the product, use the fair market value.

(1) Aerial photographs, specifications, permits, charts, blueprints, and other technical documents—$2.50 each.

(2) Microfilmed engineering data aperture cards (silver duplicate negatives)—$.75 per card.

(3) Silver duplicate negatives, keypunched and verified—$.85 per card.

(4) Diazo duplicate negatives—$.65 per card.

(5) Diazo duplicate negatives keypunched and verified—$.75 per card.

(6) Engineering data on 35mm roll film—$.50 per frame.

(7) Engineering data 16mm roll film—$.45 per frame.

(8) Engineering paper prints and drawings—$1.50 each.

(9) Reprints of microfilm indices—$.10 each.

(10) Office copies—$3.50 for up to six images. Each additional image—$.10.

(11) Typewritten pages—$3.50 each.

(12) Certification and validation with seal—$5.20.

(13) Hand-drawn plots and sketches—$12 an hour or less.

(14) Fee Waivers for Technical Data. Waive the fees if they are more than regular FOIA fee rates if a citizen or a US corporation asks and certifies the need for technical data to submit (or assess its ability to submit) an offer to supply the United States or its contractor with a product related to the technical data. You may ask the citizen or corporation for a deposit of not more than what fulfilling the request costs. When the citizen or coporation submits the offer, refund the deposit. Also waive charges:

(15) If a requester needs technical data to meet the terms of an international agreement.

(16) If you decide, using regular FOIA fee waiver guidance, that a waiver is in the interest of the United States.

**§ 806.25 Appeals.**

Requesters may appeal denials of records, category determinations, fee waiver requests, and "no records" determinations by writing to the Office of the Secretary of the Air Force, within 60 calendar days after the date of the denial letter. A requester who sends the appeal after 60 calendar days, should explain the reason for the delay.

(a) Requesters who appeal have exhausted all administrative remedies within the Department of the Air Force and The Office of the General Counsel to the Secretary of the Air Force (SAF/GC) makes a final decision. Requesters must address all appeals to the Office of the Secretary of the Air Force, through the MAJCOM or FOA FOIA office that denied the request. Requesters should attach a copy of the denial letter to their appeal and give their reasons for appealing.

(b) After coordinating with the local SJA (and the OPR, if appropriate), MAJCOM and FOA FOIA offices send all appeals, including late submissions, to Air Force Legal Services Agency (AFLSA/JACL) for determination, unless they have reconsidered and approved the request. MAJCOM and FOA FOIA offices give appeals priority. They do not have 20 workdays to process an appeal.

(c) Requesters must appeal denials involving Office of Personnel Management's controlled civilian personnel records to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington DC 20415.

(d) When sending appeals to AFLSA/JACL, attach:

(1) The original appeal letter and envelope.

(2) The initial request and any attachments.

(3) The denial letter, with an index of the denied material, if applicable.

(4) Copies of all records you have already provided; or if the records are massive (Several cubic feet) and AFLSA/JACL agrees, an index or description of released records.

(5) Copies of all administrative processing documents, including extension letters and opinions and recommendations about the request.

(6) Copy of the denied record or denied portions of it marked to show what you withheld. If the records are massive and AFLSA/JACL agrees, you may substitute a detailed description of the documents.

(7) A point-by-point discussion of factual and legal arguments the requester's appeal contains and, proof that the denial authority considered and rejected these arguments and why.

(8) An explanation of the decisionmaking process for intraagency documents denied under the deliberative process privilege and how the denied material fits into that process.

(e) Assemble appeal packages:

(1) Arrange attachments in the order listed in paragraph (d) of this section. Use tabbed dividers to separate attachments.

(2) List all attachments in your cover letter.

(3) Include the name of the person to contact and a phone number.

(f) AFLSA/JACL sends the appeal of the Office of the General Counsel, who makes a final determination. The law requires a final decision within 20 workdays after receipt of the appeal letter. The 20 days begins when the denial authority's FOIA office receives the appeal. The time limit includes processing actions by all levels. If a final determination cannot be made within 20 days, AFLSA/JACL writes to the requester to acknowledge the appeals' receipt and to explain the delay. If SAF/GC upholds the denial, in whole or in part, SAF/GC tells the requester, explains reasons for the denial, and tells the requester about judicial review rights. If SAF/GC grants the appeal, that office tells the requester in writing and releases, or directs the release of, the record.

(g) For "no records" determinations, search again, if warranted, or verify the first search. Include in the package you send to AFLSAS/JACL any letters that show you systematically tried to find records. Tell, for example, what areas or offices you search for how you conducted the search—manually, by computer, by telephone, etc.

(h) For appeals to denials of fee waiver requests, fully account for actual and estimated costs with a copy of the DD 2086 or DD Form 2086–1.

**§ 806.26 For Official Use Only (FOUO).**

FOUO is not a classification. Information marked FOUO must meet the criteria for exemptions 2 through 9, or you cannot withhold it. Do not consider or mark any other records FOUO.

(a) Originators mark records when they create them to call attention to FOUO content. An FOUO marking does not mean you must withhold a record under the FOIA. You still need to review a requested record. Examine records with and without markings to identify information that needs protection and is exempt from public release or to decide whether discretionary release is appropriate.

(1) Information in a technical document that requires a distribution statement per AFI 61–204, Controlling the Distribution of Classified and Unclassified Scientific and Technical Information (formerly AFR 80–30), must show that statement. The originator may also mark the information FOUO, if appropriate.

(2) Mark an unclassified document containing FOUO information "For Official Use Only" at the bottom, on the outside of the front cover (if any), on each page containing FOUO information, on the back page, and on the outside of the back cover (if any).

(3) In unclassified documents, the originator may also mark individual paragraphs that contain FOUO information to alert users and assist in review.

(4) In a classified document, mark:

(i) An individual paragraph that contains FOUO, but not classified information, by placing "(FOUO)" at the beginning of the paragraph.

(ii) The top and bottom of each page that has both FOUO and classified information, with the highest security classification of information on that page.

(iii) "FOUO" at the bottom of each page that has FOUO but not classified information.

(5) If a classified document also contains FOUO information or if the classified material becomes FOUO when declassified, place the following statement on the bottom of the cover or the first page, under the classification marking: If declassified, review the document to make sure material is not FOUO and not exempt under this part before public release.

(6) Mark other records, such as computer printouts, photographs, films, tapes, or slides, "For Official Use Only" or "FOUO" so the receiver or viewer knows the record contains FOUO information.

(7) Mark FOUO material sent to authorized persons outside the DoD with an explanation typed or stamped on the document:

> This document contains information EXEMPT FROM MANDATORY DISCLOSURE UNDER THE FOIA. Exemption(s) . . . . . applies (apply). (Further distribution is prohibited without the approval of (enter OPR)).

(b) DoD components, officials of DoD components, and authorized DoD contractors, consultants, and grantees send FOUO information to each other to conduct official DoD business. Tell recipients the status of such information, and send the material in a way that prevents unauthorized public disclosure. Make sure documents that transmit FOUO material call attention to any FOUO attachments. Normally, you may send FOUO records over facsimile equipment. To prevent unauthorized disclosure, consider attaching special cover sheets (i.e., AF Form 3227, Privacy Act Cover Sheet, for Privacy Act information), the location of sending and receiving machines, and whether authorized personnel are around to receive FOUO information. FOUO information may be passed to officials in other departments and agencies of the executive and judicial branches to fulfill a government function. Mark the records "For Official Use Only," and tell the recipient the information is exempt from public disclosure under the FOIA and whether it needs special handling. If the records are subject to the PA, refer to Part 806b of this chapter for PA disclosure policies.

(c) AFI 90–401, Air Force Relations With Congress (formerly AFR 11–7), governs the release of FOUO information to members of the Congress and AFI 65–401, Air Force Relations With the General Accounting Office (formerly AFR 11–8), governs its release to the General Accounting Office (GAO). Review records before releasing to see if the information warrants FOUO status. If not, remove FOUO markings. If the material still warrants FOUO status, mark the records FOUO and explain the appropriate exemption and marking to the recipient.

(d) When you use the US Postal Service, package records with FOUO information so their contents are safe. If FOUO information is not combined with classified information, individuals may send FOUO information by First Class Mail or Parcel Post. Bulky shipments, such as FOUO directives or testing materials, that qualify under postal regulations may be sent by Fourth Class Mail.

(e) Mark each part of a message that contains FOUO information. Unclassified messages containing FOUO information must show the abbreviation "FOUO" before the text begins.

(f) To safeguard FOUO records during normal duty hours, place them in an out-of-sight location if people who do not work for the government come into the work area. After normal duty hours, store FOUO records to prevent unauthorized access. File them with other unclassified records in unlocked files or desks, etc., if the Government or a Government contractor provides normal internal building security. When there is no internal security, locked buildings or rooms usually provide adequate after-hours protection. For additional protection, store FOUO material in locked containers such as file cabinets, desks, or bookcases.

(g) When a record is no longer FOUO, remove the markings or indicate on the document the markings no longer apply. Try to tell everyone who has the records that their status has changed.

(h) Destroy FOUO materials by tearing them up so no one can put them back together and throwing them into trash containers. When the information needs more protection, local authorities may use other methods. However, balance the expense of extra protection against the degree of sensitivity of the FOUO information in the records. You may recycle FOUO material. Safeguard the FOUO documents or information until recycling to prevent unauthorized disclosure. Recycling contracts must include agreements on how to protect and destroy FOUO and PA materials.

(i) Unauthorized disclosure of FOUO records is not an unauthorized disclosure of classified information. Air Force personnel must act to protect FOUO records under their control from unauthorized disclosure. When unauthorized persons gain access to these records, administrators find out who is responsible and take disciplinary action where appropriate. Unauthorized disclosure of FOUO information containing PA information may also result in civil or criminal sanctions against individuals or the Air Force. Tell the originating organization when its records are improperly disclosed.

**Appendix A to Part 806—Glossary of Terms**

*Appellate Authority*—The Office of the General Counsel to the Secretary of the Air Force, who decides FOIA appeals.

*Commercial Request*—A category 1 request from, or on behalf of, one who seeks information that furthers the commercial,

trade, or profit interest of the requester or the person represented.

*Denial*—A determination by a denial authority not to disclose requested records in its possession and control.

*Determination*—The decision to grant or deny all or part of a request from the public for records.

*Disclosure*—Providing access to, or one copy of, a record.

*Disclosure Authority*—Official authorized to release records.

*Education Institution Request*—A category 2 request from a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates one or more scholarly research programs.

*Electronic Data*—Records or information created, stored, and retrieved by electronic means. Electronic records do not include computer software used as a tool to create, store, or retrieve electronic data.

*FOIA Manager*—The person who manages the FOIA Program at each organizational level.

*FOIA Request*—A written request for records from the public that cites or implies the FOIA.

*Functional Request*—A request for records that does not specifically cite or imply the FOIA.

*Glomar Response*—A reply that neither confirms nor denies the existence or nonexistence of the requested record. A "Glomar" response may be used with FOIA exemptions 1, 6, and 7(C).

*Initial Denial Authority (IDA)*—Persons in authority positions who may withhold records under the FOIA.

*News Media Request*—A category 2 request from a person whose job is gathering news for a publishing or broadcasting organization that supplies news to the public. News media also includes free lance journalists who can prove they have good reason for expecting a news organization to publish their work.

*Noncommercial Scientific Institution Request*—A category 2 request from a noncommercial institution that operates solely to conduct scientific research not intended to promote a particular product or industry.

*Other Request*—A category 3 request from anyone who does not fit into the Commercial category or the Noncommercial Scientific or Educational Institutions or News Media category.

*Partial Denial*—Decision to withhold part of a requested agency record.

*Public Interest*—When releasing official information sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing or reveals an Air Force official's conduct. Normally there is no public interest in personal information if it does not reveal a person's conduct in their job.

*Records*—The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government in connection with the transaction of public business and in the agency's possession and control at the time it receives the request. Records such as notes, working papers, and drafts kept as historical evidence of actions are subject to the FOIA, and may be exempt from release under 5 U.S.C. 552(b)(5) if an identifiable harm exists by their release. Computer software rarely qualifies as an agency record. Evaluate each case. Two examples of software as a record are:

a. Data embedded in the software cannot be extracted without the software.

b. Software that reveals information about DoD organization, policies, functions, decisions, or procedures, such as computer models used to forecast budget outlays, to calculate retirement system costs, or to optimize models on travel costs.

*Search*—To look for a requested record or a specific section of a record. You can search over the telephone, manually, or with computer searches.

*Statutory Time Limits*—The 10 workdays after receiving the request to tell the requester whether the records are released or denied. This term also covers the additional 10-workday extension allowed for reasons in § 806.15(a)(12). The 10 days begin when the FOIA manager receives a properly filed request with a reasonable description of the requested records and with the requester's stated willingness to pay fees or fees paid. If the requester disagrees with his or her category or wants fees reduced or waived, the 10 days begin after resolving these issues.

*Technical Data*—Information (including computer software documentation) that is scientific or technical in nature and recorded on any medium.

**Appendix B to Part 806—Requirements of 5 U.S.C. 552(b)(4) (Send With Letter to Submitters)**

(a) The Freedom of Information Act (FOIA) requires Federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy.

(b) Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

(c) In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies may withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government which is privileged or confidential.

(d) This generally includes information provided and received with the understanding that it will be kept privileged or confidential.

(e) Commercial or financial matter is "confidential" and exempt if its release will probably:

(1) Impair the Government's ability to obtain necessary information in the future.

(2) Substantially harm the source's competitive position or impair some other legitimate Government interest.

(f) The exemption may be used to help the source when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

(1) Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

(4) Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

(5) Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.

(6) Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320–2321 and 48 CFR 227.4.

(7) Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

(g) If release of the subject material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm it will cause to you, your organization, or your business. The Act requires we provide any reasonably segregable part of a record after deleting exempt parts. So, tell us if deleting key words or phrases would adequately protect your interests.

(h) If you do not prove the probability of substantial harm to your competitive position or other commercial interests, we may be required to release the information. Records qualify for protections case by case.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 94–24663 Filed 10–5–94; 8:45 am]

BILLING CODE 3910–01–P–M

## ENVIRONMENTAL PROTECTION AGENCY

**[MI26–03–6661; FRL–5075–2]**

**40 CFR Part 52**

## Approval and Promulgation of Implementation Plans; Michigan; Removal of Final Rule

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

**ACTION:** Final rule; Removal.

**SUMMARY:** On August 10, 1994, the EPA published a final rule, through the "direct final" procedure, approving the exemption request from the requirements contained in section 182(f) of the Clean Air Act (Act) for the Detroit-Ann Arbor ozone nonattainment areas in Michigan. See 59 FR 40826. The EPA is removing this final rule due to adverse comments received on this action. In a subsequent final rule, EPA will summarize and respond to the comments received on these exemption requests from the State of Michigan.

**EFFECTIVE DATE:** October 6, 1994.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air Enforcement Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–6960.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Oxides of nitrogen, Ozone, and Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 7, 1994.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 94–24675 Filed 10–5–94; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 55**

[FRL–5083–4]

## Outer Continental Shelf Air Regulations Consistency Update for California

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

**ACTION:** Final rule—consistency update.

**SUMMARY:** EPA is finalizing the updates of the Outer Continental Shelf ("OCS") Air Regulations proposed in the **Federal Register** on June 30, 1994 and August 17, 1994. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD), and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs, and a requirement submitted by the state of California. The intended effect of approving the requirements contained in "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (August 30, 1994), "South Coast Air Quality Management District Requirements Applicable to OCS Sources" (Parts I and II) (August 30, 1994), "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (August 30, 1994), and "State of California Requirements Applicable to OCS Sources" (August 30, 1994) is to regulate emissions from OCS sources in accordance with the requirements onshore.

**EFFECTIVE DATE:** This action is effective November 7, 1994.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 30, 1994 in 59 FR 33719 and August 17, 1994 in 59 FR 42194, EPA proposed to approve the following requirements into the OCS Air Regulations: "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources", "South Coast Air Quality Management District Requirements Applicable to OCS Sources" (Parts I and II), "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources", and "State of California Requirements Applicable to OCS Sources". These requirements are being promulgated in response to the submittal of rules from local air pollution control agencies and the state of California. EPA has evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided in 59 FR 33719 and 59 FR 42194 and no comments were received.

**EPA Action**

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposals set forth in the June 30, 1994 and August 17, 1994 notices of proposed rulemaking. EPA is approving the submittal as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

**Administrative Requirements**

*A. Executive Order 12291 (Regulatory Impact Analysis)*

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

*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." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates

onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this final rule will not have a significant impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 22, 1994.

**John Wise,**

*Acting Regional Administrator.*

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

## PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by adding paragraph (e)(3)(i)(A) and revising paragraphs (e)(3)(ii)(F), (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.**

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) *State of California Requirements Applicable to OCS Sources*, August 30, 1994

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, August 30, 1994.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II), August 30,.1994.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, August 30, 1994.

* * * * *

3. Appendix A to CFR Part 55 is amended by adding paragraph (a)(1) and revising paragraphs (b)(6), (7), and (8) under the heading "California" to read as follows:

**Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State**

* * * * *

California

(a) * * *

(1) The following requirements are contained in *State of California Requirements applicable to OCS Sources*, August 30, 1994:

Barclays California Code of Regulations. The following section of Title 17 Subchapter 6:

17 § 92000 Definitions (Adopted 5/31/91)
17 § 92100 Scope and Policy (Adopted 10/18/82)
17 § 92200 Visible Emission Standards (Adopted 5/31/91)
17 § 92210 Nuisance Prohibition (Adopted 10/18/82)
17 § 92220 Compliance with Performance Standards (Adopted 5/31/91)
17 § 92400 Visible Evaluation Techniques (Adopted 5/31/91)
17 § 92500 General Provisions (Adopted 5/31/91)
17 § 92510 Pavement Marking (Adopted 5/31/91)
17 § 92520 Stucco and Concrete (Adopted 5/31/91)
17 § 92530 Certified Abrasives (Adopted 5/31/91)
17 § 92540 Stucco and Concrete (Adopted 5/31/91)

(b) * * *

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, August 30, 1994:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 12/14/93)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)
Rule 342 Control of Oxides of Nitrogen ($NO_X$ from Boilers, Steam Generators and Process Heaters) (Adopted 03/10/92)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements*

*Applicable to OCS Sources,* (Part I and Part II) August 30, 1994:

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (9/6/91) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 9/11/92)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 10/08/93) except (e)(3) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/11/93)
Rule 304.1 Analyses Fees (Adopted 6/6/92)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 7/6/90)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 7/9/93)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 12/7/90)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV (Effective 1977)
Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 4/9/93)
Rule 1106 Marine Coatings Operations (Adopted 8/2/91)
Rule 1107 Coating of Metal Parts and Products (Adopted 8/2/91)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)
Rule 1113 Architectural Coatings (Adopted 9/6/91)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/10/92)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/4/92)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)
Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 9/11/92)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 2000 General (Adopted 10/15/93)
Rule 2001 Applicability (Adopted 10/15/93)
Rule 2002 Allocations for oxides of nitrogen ($NO_X$) and oxides of sulfur ($SO_X$) (Adopted 10/15/93)
Rule 2004 Requirements (Adopted 10/15/93) except (l) (2 and 3)
Rule 2005 New Source Review for RECLAIM (Adopted 10/15/93) except (i)
Rule 2006 Permits (Adopted 10/15/93)
Rule 2007 Trading Requirements (Adopted 10/15/93)
Rule 2008 Mobiles Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur ($SO_X$) Emissions (Adopted 10/15/93)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 10/93)

Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen ($NO_X$) Emissions (Adopted 10/15/93)
Appendix A Volume V—(Protocol for oxides of Nitrogen) (Adopted 10/93)
Rule 2015 Backstop Provisions (Adopted 10/15/93) except (b)(1)(G) and (b)(3)(B)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, August 30, 1994:

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 3/22/94)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II–A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 5/4/93)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 6/8/93)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 72 New Source Performance Standards (NSPS) (Adopted 7/13/93)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of $NO_X$ (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 12/3/91)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 5/11/93)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

* * * * *

[FR Doc. 94–24641 Filed 10–5–94; 8:45 am]
BILLING CODE 6560–50–P

## 40 CFR Part 81

**[Region II Docket No. 135, NY14–2–6676, FRL–5086–3]**

## Clean Air Act Promulgation of Reclassification of Ozone Nonattainment Area; States of New Jersey and New York

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing its final decision to reclassify the Poughkeepsie ozone nonattainment area from a marginal nonattainment area to a moderate nonattainment area. This action also announces a final determination that the Albany-Schenectady-Troy, NY; Allentown-Bethlehem-Easton, NJ-PA; Buffalo-Niagara Falls, NY; Essex County, NY; and, Jefferson County, NY ozone nonattainment areas classified as marginal have attained the ozone air quality standard by the attainment date of November 15, 1993. These actions are based on monitored air quality readings of the national ambient air quality standard for ozone during the years 1991–1993.

**EFFECTIVE DATE:** This action will be effective on November 7, 1994.

**ADDRESSES:** Materials relevant to this rulemaking are included in Air Docket A–90–42, located in Rm. M–1500, First Floor, Waterside Mall, 401 M St., SW., Washington, DC, and may be inspected at this location during the hours from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday,

except for legal holidays. A duplicate copy of the docket is located in the EPA Regional Office listed below.

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, Room 1034A, New York, New York 10278, (212) 264–2517.

**SUPPLEMENTARY INFORMATION:** On July 28, 1994, the EPA published in the **Federal Register** (59 FR 38410) a Notice of Proposed Rulemaking (NPR) concerning the reclassification of the Poughkeepsie ozone nonattainment area from marginal to moderate. The NPR also proposed a determination that the Albany-Schenectady-Troy, NY; Allentown-Bethlehem-Easton, NJ-PA; Buffalo-Niagara Falls, NY; Essex County, NY; and, Jefferson County, NY marginal nonattainment areas attained the ozone air quality standard by the attainment date of November 15, 1993. The reclassification and determinations are based solely on ozone air quality data measured during the 1991–1993 period.

The rationale for EPA's proposed action was explained in the NPR and will not be restated here since EPA's final action does not differ from the proposed action in the NPR. EPA received eleven separate letters submitted by the public in support of the proposed reclassification of the Poughkeepsie area. No adverse comments were received on the NPR. Therefore, EPA is finalizing the proposed reclassification of the Poughkeepsie nonattainment area. This rule fulfills EPA's obligations under Section 181(b)(2) to determine whether the Poughkeepsie area attained the ozone national ambient air quality standards (NAAQS) by its attainment date, and to publish its determination in the **Federal Register**.

No comments were received on the proposed attainment determinations of the Albany-Schenectady-Troy, NY; Allentown-Bethlehem-Easton, NJ-PA; Buffalo-Niagara Falls, NY; Essex County, NY; and, Jefferson County, NY marginal nonattainment areas. Therefore, this rule also fulfills EPA's obligation under Section 181(b)(2)(A) which requires the Administrator, shortly after the attainment date, to determine whether ozone nonattainment areas attained the NAAQS.

**Final Action**

The EPA is reclassifying the Poughkeepsie ozone nonattainment area from a marginal nonattainment area to a moderate nonattainment area. This action also determines that the Albany-Schenectady-Troy, NY; Allentown-Bethlehem-Easton, NJ-PA; Buffalo-Niagara Falls, NY; Essex County, NY; and, Jefferson County, NY ozone nonattainment areas classified as marginal have attained the ozone air quality standard by the attainment date of November 15, 1993. These actions are based on measured ozone air quality levels during the years 1991–1993. Consequently, these areas are eligible to be redesignated to attainment under section 107(d)(3), if the criteria of that provision are met.

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

Under Executive Order 12866, which revoked and replaced Executive Order 12291, EPA is required to judge whether an action is a "significant regulatory action" and therefore subject to the requirement of a regulatory impact analysis. The Agency has determined that this reclassification would not adversely affect the economy to the degree set forth in section 3(f) of the Executive Order as grounds for a finding that an action is a "significant regulatory action." Furthermore, under the Executive Order, qualitative costs and benefits, such as environmental costs and benefits, are given as much weight in determining the impact of a regulatory action as quantifiable costs and benefits, such as economic costs and benefits. As such, the environmental benefits of this reclassification far outweigh any economic effect of this regulatory action. Consequently, this action will not undergo review by the Office of Management and Budget.

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

Reclassification of nonattainment areas under section 181 of the Act do not create any significant new requirements applicable to small entities. This action does not directly regulate small entities and there are no alternatives to taking this action of the types identified in sections 603(c) and 604(a)(3) of the Regulatory Flexibility Act. Therefore, I certify that this action does not have a significant impact on small entities.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 30, 1994.

**Carol M. Browner,**

*Administrator.*

40 CFR part 81 is amended as follows:

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. In § 81.333 the table for "New York-Ozone" under "Poughkeepsie Area" is amended by revising the entries for "Dutchess County", "Orange County (remainder)", and "Putnam County" to read as follows:

**§ 81.333 New York.**

* * * * *

NEW YORK-OZONE

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| * * * | * | * | * * * | * |
| Poughkeepsie Area: | | | | |
| Dutchess County | 1/6/92 | Nonattainment | November 7, 1994 | Moderate. |
| Orange County (remainder) | [2]4/21/94 | Nonattainment | November 7, 1994[2] | Moderate. |
| Putnam County | 1/15/92 | Nonattainment | November 7, 1994 | Moderate. |
| * * * | * | * | * * * | * |

[1] This date is November 15, 1990, unless otherwise noted.
[2] However, the effective date is November 15, 1990 for purposes of determining the scope of a "covered area" under section 211(k)(10)(D), opt-in under section 211(k)(6), and the baseline determination of the 15% reduction in volatile organic compounds under section 182(b)(1).

* * * * *

[FR Doc. 94-24805 Filed 10-5-94; 8:45 am]
BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 94-25; RM-8441]**

### Radio Broadcasting Services; Cavalier, North Dakota

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Cavalier Radio, allots Channel 286C2 to Cavalier, ND, as the community's first local aural broadcast service. See 59 FR 13919, March 24, 1994. Channel 286C2 can be allotted to Cavalier in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 48-47-36 North Latitude and 97-37-12 West Longitude. Canadian concurrence has been received since Cavalier is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

**DATES:** *Effective:* November 17, 1994.

The window period for filing applications will open on November 18, 1994, and close on December 19, 1994.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 94-25, adopted Sept. 21, 1994, and released October 3, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

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

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Cavalier, Channel 286C2.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94-24764 Filed 10-5-94; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 94-16; RM-8432]**

### Radio Broadcasting Services; Belle Fourche, South Dakota

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Ultimate Caps, Inc., allots Channel 271C3 to Belle Fourche, SD, as the community's second local FM service. See 59 FR 1035, March 7, 1994. Channel 271C3 can be allotted to Belle Fourche in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 44-40-18 North Latitude and 103-51-00 West Longitude. With this action, this proceeding is terminated.

**DATES:** Effective November 17, 1994. The window period for filing applications will open on November 18, 1994, and close on December 19, 1994.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 94-16, adopted September 21, 1994, and released October 3, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Channel 271C3 at Belle Fourche.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–24763 Filed 10–5–94; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 213

### Defense Federal Acquisition Regulation Supplement: Small Purchases for Contingency Operations

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement to fully implement the Department of Defense's authority to use simplified procedures for acquisitions in support of a contingency operation.

**EFFECTIVE DATE:** September 29, 1994.

**FOR FURTHER INFORMATION CONTACT:** Claudia L. Naugle, (703) 604–5929.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

These revisions provide for the use of small purchase procedures up to $100,000 for any contract to be performed outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13). The revisions are based on language in Sections 631 and 805 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, which modified the definition of small purchase threshold at 10 U.S.C. 2302(7) and added a definition of the term "contingency operation" at 10 U.S.C. 101(a)(13).

**B. Regulatory Flexibility Act**

The rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply as this rule imposes no information collection requirements which require approval of the Office of Management and Budget.

**List of Subjects in 48 CFR Part 213**

Government procurement.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulations Council.*

Accordingly, 48 CFR Part 213 is amended as follows:

1. The authority citation for 48 CFR Part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Part 1

## PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

2. Section 213.000 is revised to read as follows:

**213.000 Scope of part.**

This part also implements 10 U.S.C. 2302(7) which increases the small purchase threshold to $100,000 for any contract to be awarded and performed outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13).

3. Section 213.101 is revised to read as follows:

**213.101 Definitions.**

*Small purchase* also means an acquisition of $100,000 or less using the procedures prescribed in FAR Part 13, if the contract is awarded and performed outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13). 10 U.S.C. 101(a)(13) defines "contingency operation" as a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 672(a), 673, 673b, 673c, 688, 3500, or 8500 of Title 10, chapter 15 of Title 10, or any other provision of law during a war or during a national emergency declared by the President or Congress.

4. Section 213.404 is amended by revising paragraph (a) to read as follows.

**213.404 Conditions for use.**

(a) Overseas transactions in support of a contingency operation as defined in 10 U.S.C. 101(a)(13) may use imprest funds up to $2,500.

5. Section 213.505–3 is revised to read as follows:

**213.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.**

(b)(1) The $2,500 limitation applies to all purchases except that purchases up to the small purchase limitation in FAR 13.000 may be made for—

(A) Aviation fuel and oil;

(B) Overseas transactions by contracting officers in support of a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(C) Transactions in support of intelligence and other specialized activities addressed by Part 2.7 of Executive Order 12333.

[FR Doc. 94–24774 Filed 10–5–94; 8:45 am]

BILLING CODE 5000–04–M

### 48 CFR Part 247

### Defense Federal Acquisition Regulation Supplement; Best Value—Stevedoring

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit contracting officers to consider factors other than cost or price when evaluating offers for stevedoring services.

**DATES:** Effective date: September 29, 1994.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 5, 1994, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 94–D005 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, (703) 604–5929.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 15.605 of the Federal Acquisition Regulation (FAR) permits contracting officers to evaluate offers on the basis of cost or price and non-cost or non-price-related factors. The Director of Defense Procurement issued an interim rule on September 29, 1994, by Departmental Letter 94–016, to revise

the guidance at DFARS 247.270–5 and 247.270–6 for consistency with section 15.605 of the FAR.

**B. Regulatory Flexibility Act**

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is consistent with the existing policy at FAR 15.605. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–D005 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 247**

Government procurement.

**Claudia L. Naugle,**

*Deputy Director, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 247 is amended as follows:

## PART 247—TRANSPORTATION

1. The authority citation for 48 CFR Part 247 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 247.270–5 is revised to read as follows:

**§ 247.270–5 Evaluation of bids and proposals.**

At a minimum, require that offers include—

(a) Tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates which apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Cost of equipment rental.

3. Section 247.270–6 is revised to read as follows:

**§ 247.270–6 Award of contract.**

Make the award to the contractor submitting the offer most advantageous to the Government, considering cost or price and other factors specified elsewhere in the solicitation. Evaluation will include, but is not limited to—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

[FR Doc. 94–24775 Filed 10–5–94; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AC11**

## Endangered and Threatened Wildlife and Plants; Final Rule to Reclassify the Plant Isotria medeoloides (Small Whorled Pogonia) From Endangered to Threatened

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines that *Isotria medeoloides* (small whorled pogonia) warrants reclassification from endangered to threatened. The determination is based on the fulfillment of reclassification criteria as stated in the Small Whorled Pogonia (*Isotria medeoloides*) Recovery Plan: First Revision (U.S. Fish and Wildlife Service 1992) and substantial improvement in the status of this orchid species. As outlined in the revised Recovery Plan, reclassification of *Isotria medeoloides* from endangered to threatened should proceed when a minimum of 25 percent of the known viable sites (as of 1992) are protected. Currently, 61 percent of the viable populations are permanently protected. This rule implements the Federal protection and recovery provisions for threatened species as provided by the Act.

**EFFECTIVE DATE:** November 7, 1994.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge Street—Unit 1, Concord, New Hampshire 03301–4986.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susanna von Oettingen at the above address (telephone: 603/225–1411, FAX 603/225–1467).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Isotria medeoloides* (small whorled pogonia), a member of the orchid family (Orchidaceae), was first described by Frederick Pursh in 1814 as *Arethusa medeoloides*. In 1838, this orchid was placed in its own genus and recognized as *Isotria medeoloides;* however, it also became known as *Pogonia affinis* and *Isotria affinis*. M.L. Fernald clarified the nomenclature in 1947, making the latter names synonyms of *Isotria medeoloides*.

*Isotria medeoloides* is an herbaceous perennial with slender, hairy, fibrous roots that radiate from a crown or rootstock. The five or six milky-green or grayish-green, elliptic and somewhat pointed leaves (four leaves in some vegetative plants) are displayed in a whorl at the apex of a smooth, green stem. *Isotria medeoloides* flowers from mid-May in the south to mid-June in the northern part of its range. A single yellowish-green flower, or occasionally flower pair, stands in the center of the whorl of leaves.

An individual plant is usually single-stemmed, although two or more stems may occur; however, closely grouped double stems may in fact be two single plants (Bill Brumback, New England Wildflower Society, *in litt.* 1993). Because of the difficulty in differentiating double stemmed plants from closely neighboring plants, population estimates are often based on the number of stems, as opposed to the number of plants.

*Isotria medeoloides* can be confused with *Isotria verticillata* (Willd.) Raf. (large whorled pogonia), the only other species in the genus *Isotria*. Characteristics that distinguish *I. medeoloides* from *I. verticillata* include the stem and flower color, the relative lengths of the sepals and petals, and the length of the stem of the fruit capsule in relation to the length of the capsule itself (Rawinski 1989a). Colonies of *Isotria verticillata* are often found near colonies of *Isotria medeoloides* in the extensive region in which they occur together (A. Belden, Virginia Division of Natural Heritage, *in litt.* 1991). They have also been reported to grow mixed together (Dixon and Cook 1988).

*Isotria medeoloides* occurs both in fairly young forests and in maturing stands of mixed-deciduous or mixed-deciduous/coniferous forests. The majority of small whorled pogonia sites share several common characteristics. These may include sparse to moderate ground cover in the microhabitat (except when among ferns), a relatively open understory canopy, and proximity to old logging roads, streams, or other

features that create long-persisting breaks in the forest canopy (Mehrhoff 1989a). The soil in which the shallow-rooted small whorled pogonia grows is usually covered with leaf litter and decaying material (Mehrhoff 1980, Sperduto 1993). The spectrum of habitats includes dry, rocky, wooded slopes to moist slopes or slope bases crisscrossed by vernal streams.

*Isotria medeoloides* is widely distributed with a primary range extending from southern Maine and New Hampshire through the Atlantic seaboard States to northern Georgia and southeastern Tennessee. Outlying colonies have been found in the western half of Pennsylvania, Ohio, Michigan, Illinois, and Ontario, Canada.

There are three main population centers of *Isotria medeoloides*. The northernmost concentration, comprising 66 sites in 1993, is centered in the foothills of the Appalachian Mountains in New England and northern coastal Massachusetts, with one outlying site in Rhode Island. A second grouping of 18 sites is located at the southern extreme of the Appalachian chain in the Blue Ridge Mountains where North Carolina, South Carolina, Georgia, and Tennessee join. The third center, with 13 sites, is concentrated in the coastal plain and piedmont provinces of Virginia, with outliers in Delaware and New Jersey. Seven sites scattered in the outlying States and Ontario are considered disjunct populations.

**Previous Federal Action**

*Isotria medeoloides* was listed as endangered on September 10, 1982 (47 FR 39827–39831). At that time, records for the species were known from 48 counties in 16 States and Canada, though there were only 17 extant sites, in 10 States and Ontario, Canada. These sites had less than 500 stems. Subsequent searches led to the discovery of many new sites. In 1991, 86 sites in 15 States and Canada (U.S. Fish and Wildlife Service 1992) were known. By 1993, 17 additional sites in New Hampshire and 1 site in Maine were discovered, bringing the total to 104 extant sites (Table 1). A number of States currently have only historic sites; these include Vermont, New York, Maryland, Missouri, and the District of Columbia.

TABLE 1.—ISOTRIA MEDEOLOIDES SITE DISTRIBUTION

| State | # Sites 1985 | # Sites (# Viable) 1993 | # Sites protected 1993 (# Viable) |
|---|---|---|---|
| Maine | 2 | 17(7) | 4(4) |
| New Hampshire | 16 | 42(15) | 11(6) |
| Massachusetts | 1 | 5(2) | 2(2) |
| Rhode Island | 1 | 1(0) | 0(0) |
| Connecticut | 1 | 1(0) | 1(0) |
| Pennsylvania | 1 | 3(0) | 3(0) |
| New Jersey | 2 | 3(1) | 1(0) |
| Delaware | 0 | 1(0) | 0(0) |
| Virginia | 3 | 9(6) | 7(4) |
| North Carolina | 2 | 5(2) | 2(2) |
| South Carolina | 1 | 4(2) | 4(2) |
| Georgia | 1 | 8(4) | 7(4) |
| Tennessee | 0 | 1(0) | 0(0) |
| Ohio | 0 | 1(0) | 1(0) |
| Michigan | 1 | 1(0) | 1(0) |
| Illinois | 1 | 1(0) | 1(0) |
| Ontario, Canada | 1 | 1(0) | 1(0) |
| Total | 34 | 104(39) | 46(24) |

[1] Protection as defined in the criteria for reclassification in the Small Whorled Pogonia Recovery Plan: First Revision (U.S. Fish and Wildlife Service 1992), also discussed below.

The first Small Whorled Pogonia Recovery Plan was completed in 1985 (U.S. Fish and Wildlife Service 1985). The original objective, outlined in the 1985 recovery plan and based on the best available information at that time, was to locate and protect 30 populations (sites) of at least 20 individuals each, with at least 15 of the sites to be located in New England. Implementation of several recovery tasks generated additional life history and population information, the identification of new sites and protection of those sites deemed important to the survival and recovery of this species.

Upon review of new life history and site information, this recovery objective was no longer considered appropriate. Viability, based on the reproductive status and persistence of a population, as opposed to merely a stem count, is now considered to be an important factor in determining the recoverability of this species.

The Small Whorled Pogonia Recovery Plan: First Revision, was completed and approved in 1992. New recovery goals for the reclassification and delisting of *Isotria medeoloides* and tasks for the recovery of this species were developed using the most recent information regarding population trends and dynamics, life history, and previous recovery efforts. The current recovery strategy is based on a multi-faceted approach of habitat protection and management (on a site specific basis), threat reduction, and environmental education.

The Service identified recovery criteria required for the reclassification of *Isotria medeoloides* from endangered to threatened in the 1992 recovery plan. Reclassification would be pursued when a minimum of 25 percent of the known, viable sites (as of 1992) is permanently protected. A site is considered viable if it has a geometric mean (over 3 years) of 20 emergent stems, of which at least 25 percent are flowering stems. Though not discussed in the recovery plan, an alternative viability definition has since been developed for sites located in the southern part of the range. This definition was based upon information provided by botanists familiar with these small, yet persistent populations (B. Sanders, U.S. Forest Service, pers. comm. 1993). Viability for smaller populations may be considered for those sites where less than 20 stems have persistently emerged for over 15 years. A determination of viability based on a stem count of less than 20 stems would require a long-term commitment to monitoring a site.

In addition to site viability and protection, reclassification necessitates that the protected, viable sites be distributed proportionally throughout the species' current range. Site protection should include a sufficient buffer zone around the populations to allow the potential for natural colonization of adjacent, unoccupied habitat.

As defined in the 1992 recovery plan, protection can be accomplished through—(1) Ownership by a government agency or a private organization that considers maintenance of the *I. medeoloides* population to be a management objective for the site, or (2) a deeded easement or covenant that effectively commits present and future landowners to protecting the population and allowing the implementation of management activities when appropriate. This high level of landowner commitment to site protection may be critical if it is determined that the species needs management to counteract the loss of nearby unoccupied habitat. The need for habitat management would be reviewed on a site-by-site basis, and be dependent upon the completion of Task 2.1 of the 1992 recovery plan, which is to determine appropriate management strategies.

Adequate protection for the purposes of reclassification has been achieved for approximately 50 percent of the viable

New England center populations; 57 percent of viable populations in the Virginia center; and 100 percent of the viable populations in the Blue Ridge center. No populations in the outlying States are considered to be viable, though 4 of the 6 extant populations are protected. As a result of meeting the reclassification criteria outlined in the 1992 recovery plan, the Service published a proposed rule to reclassify *Isotria medeoloides* from endangered to threatened in the **Federal Register** on October 19, 1993 (FR 53904).

The ultimate goal of the 1992 recovery plan is to ensure long-term viability of *Isotria medeoloides,* facilitating the removal of the species from the Federal list. This objective would be reached when a minimum of 61 sites (75 percent of the number of viable sites known in 1992) are permanently protected.

As in the reclassification criteria, the distribution of these sites must be proportionate among the three geographic centers and the outliers. Viable sites for delisting the species are those sites with self-sustaining populations having an average of 20 emergent stems (over a 10-year period), of which an average of 25 percent are flowering stems. The extended period of monitoring time is required to ensure long-term viability, and should factor in the potential for naturally induced dormancy of individual plants. An alternative definition for viability of smaller populations in the southern portion of the small whorled pogonia's range may be considered and substantiated through the recovery process for sites where less than 20 stems, of which an average of 25 percent are flowering, have persistently emerged for over 15 years.

Ideally, unoccupied habitat adjacent to existing colonies must also be protected to allow for natural colonization and maintenance of a self-sustaining population. In some cases, only the immediate area encompassing *Isotria medeoloides* populations has been protected, while surrounding habitat has been destroyed. For these sites, management strategies to maintain self-sustaining populations may need to replace the historical availability of additional habitat.

The management strategies would be dependent upon completion of Tasks 2.1 and 5.2 of the 1992 recovery plan.

**Summary of Comments and Recommendations**

In the October 19, 1993 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in—*The Kennebec Journal* (Maine), *The Portsmouth Daily Times* (Ohio), and *The New Jersey Herald* (New Jersey) on November 3, 1993; *The Richmond Times-Dispatch* (Virginia), *The State Journal-Register* (Illinois) and *The State* (South Carolina) on November 4, 1993; *The Portland Newspaper* (Maine) and *The Atlanta Journal* (Georgia) on November 5, 1993; *The Herald-Palladium* (Michigan) and *The Chattanooga News-Free Press* (Tennessee) on November 8, 1993; *The New Journal* (Delaware) and *The Wilmington News-Journal* (Delaware) on November 9, 1993; and *The Asheville Citizen-Times* (North Carolina) on November 10, 1993. Eleven letters were received, nine supported the ruling, one was in opposition and one did not support or oppose the reclassification of *I. medeoloides,* but did provide comments.

Comments questioning the soundness of reclassification are discussed below.

An individual suggested that reclassification was premature because the Service's definition of viability is based on the population's reproductive status as opposed to a stem count and reproductive status. However, the Service's definition of a viable population for this species includes both stem counts (geometric mean of 20 plants over a 3-year period) and reproductive status of the population (25 percent of the population must have flowering individuals). Therefore, the Service believes the definition for viable populations requires both constancy of stem emergence and reproduction, and provides for the best possible determination given current life history information.

Another comment questioned the Service's standard of an average of 20 stems over a 10-year period for a viable population. The individual suggested that the majority of extant populations be monitored for 10 years prior to determining the viability for all populations with 20 stems or more. The Service assumes that the commenter is referring to the delisting criteria. The stated recovery criteria are based on the best scientific and professional judgment available and were given public review during the revision of the recovery plan in 1992. No comments were received at that time opposing the criteria. Furthermore, the majority of populations averaging 20 or more stems have been monitored periodically for close to 10 years or since their discovery. Waiting to reclassify this species until such time as 10 years have passed for all sites with 20 stems or more would delay reclassification indefinitely, given that new populations continue to be discovered. The Service believes that the reclassification criteria are sufficiently protective and adequately define viability.

The commenter also interpreted the Service's recovery strategy to include habitat management and questioned its inclusion given the lack of information on appropriate and successful management. While it is true that habitat management strategies currently have not been developed, the Service believes that the potential for habitat management may exist. Habitat management will only be an aspect of the recovery strategy should it be deemed a useful tool. The proposed rule did not mean to imply that this was a given.

The Service was requested to consider reclassifying the species in a section of its range. The Act does not provide for the separate listing or reclassification of plant populations.

Two commenters questioned the protection afforded threatened plants under the Act. The Service does not believe that protection will be significantly lessened by reclassification to threatened. The protection given to this threatened species under sections 7 and 9 of the Act is essentially the same as when listed as endangered. The only exception to future protection is the exemption given to seeds from cultivated specimens of threatened plants. Cultivated *Isotria medeoloides* seeds will be exempt from the trade prohibitions of section 9(a)(2) of the Act, provided that a statement of "cultivated origin" appears on their containers. However, retention of threatened status reflects the Service's awareness that threats continue to exist for *Isotria medeoloides,* though it is no longer in immediate danger of extinction.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Isotria medeoloides* should be reclassified as a threatened species. Procedures found in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) for reclassifying species on the Federal lists were followed. A species may be listed or reclassified as threatened or endangered due to one or more of the five factors described in

section 4(a)(1). These factors and their application to *Isotria medeoloides* (Pursh) Raf. (small whorled pogonia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Following the listing of *Isotria medeoloides* as endangered, recovery activities carried out by Federal and State agencies, private organizations, and the academic community resulted in the discovery of many new sites. The number of extant sites has more than tripled in the 11 years since the orchid was listed, with approximately 48 percent of the *I. medeoloides* sites afforded some level of protection.

*Isotria medeoloides* and its habitat continue to be vulnerable to development pressures throughout its range. With the exception of a few States, the upland habitat in which it is found receives limited protection through State or Federal regulatory means when occurring on private land. Residential and commercial development, both directly and indirectly, are primarily responsible for the destruction of *Isotria medeoloides* habitat. Of the 104 extant *I. medeoloides* sites, 2 States, Maine and New Hampshire, account for 57 percent (59 sites) of all of the known sites. Only 15 of the 59 sites in these 2 States are protected.

Historical records exist for localities throughout the small whorled pogonia's range. The habitat of many of these known historical sites has been destroyed; for example, sites in Vermont, Maryland, New Jersey, and the District of Columbia were lost to habitat destruction, primarily from development. Recent intensive efforts to relocate historical sites in eastern Pennsylvania, New York, Vermont, and Missouri have been unsuccessful (U.S. Fish and Wildlife Service 1992).

Since the listing of *Isotria medeoloides*, New Hampshire has seen the destruction of a large, viable population by the construction of summer housing and the potential destruction of a second, recently discovered (1992) population. This second population of over 30 stems will most likely be severely impacted, if not destroyed, within the next few years as the habitat is developed for a subdivision. In Virginia, one of the larger sites will most likely be destroyed within the next few years as its habitat, and adjoining suitable habitat, is developed for housing. Without voluntary landowner protection, many more *I. medeoloides* populations could be destroyed as development pressures increase.

Development in areas surrounding *Isotria medeoloides* habitat could indirectly be responsible for habitat destruction as roads, power lines and sewer mains are designed to connect settled areas. In addition, housing developments, though not necessarily directly destroying habitat, may cause the alteration of habitat parameters by creating large, permanent openings in the canopy that in turn encourage denser understory growth. Disturbance to populations through increased visitation (however unintentional) from people and pets might also cause direct damage to plants, and eventually a decline in affected populations.

This plant primarily appears to reproduce sexually, though little is known at this time regarding seed dispersal and seed banking. The formation of barriers to seed dispersal, either through development of adjacent habitat or from logging or land clearing, may prevent the recolonization of suitable habitat by naturally declining populations. Careful and selective logging may not be harmful to a population; however, heavy timbering and clear-cutting may have long-term impacts on *Isotria medeoloides* populations and their habitat. The creation of logging roads and use of heavy machinery that severely alters soil composition could significantly modify the habitat and cause the direct loss of plants.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The 1982 final listing identified the collecting for scientific purposes as contributing to the loss of *Isotria medeoloides* in the past. Since the listing and the release of both recovery plans, collecting for these purposes is no longer considered to be a threat to the species. However, the potential collecting by wildflower garden enthusiasts for transplanting is still great due to the rarity of this orchid. One landowner in North Carolina was literally harassed by orchid and wildflower enthusiasts when a local garden club publicized the location of his *I. medeoloides* population (Nora Murdock, U.S. Fish and Wildlife Service, *in litt.* 1993). Furthermore, vandalism of populations (either out of capriciousness or for private collections) whose locations were publicized continue to be documented (Rawinski 1986b).

Significant commercial trade in the species is not known or expected in the future, nor is any significant import or export of this species expected. Therefore, taking of *I. medeoloides* for these purposes is not considered to be a factor in its decline.

C. *Disease or predation.* Herbivory by white-tailed deer and invertebrates, including slugs and camel crickets is a known threat of currently unknown extent. Increasing development pressure near *Isotria medeoloides* populations results in the concentration of deer onto smaller parcels of woodland and may decrease local hunting pressure on suburban deer populations. As the local deer herd increases and is forced onto less land, there is a greater likelihood of herbivory on *Isotria medeoloides*. In Virginia, the magnitude of threat from deer browse of *I. medeoloides* populations may be second only to development of its habitat (D. Ware, College of William and Mary, pers. comm. 1994). The precipitous decline of a large Virginia *I. medeoloides* population located near a housing development, appears to be primarily due to grazing (Ware 1991). However, symbolic fencing placed around four subpopulations appears to have prevented deer from grazing on the orchids. In 1993, no plants were observed to have been browsed, prior to the fencing a majority of the plants were impacted by deer browse (D. Ware, pers. comm. 1994).

Additional threats include wild pigs trampling or uprooting *I. medeoloides* plants and herbivory by rabbits in the southern portion of the small whorled pogonia's range (B. Sanders, pers. comm. 1993) and occasionally trampling or herbivory by moose in the northern portion of its range.

D. *The inadequacy of existing regulatory mechanisms. Isotria medeoloides* is afforded protection by the Endangered Species Act. The Act prohibits the take of endangered and threatened plants from lands under Federal jurisdiction or in knowing violation of any State law or regulation, and prohibits the violation of any regulation pertaining to any endangered or threatened species of plant. Under the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of listed species and must consult (under section 7) when an activity may affect a listed species or critical habitat.

Section 7(a)(1) requires Federal agencies to carry out programs for the conservation of threatened and endangered species. In this respect, several Federal agencies have intensified their search and protection efforts on behalf of *Isotria medeoloides*. In Virginia, the National Park Service provided funding for research and monitoring, and is seeking ways to prevent disturbance to sites under its jurisdiction. The Department of Defense has also facilitated searches and

monitoring of populations at two bases in Virginia. In Georgia, the U.S. Forest Service has been particularly successful in finding new sites. The Forest Service in this State conducts plant surveys in areas potentially impacted by management activities and regularly monitors known sites (B. Sanders, *in litt.* 1993). In 1993, two sites were located on the White Mountain National Forest in New Hampshire. Base maps for potential *I. medeoloides* habitat were developed for the White Mountain National Forest; the Forest Service now consults the Service on all activities proposed for those areas.

Consultations under section 7 of the Act can provide protection for this species; a road and sewer main near an *Isotria medeoloides* population in Virginia were re-routed to avoid direct destruction of the plants and their habitat. Coordination with State and local agencies, as well as private developers, has resulted in the avoidance of adverse impacts to *Isotria medeoloides* and its habitat. In Connecticut, a trail was re-routed to avoid a population in a State forest.

Additional protection through Federal and State legislation has been provided since *Isotria medeoloides* was listed. All States with current and historical populations have cooperative plant agreements with the Fish and Wildlife Service as specified under section 6(c)(2) of the Act. The 1988 amendments to the Act increased protection for plant species not on Federal lands, where State endangered species laws provide specific protection to endangered plant species.

Twenty-seven sites have been discovered on lands under State and Federal jurisdiction and are afforded some level of protection. For those populations on private lands, conservation easements or agreements with the landowners have been actively pursued. Eight sites are on lands owned by private conservation organizations, while two other sites have deeded conservation easements ensuring the protection of the plants and their habitat. Some State agencies pursue voluntary registration of I. *medeoloides* sites. While such registration does not guarantee habitat protection, it does seek to recognize the importance of the site in the hopes of voluntary protection on the part of the landowners.

The number of States protecting *I. medeoloides* has increased from 6 in 1985 to include all States in its present range. With the exceptions of New Jersey, Rhode Island and South Carolina, all States have enacted laws that prohibit the take of State listed plants, including *I. medeoloides*, without the landowner's permission. However, plants growing on privately owned lands are subject to take by the landowner. Massachusetts, Michigan and Vermont provide additional protection to listed plants in that permits are required for take on both private and public lands.

In Georgia, *Isotria medeoloides* is protected under a regional Forest Service Manual regulation, 2670.44 R–8 supp 37. Since this species is federally listed, it qualifies as a Forest Service Potential Endangered, Threatened or Sensitive (PET) species, and as such should receive a level of protection that will lead to identification of possible recovery opportunities and ensure that no adverse effects occur to plants on lands under the Forest Service's jurisdiction.

The Service does not believe that reclassification to threatened status will result in substantive changes in the protection afforded this species under these regulatory mechanisms.

E. *Other natural or manmade factors affecting its continued existence.* Recovery efforts have been directed toward research and environmental education. A predictive habitat model was developed using Geographical Information System (GIS); 10 additional sites were discovered in 1993 using maps delineating potential habitat (Sperduto 1993). Educational materials in the form of posters, brochures and fact sheets were designed and made available to the general public. Ongoing research includes the investigation of mycorrhizal relationships (Larry Zetler, Clemson University, *in litt.* 1993), and habitat manipulation to encourage or stabilize *I. medeoloides* populations (Alison Dibble, University of Maine, *in litt.* 1993).

Mycorrhizal associations are important factors in the germination and seedling establishment of most orchids. Though a mycorrhizal fungus was isolated from the closely related *Isotria verticillata*, host-specific mycorrhizae have not been identified for *I. medeoloides*. Alterations to *I. medeoloides* habitat that adversely affect the mycorrhizae would also result in adverse impacts to the orchid. However, until the specific mycorrhizal associate is determined, it will be difficult to understand the effects of subtle habitat alteration on the orchid or the fungal community.

Recent monitoring results indicate a decline in viability of many of the populations that have been followed over a number of years. It appears that no obvious changes have occurred to the habitat of most of these populations and no causes for this decline have been determined. Though life history and demographic studies have provided some clues to the habitat requirements of this species, there is still a large gap in the understanding of what is required to maintain viable populations.

Dormancy of *Isotria medeoloides* plants continues to be a matter of speculation and debate. The 1985 recovery plan provided preliminary information that a small whorled pogonia could go dormant for 10 to 20 years. To date, this length of dormancy has not been verified. The length of dormancy might also vary throughout the range of the orchid. Mehrhoff (1989b) conducted a 6-year study and observed that no plants emerged after 3 or more consecutive years; other studies indicate that plants may be dormant up to 4 years and dormancy may vary by year and by site (Brumback and Fyler 1988; Vitt 1991). Without better clarification of specific dormancy periods, it is difficult to distinguish between a dead or dormant plant.

As adjacent, suitable habitat is developed, precluding the natural colonization of suitable habitat, management may be the only alternative for maintaining viable populations. It may be vital to develop habitat management strategies for existing sites in order to maintain self-sustaining populations. Without the knowledge of key habitat characteristics, management and the precise identification of potential habitat will be impossible. Soil type (including texture and moisture), nutrient availability, overstory cover, understory density, slope position and aspect are some of the habitat characteristics that might be important factors in population viability. Other unknown parameters include the variation of climatological factors and relative humidity throughout the species' range, and how these differences impact population stability, plant reproduction, recolonization and viability.

The dearth in knowledge of habitat characteristics and life history information may result in the further decline of many populations through benign neglect. The 1992 recovery plan identified a number of tasks required to advance the understanding of *Isotria medeoloides* in furtherance of its recovery.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to reclassify this species from endangered status to threatened status. Threatened status is

more appropriate because the number of known populations has tripled since the species was listed and 61 percent of the current viable sites are afforded permanent protection. However, it may still be likely to become an endangered species within the foreseeable future without additional site protection and further investigation of its life history and habitat parameters.

### Effects of the Rule

This rule changes the status of *Isotria medeoloides* from endangered to threatened and formally recognizes that this species is no longer in imminent danger of extinction throughout a significant portion of its range. Reclassification to threatened does not significantly alter the protection for this species under the Act (see Summary of Comments and Recommendations).

Conservation measures prescribed for *Isotria medeoloides* would proceed. The recovery program approved in 1992 prescribes continued efforts to—(1) protect known *Isotria medeoloides* populations and essential habitat; (2) develop habitat management strategies; (3) manage protected sites; (4) monitor sites and determine viability; (5) survey for new sites; (6) investigate population dynamics and species biology; and (7) provide public information and education.

Many State and Federal agencies continue to monitor extant sites and search for new ones. The application of a predictive model should further assist in the location of new sites in New England. Investigations into the genetic structure of this species, the mycorrhizal relationships, and the development of habitat management measures have been targeted in the 1992 recovery plan as important tasks. These activities are either ongoing or proposed for the near future. Recovery activities are not expected to diminish as a result of this reclassification since the primary objective of the recovery strategy is delisting of the species.

This action will not be an irreversible commitment on the part of the Service. Reclassifying *Isotria medeoloides* to endangered would be possible should changes occur in management, habitat, or other factors that alter the present threats to the species' survival and recovery.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


Brumback, W.E., and C.W. Fyler. 1988. Monitoring of *Isotria medeoloides* in New Hampshire—1988. Wildflower notes 3 (1):32–40. New England Wild Flower Society. Framingham, MA.

Dixon P., and R. Cook. 1988. Attempts to relocate *Isotria medeoloides* in New York State. Unpublished report. Cornell Plantations, Ithaca, NY. 3 pp.

Mehrhoff, L.A. 1980. The reproductive biology of the genus *Isotria* (Orchidaceae) and the ecology of *Isotria medeoloides*. M.S. Thesis, University of North Carolina, Chapel Hill, N.C. pp. 17–23.

Mehrhoff, L.A. 1989a. Reproductive vigor and environmental factors in populations of an endangered North American orchid, *Isotria medeoloides* (Pursh) Rafinesque. Biological Conservation 47: 281–296.

Mehrhoff, L.A. 1989b. The dynamics of declining populations of an endangered orchid, *Isotria medeoloides*. Ecology 70 (3): 783–786.

Rawinski, T. 1986a. Element stewardship abstract for *Isotria medeoloides* (Pursh) Raf. Unpublished report. Eastern Heritage Task Force, The Nature Conservancy, Boston, MA. 16 pp.

Rawinski, T. 1986b. Vandalism of the small whorled pogonia. Endangered Species Technical Bulletin. U.S. Fish and Wildlife Service. Vol. XI(12): 6.

Sperduto, M. 1993. Use of a geographic information system (GIS) to predict potential habitat for *Isotria medeoloides* (Pursh)Raf. in New Hampshire and Maine. M.S. Thesis, University of New Hampshire, Durham, New Hampshire. 106 pp.

U.S. Fish and Wildlife Service. 1982. Endangered and threatened wildlife and plants; Determination of *Isotria medeoloides* (small whorled pogonia) to be an endangered species. Federal Register vol. 47(176): 39827–39831.

U.S. Fish and Wildlife Service. 1985. Small whorled pogonia recovery plan. Newton Corner, MA. 38 pp.

U.S. Fish and Wildlife Service. 1992. Small whorled pogonia (*Isotria medeoloides*) recovery plan, first revision. Newton Corner, MA. 75 pp.

U.S. Fish and Wildlife Service. 1993. Endangered and threatened wildlife and plants; Proposed rule to reclassify the Plant *Isotria medeoloides* (small whorled pogonia) from endangered to threatened. Federal Register vol. 58(200): 53904–53909.

Vitt, P. 1991. Conservation of *Isotria medeoloides*: A federally endangered terrestrial orchid. M.S. Thesis, University of Maine, Orono, ME. 40 pp.

Ware, D.M.E. 1991. Small Whorled Pogonia (pp. 95–97). *In*: Karen Terwilliger, coord. Virginia's Endangered Species. Nongame and Endangered Species Program, Virginia Department of Game and Inland Fisheries. The McDonald and Woodward Publishing Company, Blacksburg, VA. 672 pp.


### Author

The primary author of this proposed rule is Susanna von Oettingen (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

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

### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below.

## PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by revising the "Status" column in the existing entry for "*Isotria medeoloides* (Small whorled pogonia)" under "Orchidaceae" on the List of Endangered and Threatened Plants to read "T" instead of "E" and the "When Listed" column to read "122, 556".

Dated: September 9, 1994.

**Mollie H. Beattie,**

*Director, Fish and Wildlife Service.*

[FR Doc. 94–24713 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 663

**[Docket No. 940254–4104; I.D. 092894A]**

### Pacific Coast Groundfish Fishery

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

**ACTION:** Notice of reserve release; request for comments.

**SUMMARY:** NMFS announces the release of that portion of the 1994 Pacific

whiting (whiting) harvest guideline that will not be used by shoreside processors by the end of the year. The released amount is available for harvest by all U.S. fishing vessels, whether delivering shoreside or at sea. This action is intended to assure full utilization of the whiting resource, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP).

**DATES:** Effective 0001 hours local time October 1, 1994, through December 31, 1994 (2400 hours local time). Comments will be accepted by November 7, 1994. The aggregate data upon which this action is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours through November 7, 1994.

**ADDRESSES:** Comments should be sent to Mr. William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Mr. Rodney McInnis, Acting Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the Office of the Director, Northwest Region, NMFS (Regional Director).

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

**SUPPLEMENTARY INFORMATION:** The regulations at 50 CFR 663.23(b)(4) allocate whiting in 1994–1996 between fishing vessels that deliver at sea (catcher/processors and catcher boats delivering to motherships) and those that deliver shoreside (59 FR 17491, April 13, 1994). When 60 percent of the annual harvest guideline is taken, further at-sea processing is prohibited, and the remaining 40 percent is reserved for use by vessels delivering shoreside. The portion of the harvest guideline that the shoreside sector will not use by the end of the year will be made available for harvest by all fishing vessels, whether delivering shoreside or at sea, by August 15 or as soon as practicable thereafter. Whiting may be released at a later date if it becomes apparent that shore-based needs have been substantially over-estimated (50 CFR 663.23(b)(4)(ii)).

The amount of whiting available for release is determined by the Regional Director, based on estimates of actual and projected amounts of whiting harvested, using state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Pacific Fishery Management Council (Council) meetings, and/or other relevant information.

In 1994, the whiting harvest guideline is 260,000 mt. Of this, 104,000 mt was set aside as a reserve for shoreside processing. At-sea processing of whiting was prohibited on May 13, 1994, when 60 percent (156,000 mt) of the harvest guideline was projected to be reached.

During the last week of July, 1994, the Regional Director reviewed catch and landings data provided by the States of Washington, Oregon, and California; surveyed shore-based fishing and processing representatives; and consulted with the three States in determining the amount of whiting expected to be processed shoreside for the remainder of the year. Approximately 62,000 mt of whiting were projected to remain in the harvest guideline after August 1, 1994. An estimated 35,500 mt had been delivered shoreside by August 1. Additional shore-based fishing and processing effort entered the fishery late in July, and an additional 41,000–72,000 mt were estimated to be needed by the shore-based sector through the end of 1994. Based on this information, the Regional Director determined that the shore-based industry could use the remainder of the harvest guideline, and no whiting was made available for at-sea processing on August 15. The Council concurred with this determination, and agreed that progress of the shore-based fishery should be reevaluated in September 1994, and any surplus whiting released on or near October 1, 1994.

The States and industry were contacted again in late September, 1994 to determine the shore-based sector's use of whiting for the remainder of 1994. Whiting had become less available to the fishery in September and catch rates were lower than in earlier projections. Based on the most recent week's catch rate (389 mt/day applied through November 15, 1994) and interest of some operations to continue to the end of the year, the Regional Director has determined that, of the 38,000 mt of the harvest guideline remaining after September 25, 1994, 16,000 mt are available for release to all vessels on October 1, 1994. The remaining 22,000 mt are in reserve for shore-based processing.

After October 1, 1994, shore-based landings of whiting will be deducted first from the reserve for shore-based processing. When the shoreside reserve is taken, shoreside deliveries will be deducted from the portion of the harvest guideline that was released for harvest by all vessels. When the released amount is reached, or projected to be reached, further at-sea processing will be prohibited. When the harvest guideline is reached, a 10,000 lb (4536 kg) trip limit will be imposed, allowing landings only of whiting caught incidentally or in the small fresh and bait fisheries (as authorized at 50 CFR 663.23(b)(3)(i) and (c)(1)(i)(I), and at 59 FR 685 (January 6, 1994)).

### Secretarial Action

For the reasons stated above, the Regional Director announces that, at 0001 hours local time October 1, 1994, an additional 16,000 mt of Pacific whiting are made available for harvest by all fishing vessels. When this amount is reached, further at-sea processing will be prohibited, according to the procedures at 50 CFR 663.23(b)(4)(iv).

### Classification

The determination to take this action is based on the most recent data available.

This action is taken under the authority of 50 CFR 663.23(b)(4) and is exempt from review under E.O. 12866.

Dated: September 30, 1994.

**David S. Crestin,**

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

[FR Doc. 94–24685 Filed 9–30–94; 4:25 pm]

BILLING CODE 3510–22–F

---

## 50 CFR Part 675

**[Docket No. 931100–4043; I.D. 093094A]**

## Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the inshore component in the BS.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), October 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive

economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the inshore component in the BS was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) and a subsequent reserve apportionment (59 FR 21673, April 26, 1994) as 430,588 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the inshore component in the BS soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 425,588 mt after determining that 5,000 mt will be taken as incidental catch in directed fishing for other species in the BS. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the inshore component in the BS effective from 12 noon, A.l.t., October 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

## Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: September 30, 1994.

**David S. Crestin,**

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

[FR Doc. 94–24684 Filed 9–30–94; 4:25 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 59, No. 193
Thursday, October 6, 1994

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 AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 75

[Docket No. 94–061–1]

### Equine Infectious Anemia

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations concerning interstate movement of horses that test positive for equine infectious anemia to allow the horses to be moved interstate directly to slaughter under a permit and in a sealed conveyance, as an alternative to the horses being officially identified prior to the interstate movement with a hot iron or chemical brand, freezemarking, or a lip tattoo. This proposed change in the regulations would provide owners of equine infectious anemia reactors with an alternative means of handling their animals while preventing the spread of this communicable disease.

**DATES:** Consideration will be given only to comments received on or before December 5, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–061–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Tim Cordes, Senior Staff Veterinarian, Sheep, Goat, Equine and Poultry Staff, Veterinary Services, APHIS, USDA, room 769B, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–3279.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR part 75 (referred to below as the regulations) contain provisions for the interstate movement of horses, asses, ponies, mules, and zebras that test positive for communicable diseases, including equine infections anemia (EIA). The purpose of these provisions is to prevent the spread of communicable diseases, including EIA. A viral disease of equines, EIA, also known as swamp fever, may be characterized by sudden fever, swelling of the legs and lower parts of the body, severe weight loss, and anemia.

Section 75.4(a) of the regulations defines an EIA reactor as any horse, ass, mule, pony or zebra which is subjected to an official test and found positive. Under § 75.4(b) of the regulations, no EIA reactor may be moved interstate unless the reactor is officially identified and meets certain other requirements. Section 75.4(a) of the regulations defines "officially identified" as the permanent identification of a reactor with markings permanently applied by an Animal and Plant Health Inspection Service (APHIS) representative, a State representative, or an accredited veterinarian using a hot iron or chemical brand, freezemarking or a lip tattoo.

APHIS believes that EIA reactors could be moved interstate to slaughter under a permit and in a sealed conveyance, as an alternative to being officially identified prior to the interstate movement. Moving EIA reactors interstate to slaughter under a permit and in a sealed conveyance would ensure that the animals are not diverted for other uses.

Therefore, we are proposing to amend the requirements for interstate movement in § 75.4(b) by adding a provision stating that "Official identification is not necessary if the animal is moved directly to slaughter, traveling under a permit and in a sealed conveyance." In addition, we propose to add definitions to § 75.4(a) for "official seal" and "permit." An official seal would be defined as a "serially numbered metal or plastic strip, or a serially numbered button, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened. It is applied by an APHIS representative or State representative." A permit would be defined as an "official document (VS Form 1–27 or a State form which contains the same information, but not a 'permit for entry') issued by an APHIS representative, State representative, or accredited veterinarian which lists the owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, and one of the following: The individual animal registered breed association registration tattoo, individual animal registered breed association registration number, or similar individual identification, including name, age, sex, breed, color, and markings."

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Because this proposed rule would provide an alternative, the economic impact to horse owners would be minimal. The horse owners that would be affected by this rule change are those that have horses which test positive for EIA and voluntarily choose to transport their horses interstate to slaughter under an official seal. APHIS estimates that, annually, between 500 and 1,000 horse operations have horses that become infected with EIA. Although it is not known how many of these operations are "small" entities (less than $0.5 million in annual sales, according to Small Business Administration size criteria), it is likely that most are in that category.

Current estimates put the number of horses in the United States between 6 and 10 million. In 1993, about 1 million horses were tested for EIA. Of these, 1,859 (about 0.18 percent) tested positive for EIA.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0051.

**List of Subjects in 9 CFR Part 75**

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 75 would be amended as follows:

## PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, paragraph (a) would be amended by adding new definitions, in alphabetical order, and in paragraph (b), the introductory text would be amended by adding a statement immediately before the colon, to read as follows:

**§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.**

(a) * * *

* * * * *

*Official seal.* A serially numbered metal or plastic strip, or a serially numbered button, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened. It is applied by an APHIS representative or State representative.

* * * * *

*Permit.* An official document (VS Form 1–27 or a State form which contains the same information, but not a "permit for entry") issued by an APHIS representative, State representative, or accredited veterinarian which lists the owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, and one of the following: The individual animal registered breed association registration tattoo, individual animal registered breed association registration number, or similar individual identification, including name, age, sex, breed, color, and markings.

* * * * *

(b) * * *; *Provided that* official identification is not necessary if the reactor is moved directly to slaughter under a permit and in a conveyance sealed with an official seal.

* * * * *

**§ 75.4 [Amended]**

3. Section 75.4 would be amended by adding at the end of the section the following:

(Approved by the Office of Management and Budget under control number 0057–0051)

Done in Washington, DC, this 30th day of September 1994.

**Terry L. Medley,**

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

[FR Doc. 94–24780 Filed 10–5–94; 8:45 am]

BILLING CODE 3410–34–P

---

## 9 CFR Part 102

**[Docket No. 91–064–1]**

## Viruses, Serums, Toxins, and Analogous Products; Animal Rabies Vaccines

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

**ACTION:** Request for data.

**SUMMARY:** This document announces that the Animal and Plant Health Inspection Service is requesting additional information to determine whether the regulations under the Virus-Serum-Toxin Act should be amended to require that rabies vaccines be distributed and used only by or under the direct supervision of licensed veterinarians.

The Animal and Plant Health Inspection Service has received requests from the National Association of State Public Health Veterinarians to consider proposing such a restriction.

**DATES:** Consideration will be given only to comments received on or before January 4, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–064–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert B. Miller, Chief Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5863.

**SUPPLEMENTARY INFORMATION:** The regulations concerning veterinary biological products in 9 CFR 102.5(e) provide that:

> [W]here the Administrator determines that the protection of domestic animals or the public health, interest, or safety, or both necessitates restrictions on the use of a product, the product shall be subject to such additional restrictions as are prescribed on the license. Such restrictions may include, but are not limited to, limits on distribution of the product or provisions that the biological product is restricted to use by veterinarians, or under the supervision of veterinarians, or both.

The Animal and Plant Health Inspection Service (APHIS) has received requests from the National Association of State Public Health Veterinarians (NASPHV) to consider proposing a Federal restriction that animal rabies vaccines be distributed and used only by or under the direct supervision of a licensed veterinarian. The NASPHV believes that a uniform national restriction would result in: (1) proper handling of animal rabies vaccines to help ensure potency and (2) improved documentation of animal rabies vaccinations.

APHIS has attempted to identify specific issues that need to be addressed prior to proposing such restrictions on animal rabies vaccines. The Agency is seeking data and information on these issues for consideration before it decides whether or not to proceed with such a proposal.

In 1979, APHIS published a notice of proposed action (44 FR 54737–54738, September 21, 1979) to restrict animal

rabies vaccines to distribution and use by or under the direction of a licensed veterinarian. APHIS received 150 comments in response to that notice of proposed action. Sixty-six commenters supported the proposed action without change. Seventy-two commenters were opposed to the proposed action. At that time, there was a lack of agreement concerning the need and justification for a Federal restriction. The prevailing opinion of those opposed to a Federal restriction was that there was a need for flexibility to meet local needs, especially in rural areas.

Based on the comments received in 1979, the restriction that animal rabies vaccine be distributed and used by or under the direction of a veterinarian was not imposed on a nationwide basis. Rather, APHIS determined that the decision concerning control of distribution and use of animal rabies vaccines should be made by each State based on what would work best for a particular State. Thus the current restriction reads in relevant part that animal rabies vaccines are restricted "to authorized recipients designated by proper State officials under such additional conditions as those authorities may require" (*see* 44 FR 18411, March 21, 1980).

At least 34 States currently restrict or have pending legislation to restrict the distribution and use of animal rabies vaccines. Some sixteen States do not restrict the distribution and use of animal rabies vaccines.

The National Association of State Public Health Veterinarians (NASPHV), the American Veterinary Medical Association (AVMA), and other organizations including State public health agencies have expressed concern regarding rabies control programs in various States. They requested in 1989 that APHIS consider the promulgation of a Federal restriction on the distribution and use of animal rabies vaccines on a nationwide basis to protect the health and safety of animals and the public.

The groups that took an active role in studying the various problems associated with the control of rabies were the NASPHV Compendium Committee, the National Centers for Disease Control and Prevention, the AVMA, State and local veterinary medical associations, veterinary medical schools, veterinary practitioners, and numerous State public health agencies.

The NASPHV evaluated the progress of rabies control programs in the United States. As a result of its study, NASPHV requested that the Federal Government consider strengthening current restrictions aimed toward controlling rabies nationwide.

In response to the request from the NASPHV to amend the Federal restriction on animal rabies vaccines to require that they be distributed and used only by or under the direct supervision of a licensed veterinarians, APHIS requested that the NASPHV address four issues raised by the comments to the 1979 notice of proposed action concerning restrictions on animal rabies vaccines. Four main points were cited by commenters opposing the 1979 proposed restriction that rabies vaccines be distributed and used only by or under the direction of a veterinarian: (1) There were inadequate veterinary services in remote rural areas of the United States; (2) a veterinary monopoly on rabies vaccine would raise the cost of vaccination to unaffordable amounts (especially for individuals with many animals), resulting in fewer animals being vaccinated; (3) traveling to and from a veterinary clinic during business hours (especially for individuals with many animals) could be very inconvenient and impractical; and (4) APHIS has no information whether misuse of rabies vaccines by nonveterinarians is a problem.

In response to the questions which were raised, NASPHV made the following replies. The local needs of rural areas within the United States have changed since 1979, and the lack of adequate veterinary services in rural States is no longer a problem. The veterinary profession stands ready to accommodate owners of multiple pets. NASPHV also indicated that in many cases, the cost of a rabies vaccination from a veterinarian had not kept up with the rising consumer price index. In addition, the Association stated that the inconvenience of traveling to and from a veterinary clinic during business hours for rabies vaccinations was no different than the inconvenience of pet ownership in general, and that improper vaccination by nonveterinarians was worse than no vaccination at all because such vaccination gave a false sense of security.

The NASPHV argued that proper handling of animal rabies vaccines, including cold storage, physical examination of the animal receiving vaccine to ensure the health status of the animal, proper timing and route of administration according to label instructions, and knowledge of rabies control were essential for effective rabies vaccination.

The NASPHV further argued that in a mobile society such as the United States, it was unfair and unsafe for the public to rely on so many different State rabies laws and regulations to protect the public. The restriction of rabies vaccines at the Federal level would reduce confusion, unnecessary revaccination, and the necessity for human post-exposure treatment. Further, as endemic reservoirs of wildlife rabies continue to spread and put more areas of the United States at risk, the standardization of rabies control becomes more important. The Association concluded that the need for proper administration and improved documentation of animal rabies vaccinations are the most important issues concerning national rabies prevention in man and animals.

A case arose in 1986, in which a rabies vaccine manufacturer needed to follow documentation of rabies vaccinations in order to trace recipients of its vaccine after a change had been made in the instructions for administration. Since the particular manufacturer's vaccine was sold to and administered by veterinarians or State authorized recipients, in large part, the appropriate records were available for the tracking and revaccination of thousands of animals.

Public health officials have expressed concern regarding the uncertainties of vaccine administration and certification when animals are vaccinated by nonveterinarians or without adequate veterinary supervision. There is reason to believe that some distributors, in States without restrictions on vaccine sale or administration, are distributing rabies vaccines to unauthorized individuals in other States that currently have such restrictions. This practice destroys the effectiveness of State programs designed to monitor and verify vaccine sale and administration in such States and is contrary to their law. Such practice also creates significant safety concerns since any failure associated with vaccine administration and documentation increases the risk of rabies exposure to both animals and man.

Dogs and cats that have properly documented rabies vaccinations and that are involved in bite cases involving a human being are isolated and observed for 10 days at a veterinary quarantine facility to confirm the absence of rabies. When the vaccination record of a dog or cat that has bitten someone cannot be verified, the animal may be euthanized to determine if rabies virus is present in brain tissue. In these cases, the individual who has been bitten and the physician are placed in the position of weighing the risks and costs of post-exposure prophylactic treatment against the odds of having

been exposed to rabies. Because the verification of animal rabies vaccination is important in decisions relating to both animals and man, the Association argued that the issue of proper documentation of vaccination is a major concern. The fact that 618 cases of rabies among domestic animals in the United States (including 155 dogs and 189 cats) were reported to the Centers for Disease Control and Prevention in 1991 makes an informed choice important. Because of questions concerning proper vaccine handling, storage, administration, documentation of vaccination and revaccination, and recordkeeping, many State public health departments disregard rabies vaccination claims by owners and only rely on documentation from a veterinarian as proof of vaccination.

After reviewing NASPHV's request to amend the Federal restriction on the distribution and use of animal rabies vaccines, APHIS has determined that it needs additional information to determine the appropriate course of action with respect to this matter. Before proceeding with a proposal to amend the Federal restriction on animal rabies vaccines, the Agency must determine whether such an amendment would in fact be beneficial, whether rabies control programs and rabies vaccination could not be better managed by the States and local jurisdictions, and whether the benefit of Federal control would outweigh the cost of such a program.

It could be argued that the anticipated benefits from amending the Federal restriction on animal rabies vaccines to require that they be distributed and used only by or under the direct supervision of a licensed veterinarian would be: (1) more uniform regulation of the distribution and administration of animal rabies vaccines, (2) improved documentation of animal rabies vaccinations to enable public health officials to make an informed choice concerning the therapy for animal bite victims; (3) facilitation of the recall of any unsatisfactory serials of rabies vaccines, and (4) assurance of the identification of animals receiving vaccines determined not to meet requirements for stability or potency.

Currently, it is reported that 98.4 percent of the 25,000,000 doses of animal rabies vaccine that are distributed in the United States each year are sold directly to veterinarians. It is not known, however, how many of these doses are redistributed through catalogs and over the counter for administration by nonveterinarians.

An estimated 9,000 human beings are treated annually in the United States for potential exposure to rabid dogs and cats. Post-exposure human rabies prophylaxis costs an estimated $1,000 per patient. In 1989, the Centers for Disease Control and Prevention recommended that the most effective methods for reducing human exposure to rabies are education of the public to avoid unfamiliar, especially wild animals, and vaccination of pet dogs and cats.

**Request for Comments**

Since receiving the request from the NASPHV to amend the Federal restrictions on animal rabies vaccines, APHIS has attempted to identify specific issues (enumerated below) that need to be addressed before the Agency can proceed with a notice of proposed rulemaking. Some of these issues raise questions and identify competing interests that are difficult to resolve. For example, a Federal restriction that animal rabies vaccines only be distributed to veterinarians and administered by or under the direct supervision of a licensed veterinarian could have the benefit of ensuring proper administration and could also enable public health officials to certify that a rabies vaccine was properly administered. An unintended effect of such a restriction, however, could be a reduction in the number of animals vaccinated with a corresponding reduction in the effectiveness of rabies prevention by making it more expensive or impractical to vaccinate multiple animals in single households, animals in kennels, farm animals, or animals in metropolitan animal shelters—animals which are often vaccinated by nonveterinarians. With regard to the issue of proper vaccine administration, a 1989 study showed that only 5% of rabid cats and 14% of rabid dogs reported that year had been vaccinated against rabies, suggesting that rabies incidence in dogs and cats is related more to the failure to vaccinate than the failure of vaccination. After considering the various factors involved in rabies control, APHIS believes that any amended Federal restriction that the Agency may promulgate should encourage the vaccination of pets while providing the greatest benefit/cost value. Towards this end, the Agency seeks input on alternative approaches to the control of animal rabies vaccines. The experience of States that have enacted their own State restrictions is sought on these issues.

Public comment is requested to assist APHIS in its evaluation of the benefits and costs of a Federal restriction providing that animal rabies vaccines be distributed and used only by or under the direct supervision of a licensed veterinarian.

In order to obtain a better understanding of the benefits versus the costs of such a Federal restriction, specific comments, projections, or data are requested on the following issues:

1. The rate of vaccine misuse and failure when vaccine is administered by nonveterinarians versus veterinarians;

2. the projected cost versus benefits (e.g. decreased incidence of animal rabies, better recordkeeping, or fewer human rabies prophylaxes being sought) of a regulatory requirement that animal rabies vaccines be distributed and used only by or under the direct supervision of a licensed veterinarian, based on the experience of States that have passed such legislation;

3. the number of persons seeking post-exposure rabies prophylaxis in situations in which a current animal vaccination could not be confirmed by a veterinarian;

4. information indicating that 98.4 percent of the 25,000,000 doses of animal rabies vaccines that are distributed in the United States each year are sold directly to licensed veterinarians only;

5. the number of doses, if any, of animal rabies vaccine that are distributed or sold to nonveterinarians for administration by nonveterinarians that are not under the supervision of a veterinarian;

6. the impact of a Federal restriction concerning the distribution and use of animal rabies vaccines by or under the direct supervision of a licensed veterinarian on metropolitan animal shelters and other organizations that currently vaccinate their own animals;

7. the availability of low-cost rabies clinics nationwide and particularly in rural areas to accommodate those individuals who currently vaccinate their own animals because of cost;

8. the effect, if any, of such a Federal rabies restriction on animal rabies vaccines on the number of animals that are vaccinated based on the experience of States that have passed such restrictions; and

9. the impact, if any, on the number of companion animals versus farm animals that are vaccinated, of such a Federal restriction on animal rabies vaccines; and

10. less restrictive, alternative approaches to animal rabies control such as a Federal requirement that distribution of animal rabies vaccines be restricted to licensed veterinarians only; or that distribution and use of animal rabies vaccines be by or under the direction of a licensed veterinarian only, or other options.

Factual data supported by verifiable sources (published reports in peer-reviewed journals, university-sponsored studies, objective scientific data, etc.) will be given greater weight by the Agency than anecdotal information in arriving at its decision whether or not to proceed with a proposed rulemaking. Any projections provided to APHIS should indicate data sources and the assumptions made in reaching whatever conclusions obtained.

For those questions for which data are not available, APHIS also requests comments on the most cost-effective means to obtain such data.

**References**

Many of the factual statements in this notice are based on the following references:

1. Eng, T.R., D.B. Fishbein, and the National Study Group on Rabies, J. Amer. Vet. Med. Assoc. 197: 201–209, (1990).

2. Reid-Sanden. J.B. Dobbins, J.S. Smith, and D.B. Fishbein, J. Amer. Vet. Med. Assoc. 197: 1571–1583, (1990).

**Public Participation**

Interested parties are invited to submit comments on these and other pertinent issues related to the need for a Federal restriction that animal rabies vaccines be distributed and used only by or under the direct supervision of a licensed veterinarian. Written comments should be submitted within the 90-day comment period specified in this notice under the section entitled "DATES" to the person listed under the section entitled "ADDRESSES". All comments received on or before the close of the comment period will be considered in determining the appropriate course of action.

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 3rd day of October 1994.

**Lonnie J. King,**

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

[FR Doc: 94–24781 Filed 10–5–94; 8:45am]

BILLING CODE 3410–34–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Chapter I

**[Summary Notice No. PE–94–35]**

### Petition for Waiver; Summary of Petition Received

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

**ACTION:** Notice of petitions for waiver received.

**SUMMARY:** This notice contains summaries of certain petitions requesting a waiver from the interim compliance date requirement of 14 CFR part 91, § 91.865(b)(1) and (d)(1). Requesting a waiver is allowed through § 91.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received November 4, 1994.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____ 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

Issued in Washington, D.C. on September 27, 1994.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Waiver**

*Docket No.* 27869
*Petitioner:* Millon Air, Inc.
*Regulations Affected:* 14 CFR 91.865(b)(1) and (d)(1)
*Description of Waiver Sought:* To allow Millon Air, Inc., to operate after December 31, 1994, without meeting the interim compliance date for fleet transition to Stage 3 aircraft.

[FR Doc. 94–24697 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–13–M

### 14 CFR Chapter I

**[Summary Notice No. PE–94–36]**

### Petition for Waiver; Summary of Petition Received

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

**ACTION:** Notice of petitions for waiver received.

**SUMMARY:** This notice contains summaries of certain petitions requesting a waiver from the interim compliance date requirement of 14 CFR part 91, §§ 91.855 and 91.867. Requesting a waiver is allowed through § 91.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received October 25, 1994.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7624.

Issued in Washington, D.C. on September 27, 1994.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Waiver**

*Docket No.:* 27894
*Petitioner:* Airtrain Corporation
*Regulations Affected:* 14 CFR 91.855 and 91.867
*Description of Waiver Sought:* To allow Airtrain Corporation to acquire Stage 2 aircraft to commence operations, and to allow operation of the aircraft after December 31, 1994, without meeting the interim compliance date for fleet transition to Stage 3 aircraft.

*Docket No.:* 27898
*Petitioner:* Fine Airlines, Inc.
*Regulations Affected:* 14 CFR 91.867
*Description of Waiver Sought:* To allow Fine Airlines, Inc., to operate after December 31, 1994, without the required number of State 3 aircraft in its fleet.

*Docket No.:* 27899
*Petitioner:* AirTran Airways, Inc.
*Regulations Affected:* 14 CFR 91.867
*Description of Waiver Sought:* To allow AirTran Airways, Inc., to waive the interim compliance date for fleet transition to Stage 3 aircraft so it can operate its fleet meeting only Stage 2 noise requirements until June 30, 1995.

[FR Doc. 94–24698 Filed 10–5–94; 8:45 am]
BILLING CODE 4910–13–M

## 14 CFR Part 71

**[Airspace Docket No. 94–ACE–16]**

## Proposed Establishment of Class E Airspace; Monticello, MO

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establishes Class E airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Lewis County Regional airport, Monticello, MO. A standard instrument approach procedure (SIAP) has been recently developed at Lewis County Regional Airport, utilizing the Quincy, MO. VHF Omnidirectional Range/Distance Measuring Equipment (VORTAC) as a navigational aid. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operators executing the recently established SIAP.

**DATES:** Comments must be received on or before November 14, 1994.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, System Management Branch, ACE–530, Federal Aviation Administration, Docket No. 94–ACE–16, 601 East 12th Street, Kansas City, Missouri 64106. The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Regional office at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Raymond, Airspace Specialist, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–7289.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting 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 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. 94–ACE–16." 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 Office of General Council, at 601 East 12th Street, Kansas City, Missouri, 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 this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Air Traffic Division, 601 East 12th Street, Kansas City, Missouri, 64106. Communications must identify the 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 describe the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface at Monticello, MO. A SIAP based on the Quincy VORTAC has been established. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR/DME SIAP at Lewis County Regional Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extend upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B, dated July 18, 1994 and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). 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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, 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 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

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

* * * * *

**ACE MO E5 Monticello, MO [New]**

Lewis County Regional Airport, MO
(Lat. 40°07'79" N, long. 91°16'74" W)
Quincy VORTAC
(Lat. 39°50'88" N, Long 91°16'

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Lewis County Regional Airport.

* * * * *

Issued in Kansas City, Missouri, on September 6, 1994.

**Clarence E. Newbern,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 94–24695 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–13–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

**[Release No. 34–34753; File No. S7–28–94]**

**RIN 3235–AG21**

### Customer Limit Orders

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission proposes a rule setting standards for market makers in handling customer limit orders in NASDAQ National Market System securities. The rule would prohibit a market maker from trading for its own account, directly, or indirectly, at a price at which the market maker could execute a customer limit order it is holding, without executing the customer's limit order at the limit price or a price more favorable to the customer under the specific terms and conditions by which the order is accepted by the market maker.

**DATES:** Comments should be submitted on or before December 5, 1994.

**ADDRESSES:** Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should refer to File No. S7–28–94. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, N.W., Washington D.C. 20549.

**FOR FURTHER INFORMATION CONTACT:** Scott C. Kursman, (202) 942–3197, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5–1, 450 Fifth Street, N.W., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction and Background

The Securities and Exchange Commission ("SEC" or "Commission") today is proposing a rule (17 CFR 240.15c5–1) to prohibit market makers in NASDAQ National Market System ("NASDAQ/NMS") securities from trading ahead of customer orders that they are holding at the same or better price. The Commission is proposing to change existing practices because it believes this will enhance broker-dealer competition, promote efficient pricing of securities, facilitate best execution of customer orders and better reflect investor expectations in the NASDAQ/NMS market. The growth of the NASDAQ market and the concomitant visibility of and investor interest in its companies has changed investors' expectations.

In designing the proposed rule, the Commission has been mindful of the special role of NASDAQ market makers in discovering prices and providing liquidity in NASDAQ/NMS stocks. The proposal seeks comment on specific trading standards that would govern individual market makers. The proposed rule is intended to have the effect of giving priority to orders that improve the market (*i.e.*, narrow the bid-ask spread) being made by a specific market maker.

Generally, an order to buy or sell a security at a specified price ("limit order") is first received by the customer's broker, who either routes the order to an affiliated or non-affiliated market maker for execution or, if the firm is itself a market maker in the security, to the firm's market making desk. The combination of limit order execution and market maker functions can lead to the market maker competing with a customer for executions. While the past few years have seen several positive efforts at improving limit order handling practices in the NASDAQ market, the Commission believes that it should consider a limit order priority rule to ensure protection for all customer orders in this market.

The priority accorded a customer limit order today is different depending on the structure of the marketplace of execution. The rules of national securities exchanges generally require specialists and other market professionals to yield to a customer's limit order; the specialist cannot trade for its own account at prices equal to or better than the limit order until the limit order is executed.[1] The rules of the National Association of Securities Dealers ("NASD") similarly prohibit third market makers (over-the-counter market makers in listed securities) from trading ahead of customer limit orders in the third market.[2]

In 1988, the Commission addressed the issue of customer limit order protection in the NASDAQ market.[3] In the Manning decision, the Commission affirmed, based on principles of agency law, an NASD determination that it is inconsistent with just and equitable principles of trade for a market maker to trade ahead of a customer limit order unless the customer is first informed of the firm's limit order policy. As a result of the Manning decision, the NASD filed a proposed rule change with the Commission stating that a member firm will not be deemed to have violated NASD Rules of Fair Practice if it provides customers with a statement setting forth the circumstances in which the member firm accepts limit orders and the policies and procedures that the firm follows in handling these orders.[4]

In July, 1993, the NASD Board of Governors reviewed the handling of limit orders in NASDAQ securities and concluded that "the continuation of the disclosure exception appeared inappropriate."[5] The NASD solicited member comment on eliminating the disclosure "safe-harbor" approach for members trading ahead of customer limit orders and the effect a rule prohibiting trading ahead might have on integrated broker-dealers, on limit orders received from other firms, and on market liquidity.[6]

After full consideration of the concerns articulated in the comment process, the NASD withdrew its rule filing proposing the disclosure safe harbor approach,[7] and submitted a

---

[1] See, e.g., New York Stock Exchange ("NYSE") Rule 92, 2 NYSE Guide (CCH) ¶ 2092. The priority rules of the New York Stock Exchange do permit an exception to this general principle for pre-arranged crosses of 25,000 shares or more. Such a cross may be executed on the floor without interacting with pre-existing limit orders at the same price. A preexisting limit order, however, may interact with the buyer or seller in the cross if it provides a price that is better than the proposed cross price. *See* Securities Exchange Act Release No. 31343 (October 21, 1992), 57 FR 48645 (October 27, 1992).

[2] NASD Bylaws, Schedule G, Section 4(f), NASD Manual (CCH) ¶ 1921. Third market dealers account for more than 9% of listed stock trades.

[3] See In re E.F. Hutton & Co. (the so-called "Manning decision"), Securities Exchange Act Release No. 25887 (July 6, 1988), 41 SEC Doc. 473, appeal filed, Hutton & Co. Inc. v. SEC, Dec. No. 88–1649 (D.C. Cir. Sept. 2, 1988), (Stipulation of Dismissal Filed, Jan. 11, 1989).

[4] Securities Exchange Act Release No. 26824 (May 15, 1989), 54 FR 22046 (May 22, 1989). The proposal included model disclosure language to be used by firms whose policy is not to grant priority to customer limit orders over the member's own proprietary trading.

[5] See File No. SR-NASD–93–58, p.6.

[6] See NASD Notice to Members 93–49 (July 23, 1993).

[7] See Letter from Robert E. Aber, Vice President and General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation,

proposed Interpretation to its Rules of Fair Practice, prohibiting member firms from trading ahead of their customers' limit orders in their market making capacity.[8] The Division of Market Regulation's Market 2000 study examined this practice and recommended that a ban apply to trading ahead of all customer limit orders, not just those of a firm's own customer.[9] The study noted that the adverse effects of trading ahead exist whether the customer's order is handled by the customer's firm or by another market maker.[10]

The Commission approved the NASD Interpretation on June 29, 1994, but expressed concern that the prohibition did not extend to trading ahead of limit orders of other firms' customers that have been sent to the market maker for execution.[11] The NASD also convened a special task force to study the potential effect of expanded limit order protection on market liquidity and market maker capital commitment and to report back to the Board in September. The Commission stated that while such a study could be helpful to a future consideration of this issue, the Commission believed that member-to-member trades raise significant concerns that should be addressed and, if necessary, the Commission would consider instituting its own rulemaking proceeding for that purpose.[12]

The task force has now submitted its report to the NASD Board of Directors and the Board has proposed for member comment market maker standards that would restrict market makers from trading ahead of certain member-to-member trades, keyed in part on the size of the customer limit order.[13] Under the NASD proposal, market makers would be prohibited from trading at prices equal to or better than the price of a customer limit order they hold if the size of that order was 1,000 shares or less and from trading at prices better than a customer's limit order if the size of that order was greater than 1,000 shares.

The Commission believes that the NASD's proposal is an instructive step and will provide useful comment from the member firm community. The Commission, however, believes that comment from the broader constituency of the investing public and other non-NASD members will be critical in formulating adequate limit order protection for the NASDAQ market. In addition, the Commission believes that alternatives which provide more extensive limit order protection for public customers also should be the subject of public comment. Therefore, the Commission has determined to propose its own rule. Publication of the proposal will complement the efforts of the NASD and enable the Commission to act on its own initiative if it deems such action appropriate.

## II. Discussion

The Commission proposes to adopt Rule 15c5–1 pursuant to Section 15(c)(5) of the Securities Exchange Act of 1934 ("Exchange Act"),[14] among other provisions.[15] Section 15(c)(5) grants the Commission authority over dealers acting in the capacity of market makers by permitting the Commission to impose standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system.[16]

The legislative history of the Securities Acts Amendments of 1975, under which Section 15(c)(5) was adopted, endorsed priority for customer limit orders in national market system securities and stated that the Commission should have discretion to achieve this protection. Congress noted that for suitable securities, every effort should be made to ensure that public investors in these securities would receive the benefits and protections that would result from the placing of public orders ahead of dealers' orders in determining the sequence in which orders entering the market are executed.[17]

NASDAQ has evolved from a market of thinly traded companies in 1975 to one that today accounts for 42% of share volume and 29.2% of dollar volume in the U.S. equity markets.[18] During that time, the Commission, together with the NASD, has attempted to implement rules that reflect increased investor interest in this market. The events which gave rise to the Manning case date back to 1984 and the Commission has been pressing for improved limit order priority since then.

In its order approving the recent NASD Interpretation, the Commission indicated that a further Commission rule might be necessary to ensure protection for all public limit orders in NASDAQ/NMS securities, should the NASD fail to do so. The NASD's Interpretation prevents a market maker from trading ahead of its own customers' limit orders, but does not prevent the same market maker from trading ahead of the limit orders of other firms' customers that are sent to the market maker for execution.[19] The Commission believes that it is reasonable for customers to expect that the quality of the execution received will not vary from trade to trade. Under current NASD rules, the quality of the execution received could vary depending on whether the customer's firm or an affiliate makes a market in a security or whether that firm sends the order to another market maker for execution. Customers choose their brokers for a variety of reasons, including cost and integrity; whether the broker also makes a market in a security in which the customer may be interested should not affect the quality of the execution.

The Commission agrees with the conclusion of the Division of Market Regulation's Market 2000 Study that the adverse effects of trading ahead exist whether the customer's order is handled by the customer's firm or by another market maker.[20] Rule 15c5–1 would apply to customer limit orders, regardless of where the order is ultimately routed for execution.

The Commission believes that the principles of investor protection and market integrity would be advanced by a limit order priority rule. The lack of limit order protection results in inferior executions for customers and adversely affects the price discovery process for these securities.[21]

By providing a customer's limit order priority over the market maker's proprietary trading, more trade volume will be available to be matched with the customer's order, resulting in quicker

---

Division of Market Regulation, SEC (October 13, 1993).

[8] Securities Exchange Act Release No. 33697 (March 1, 1994), 59 FR 10842 (March 8, 1994).

[9] Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments ("Market 2000 Study"), V–5 (1994).

[10] Id.

[11] Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[12] *Id.*.

[13] See Special NASD Notice to Members 94–79 (September 23, 1994).

[11] Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[12] Id.

[14] Section 15(c)(5), 15 U.S.C. 78o.

[15] Section 11A, 15 U.S.C. 78k–1; Section 23, 15 U.S.C. 78w.

[16] See Exchange Act Section 15(c)(5), supra note 14.

[17] S. Rep. No. 75, 94th Cong., 1st Sess. 16 (1975) ("Senate Report").

[18] *See supra* note 9, at 9.

[19] *See supra* note 11.

[20] *See supra* note 9, at V–8.

[21] *Id.* at V–7.

and more frequent executions for limit order customers. In the past, customers may have refrained from placing limit orders because of the uncertainty of and difficulty in obtaining an execution at a price between the spread. A customer limit order rule will encourage dealers that accept customer limit orders to execute them in a timely fashion so that they may resume their proprietary trading activities. With the improvement in the quality of these executions, investors will have greater confidence in this market and trade volume from retail investors could increase.[22]

In addition, customer limit order priority would improve the price discovery process in NASDAQ/NMS securities. Limit orders aid price discovery by adding liquidity to the market and by tightening the effective spread between the bid and ask price of a security, even though these limit orders would not be displayed in the market maker's quote. The practice of not executing a limit order until the inside quotation price reaches the customer's limit order price also impedes the price discovery process by preventing those orders from interacting with other orders. More expeditious handling of customer limit orders under the proposed rule could provide investors with a more accurate indication of the buy and sell interest at a given moment.[23]

One of the problems with not giving customer limit orders priority is the cost to public customers in terms of inferior or missed executions for limit orders. It is currently impossible for customers to monitor these costs. The ability of a customer to monitor the cost of the transaction and choose a broker-dealer on that basis imposes a competitive discipline on the market maker to achieve the best possible execution for the customer or risk losing the business. Unlike institutional clients who are in a better position to negotiate their own protection with market makers, public customers have less viable alternatives in determining where their orders are ultimately sent for execution. Under these circumstances, market makers lack the same incentive to provide superior executions to public customers.

Market makers who oppose a comprehensive rule mandating limit order priority for customers do so in part on the ground that such a rule would reduce their return from market making.[24] Market makers are, of course, entitled to earn a profit from their service; A limit order rule could force market makers to recoup the cost of the transaction in ways more apparent to the customer, such as by charging a commission for handling the limit order. The Commission requests comment in the form of specific data regarding the potential consequences of the proposed rule for market liquidity and market maker capital commitment.

## III. Description of the Proposed Rule

Limit order protection in the NASDAQ market is now required only of firms that execute their own customers' limit orders. Market makers still may trade ahead of the limit orders entered by customers of other firms that are sent to them for execution. Proposed Rule 15c5–1 would provide limit order protection to all customers in NASDAQ/NMS securities, regardless of where the order is ultimately sent for execution.

### *A. General Prohibition on Trading Ahead*

Paragraph (a) of the proposed rule establishes the general prohibition on trading ahead of limit orders: a market maker shall not effect a transaction involving a covered security for its own account, directly or indirectly, at a price at which the market maker could execute a customer limit order it is holding without executing the customer limit order at the limit price or a price more favorable to the customer, under the specific terms and conditions by which the order was accepted by the market maker.

The rule applies once a market maker has accepted a customer limit order for execution.[25] The rule applies to all market makers, whether they are handling orders for their firm's clients or orders sent from another firm. Finally, the rule applies to all accounts of the market maker in which the market maker or any person associated with the market maker is directly or indirectly interested.

The application of the rule can best be illustrated through the following example. Firm *A* is a retail brokerage firm. Firm *B* is a market making firm with no customers of its own. Firm *C* is an integrated firm with both brokerage and market making units. The present NASD Interpretation applies only to orders received and executed internally by firm *C*.[26] The proposed rule would cover these orders as well as orders sent from firm *A* to firm *B* or *C*, and orders sent from firm *C* to firm *B*.

For instance, firm *A* may send firm *B* a customer limit order to buy 1,000 shares of stock at $20¼. Firm *B*, a market maker in that security, is quoting a bid of $20 and an offer of $20½. Under the proposed rule, a purchase of a certain number of shares by firm *B* at $20¼ or lower would trigger an obligation to fill the same number of shares in the customer's order at $20¼. A failure to execute the customer's limit order either before or immediately after the market maker's purchase would constitute a violation of the rule. The Commission is requesting comment on whether it should exclude from the protection of the rule limit orders to buy at the bid or limit orders to sell at the offer.

### *B. "Covered Security"*

The rule would apply to NASDAQ securities that have been designated National Market System securities. A NASDAQ security is a registered equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation system. A NASDAQ National Market System security is a NASDAQ security as defined above for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan.[27] The Commission requests comments on the feasibility of extending the limit order protection measures incorporated herein to other NASDAQ securities, such as NASDAQ SmallCap securities and over-the-counter ("OTC") Bulletin Board-eligible securities.[28]

### *C. Definition of "Customer Limit Order"*

Paragraph (c)(3) of the proposed rule defines the term "limit order" as an order to buy or sell shares of a security at a specified price or other price more favorable to the customer. In the example above, the customer placed a limit order to buy 1,000 shares of stock

---

[22] *Id.*

[23] *Id.*

[24] See letter from Frank Masi, President, Securities Traders Association of New York ("STANY"), to Jonathan G. Katz, Secretary, SEC (March 29, 1994).

[25] NASD rules do not require a market maker to accept a customer limit order.

[26] The Interpretation also applies to firm *A* if it forwards limit orders to an affiliated firm (e.g., Firm *D*, a firm that it controls) for execution.

[27] *See* 17 CFR 240.11Aa3–1.

[28] A NASDAQ SmallCap security is one which (1) satisfies all applicable requirements for qualification as a NASDAQ security and is not a NASDAQ National Market System security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security. *See* File No. SR-NASD–94–48.

The OTC Bulletin Board provides an electronic quotation medium for subscribing members to reflect market making interest in eligible securities, which are generally domestic or foreign equity securities or American Depository Receipts not listed on NASDAQ or the New York or American Stock Exchanges. *See* NASD Over-the-Counter Bulletin Board Service Rules, § 3, NASD Manual (CCH) ¶ 2573.

at $20¼, indicating that the customer wishes to pay no more than $20.25 for the security. The market maker may fill the order at a lower price, but not at a price higher than the limit the customer has set.

The Commission proposes to limit the class of persons who would be protected by the rule to public customers only. To this end, the term "customer" in paragraph (c)(3) is defined as a person who is not a registered broker or dealer. Nevertheless, because customer limit orders often are sent to a market maker by a broker or another market maker that originally received the order, the definition of "customer" would encompass such orders as customer orders entitled to protection under the rule. Orders for registered brokers or dealers that are sent to a market maker by another broker or market maker would not be entitled to this protection. The Commission requests comment on the necessity of restricting limit order protection to customers and the effectiveness of the definition in carrying out that purpose.

*D. "Terms and Conditions"*

While the proposed rule does not distinguish institutional from retail orders, the Commission believes that larger-sized orders may qualify for special treatment. The language of the proposed rule that would allow the parties to set the specific terms and conditions for acceptance of limit orders is intended to permit market makers to employ the appropriate strategy in filling a larger sized order without being subjected to the requirements of the proposed ban.

By distinguishing the protection afforded a limit order by its size or dollar value, the rule would recognize the greater significance of larger size orders to market makers seeking to establish or liquidate a position and the ability of larger sized customers to negotiate specific order handling procedures. Market makers actively compete for customer order flow. A customer dealing in greater size or amount generally can better monitor the market for the security and negotiate alternative execution procedures with another market maker.[29]

The Commission preliminarily believes that larger sized orders should be distinguished by measurable characteristics such as number of shares or dollar amount. To this end, comment is requested on the appropriate level of a size limit, *i.e.* 5,000 or 10,000 shares, and/or a dollar value limit, *i.e.* $50,000, $100,000 or $200,000, that would determine market maker obligations with respect to these two types of orders in the final rule. This will insure that the rule ultimately adopted includes limit order protection for retail investors while maintaining the ability of market makers to negotiate order handling arrangements with their institutional clients.

*E. Exceptions*

The rule proposal also establishes exceptions for all-or-none and odd-lot orders as well as a general exemptive provision [paragraph (d)]. The specific exceptions to the rule [paragraph (b)] are discussed below. The Commission requests comment on the need for an all-or-none or odd-lot order exception and a general exemptive provision.

Exception for All-or-None Orders

The proposed rule includes an exception for all-or-none customer limit orders [paragraph (b)(2)]. An all-or-none customer limit order is defined in paragraph (c)(1) as one that carries a condition that instructs the market maker to execute all of the shares in the order only if it can be done all at once. The purpose of this exception is to prevent delays in executing other orders that a market maker may be receiving at the time the market maker is handling the all-or-none order. In the example above, the customer's limit order for 1,000 shares of stock could be filled in several separate transactions. With an all-or-none order, a market maker must execute all the shares of the order in a single trade. The market maker may not have immediate access to that number of shares. In the meantime, other orders may be received that require the market maker to purchase shares from other market makers or their customers. Without this exception, the market maker would not be able to buy any stock at less than the all-or-none limit order price and, ultimately, the execution quality of other customer orders would suffer. Thus, using the above example, the exception would permit a market maker handling an all-or-none order to purchase shares in the security for its own account at $20 ¼ or lower without filling the customer's limit order, but only for amounts smaller than the 1,000 shares in the all-or-none order. The market maker could not, however, purchase 1,000 shares or more at $20 ¼ or lower for its own account without satisfying the customer limit order.

**IV. Initial Regulatory Flexibility Analysis**

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed Rule 15c5–1. The IRFA uses certain definitions of small entities adopted by the Commission for purposes of the Regulatory Flexibility Act. The IRFA indicates that regulatory action is required in order to ensure that market makers in NASDAQ/NMS securities adhere to certain minimum standards of fair treatment of customers. Specifically, by prohibiting a market maker from trading ahead of a customer limit order that it holds, the rule would improve the quality of executions for customers and the price discovery process in the market for these securities.

In 1993, there were 492 active NASDAQ market makers.[30] Data on the number of market makers meeting the definition of small entity that make markets in NASDAQ/NMS securities and execute customer limit orders is unavailable. The Commission is unable to quantify reasonably the impact that the proposed rule would have on small market makers or small issuers. The Commission does not believe it would be practicable to exempt small market makers from the proposed rule because to do so would be inconsistent with the Commission's statutory mandate to protect investors.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Scott C. Kursman, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 942–3197.

**V. Effects on Competition**

Section 23(a)(2) of the Exchange Act[31] requires the Commission, in adopting rules under the Act, to consider any anti-competitive effects of such rules and to balance these effects against the regulatory benefits gained in furthering the purposes of the Act. As previously noted, comment letters received prior to the adoption of the NASD Interpretation suggested that such a rule would deny market makers an opportunity to earn a profit in some situations. If true, this may result in less market maker commitment in the NASDAQ/NMS market which may in turn effect competition in this market. The Commission is soliciting comment on the effect the rule may have on

[29] There are an average of 11.9 market makers for every NASDAQ/NMS security. *See* NASD, 1994 NASDAQ Fact Book and Company Directory (1994).

[30] *See supra* note 29.

[31] 15 U.S.C. 78w(a)(2).

market maker capital commitment and small issuers.

The Commission preliminarily views Rule 15c5–1 as causing no burden on competition unnecessary or inappropriate in furtherance of the purposes of the Exchange Act. The Commission believes that the principles of customer protection that Congress envisioned and that would be advanced by this rule justify the burdens that the rule will impose on market makers. The Commission, however, requests comment on any competitive burdens that might result from adoption of the proposed rule described in this release.

**List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements, Securities.

**Text of Proposed Rule**

For the reasons set out in the preamble, part 240 of Chapter II of Title 17 of the Code of Federal Regulations is amended to read as follows:

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

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

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

* * * * *

2. Section 240.15c5–1 is added to read as follows:

**§ 240.15c5–1. Prohibition on Market Makers Trading Ahead of Customer Limit Orders.**

(a) *General Prohibition*—A market maker shall not effect a transaction involving a covered security for its own account, directly or indirectly, at a price at which the market maker could execute a customer limit order it is holding without executing the customer limit order at the limit price or a price more favorable to the customer, under the specific terms and conditions by which the order is accepted by the market maker.

(b) *Exceptions.* The prohibition in paragraph (a) of this section shall not apply to the following customer limit orders:

(1) "all-or-none" customer limit orders, provided that the number of shares executed by the market maker is less than the number of shares in the customer's all-or-none order; or

(2) odd-lot customer limit orders.

(c) *Definitions.* For purposes of this section:

(1) The term *all-or-none* refers to a condition placed upon a customer limit order that instructs the market maker to either execute all of the shares in the order at the specified price or execute none.

(2) The term *covered security* shall mean a NASDAQ security that has been designated a National Market System security pursuant to § 240.11Aa2–1.

(3) The term *customer limit order* shall mean an order to buy or sell a security at a specified price or a price more favorable to the customer, that is not for the account of either a broker or dealer; provided, however, that the term *customer limit order* shall include an order transmitted by a broker or dealer on behalf of a customer.

(4) The term *market maker* shall have the meaning provided in Section 3(a)(38) of the Act (15 U.S.C. 78c(a)(38)).

(d) *Exemptions.* The Commission, upon request or upon its own motion, may exempt, by rule or by order, any market maker or any class of market makers from the requirements of paragraph (a) of this section with respect to any limit order or class of limit orders, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

Dated: September 29, 1994.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24690 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

### 24 CFR Parts 813, 905, 908, and 913

**[Docket No. R–94–1747; FR–3730–P–01]**

**RIN 2577–AB47**

### Electronic Transmission of Required Family Data for Public Housing, Indian Housing, and the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule requires all housing agencies (HAs) to submit certain data electronically to HUD in a HUD prescribed format. For HAs that are not already automated or who determine that automation is not cost-effective, transmission of the data through the use of a service bureau is permitted. Electronic transmission is necessary because the manual submission of HUD forms has become a burden to HAs and HUD. This proposed rule applies to projects administered under the public housing, Indian housing, and Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs. A similar rule, 24 CFR part 208, was issued with respect to multifamily subsidized projects administered under programs subject to the oversight of the Assistant Secretary for Housing-Federal Housing Commissioner.

**DATES:** Comments due date: December 5, 1994.

**ADDRESSES:** Comments on this proposed rule may be submitted to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

**FOR FURTHER INFORMATION CONTACT:** For Technical Information—Katherine M. Dillon, Director, Information Services Division, Office of Public and Indian Housing, Room 4248, telephone (202) 708–5285. For Program Information—Edward C. Whipple, Director, Occupancy Division, Office of Public and Indian Housing, Room 4206, telephone (202) 708–0744, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

**I. Paperwork Burden**

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The submission amends the current requirements approved by OMB on January 26, 1994 (Number: 2577–0083).

The public reporting burden for the collection of information requirements contained in this proposed rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. 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 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

## II. Background

### *A. Impetus for Change*

Housing agencies have been submitting to HUD data forms for each family assisted under the public housing, Indian housing, and Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation Programs. The Forms HUD–50058, Family Report, and HUD–50058–FSS, Family Self-Sufficiency Addendum, concern family characteristics, rent, income, subsidy payments and participation in the Family Self-Sufficiency Program.

As of March 1, 1994, these forms were being processed by the Department's central processing facility. Approximately 85 percent of reporting agencies (3,655 HAs) are submitting paper forms. This extensive processing of paper forms has become a burden to the HAs as well as to HUD.

To reduce the cost to the Department of processing this information and to improve its accuracy, the Department is issuing this proposed rule to require that the information be submitted electronically. The change is expected to contribute significant savings to the Department, in a time when budget contraints demand such savings.

Housing agencies that report on paper have the time consuming task of completing the calculations which are prone to error. The Department edits the information on the forms. When errors are found, HAs are notified (by letter) and requested to make appropriate corrections.

The time spent by HAs in initiating electronic transmission and making corrections to the electronic data submissions will be offset by future savings in the reexamination and reporting process, as well as increased accuracy and speed associated with the admission, reexamination and reporting processes, and the reduced number of HUD adjustments and paperwork required by these adjustments. This change to electronic submission of family data will also encourage HAs to automate other functions or to automate this particular function as they automate others, in the course of revising their own management practices.

The rule will require HAs to submit data electronically via telephone modem, rather than through tape, diskette, or paper. However, the rule also provides that the Department may approve transmission of the data by tape or diskette where the Department determines that the cost of telephonic transmission would be excessive. (It is contemplated that this would only occur in a few instances, involving very large HAs.)

### *B. Voluntary Automation*

Several years ago, the Department began to develop a computer system to collect all rental assistance data and ensure the accuracy of subsidy payments. This system serves as the basis for the Department's electronic data transmission requirements in lieu of hard copy.

In July 1993, the Department distributed a Form HUD–50058 Information Packet, which gave instructions for submitting the data electronically. The Department encouraged program participants to begin transmitting data electronically to HUD (via tape, diskette, or telephonic network). Approximately 600 housing agencies have responded by submitting the data electronically. Recently, the Department initiated a pilot test with 20 HAs using the telephonic network mode (via SprintMail—a commercial software package) to evaluate HA capability for data transmission. In addition, a test program (for use by all HAs) has been initiated to assure that errors are not introduced by the sender's software. Both processes will facilitate implementation of this rule.

These electronic transmissions consist of information requested on the forms, organized into various categories and transmitted in an ASCII fixed format (not field delimited). These fixed format ASCII files will deliver the data with the field lengths as specified by HUD in the July 1993 guide. (This guide may be obtained from the office listed above for program information.)

The Department encourages HAs to begin electronic transmission as soon as the capability exists. An earlier electronic transmission will allow timely correction of errors found during the data load into the automated software. These corrections will then reduce the number of errors formerly found when manual information entered the Department's system. Early electronic transmission will also help minimize an initial surge of data in the system from the number of currently nonautomated HAs.

### *C. Action Required*

Nonautomated HAs (i.e. those who currently prepare the Forms HUD–50058 and HUD–50058–FSS manually) should immediately begin to obtain information on the cost of purchasing hardware or software, or both, to determine whether it is financially feasible to purchase these items or whether they should contract out the electronic transmission of data to another entity. These HAs must: (1) Complete the search and either purchase the necessary hardware and software, or sign service contracts, (2) complete their data loading, and (3) begin electronic transmission by one year after the publication of the final rule.

While the Department would prefer each HA to obtain its own hardware and software, HAs may elect to contract out the electronic transmission function. However, when HAs contract out the electronic transmission function, they are still required to continue to retain the ability to monitor the day-to-day operations of the projects and be able to demonstrate that ability to their local HUD Office.

In recognition of the difficulty some HAs may have in conversion to electronic submission of data, the rule will permit HUD Field Offices to grant extensions of time beyond the stated implementation date for commencement of electronic submission under certain circumstances.

### *D. Cost*

Housing agencies may be concerned about funding the initial cost of automation. For public and Indian housing, the costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both; the cost of contracting for those services; or the cost of centralizing the electronic transmission function; are eligible operating expenses and can be included in the operating budget. However, they are not eligible for additional operating subsidy funding. Automating this management function also is an allowable expense under the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program. For Section 8 programs, the costs may be paid from ongoing administrative fees or the Section 8 operating reserve. Ultimately, the cost of automating this

function will be recovered in reduced administrative costs.

The Department anticipates that the large number of vendors competing in the marketplace will cause the cost of automation and electronic transmission to be reasonable, and a large number of HAs will therefore be able to purchase and maintain their own equipment. However, the decision to purchase and maintain the necessary equipment and services or to contract for the automation and electronic transmission function, will only be made by each housing agency.

**III. Parts Amended**

This proposed rule would add a new part 908 to specify the electronic submission requirements. The requirements for obtaining and verifying family income information in the various programs are found in § 813.109 for the Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation programs, in § 905.315 for the Indian housing program, and in § 913.109 for the public housing program. This rule would add a new paragraph to each of these sections to cross reference the requirements of the new part 908.

**IV. Other Matters**

*A. Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o) of the HUD regulations, the policies and procedures contained in this proposed rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

*B. Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this proposed rule is directed to housing agencies that operate HUD-assisted housing, whose functions and authority remain unchanged. It merely changes the format of data submitted to HUD to make its transmission more accurate and efficient. It will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the proposed rule is not subject to review under the order.

*C. Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

*D. Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Because this proposed rule changes the way in which the data is transmitted to HUD, and all costs associated with implementation of the electronic transmission will be considered allowable project operating costs, the proposed rule is not expected to have a significant economic impact.

*E. Regulatory Agenda*

This proposed rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424) under Executive Order 12866 and the Regulatory Flexibility Act, and therefore was submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

*F. Catalog*

The Catalog of Federal Domestic Assistance numbers for the programs covered by this proposed rules are 14.850, 14.855, 14.856, and 14.857.

*G. Paperwork Reduction Act*

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). In accordance with OMB regulations, the following chart is provided to describe the collection of information requirements.

| FY | Transmission mode | Number of respondents | Total annual responses | Hours/minutes per response | Total hours |
|---|---|---|---|---|---|
| 1994* | Paper/Diskette/Tape/Telephonic | 4,500 | 4,124,000 | 1 hour | 4,124,000 |
| 1995 | Paper/Diskette/Tape/Telephonic | 4,500 | 4,124,000 | 50 minutes | 3,435,300 |
| 1996 | Telephonic Only | 4,500 | 4,124,000 | 30 minutes | 2,062,000 |

*Burden Hours Currently in OMB Inventory.

**List of Subjects**

*24 CFR Part 813*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

*24 CFR Part 905*

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 908*

Computer technology—automatic data processing, data processing, electronic data processing, Subsidies—grant programs, Rent subsidies.

*24 CFR Part 913*

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24, chapters VIII and IX, of the Code of Federal Regulations would be amended as follows:

## PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for part 813 would continue to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

2. In § 813.109, a new paragraph (c) would be added, to read as follows:

**§ 813.109 Initial determination, verification, and reexamination of family income and composition.**

* * * * *

(c) See 24 CFR part 908 for requirements for transmission of data to HUD.

* * * * *

## PART 905—INDIAN HOUSING PROGRAMS

3. The authority citation for part 905 would be revised to read as follows:

**Authority:** 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

4. In § 905.315, paragraphs (a)(2) and (a)(3) would be redesignated as paragraphs (b) and (c), and a new paragraph (d) would be added, to read as follows:

**§ 905.315 Initial determination, verification, and reexamination of family income and composition.**

* * * * *

(d) See 24 CFR part 908 for requirements for transmission of data to HUD.

5. A new part 908, consisting of §§ 908.101 through 908.112, would be added to chapter IX, to read as follows:

## PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

Sec.

908.101 Purpose.
908.104 Requirements.
908.108 Cost.
908.112 Extension of time.

**Authority:** 42 U.S.C. 1437f, 3535(d), 3543, 3544, and 3608a.

**§ 908.101 Purpose.**

The purpose of this part is to require Housing Agencies (HAs) that operate public housing, Indian housing, or Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. This electronically submitted data is required for HUD Forms HUD–50058, Family Report, and HUD–50058–FSS, Family Self-Sufficiency Addendum.

**§ 908.104 Requirements.**

(a) *Automated HAs.* Housing agencies that currently use automated software packages to transmit Forms HUD–50058 and HUD–50058–FSS information by tape or diskette to the Department's data processing contractor must convert to telephonic electronic transmission of that data in a HUD specified format by *[insert date 120 days after publication of the final rule].*

(b) *Nonautomated HAs.* Housing agencies that currently prepare and transmit the HUD–50058 and HUD–50058–FSS information to HUD paper must:

(1) Complete a vendor search and obtain either:

(i) The necessary hardware and software required to develop and maintain an in-house automated data processing system (ADP) used to generate electronic submission of the data for these forms via telephonic network; or

(ii) A service contract for the operation of an automated system to generate electronic submission of the data for these forms via telephonic network;

(2) Complete their data loading; and

(3) Begin electronic transmission by *[insert date 365 days after publication of the final rule].*

(c) *Electronic transmission of data.* Electronic transmission of data consists of submission of all required data fields (correctly formatted) from the forms HUD–050058 and HUD–50058–FSS telephonically, in accordance with HUD instructions. Regardless of whether an HA obtains the ADP system itself or contracts with a service bureau to provide the system, the software must be periodically updated to incorporate changes or revisions in legislation, regulations, handbooks, notices, or HUD electronic transmission data format requirements.

(d) *Service contract.* HAs that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management associations and management agents with centralized facilities. HAs that contract out the electronic transmission function must retain the ability to monitor the day-to-day operations of the project at the HA site and be able to demonstrate the ability to the relevant HUD Field Office.

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Department may approve transmission of the data by tape or diskette if it determines that the cost of telephonic transmission would be excessive.

**§ 908.108 Cost.**

(a) *General.* The costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both, the cost of contracting for those services, or the cost of centralizing the electronic transmission function, shall be considered Section 8 Administrative expenses, or eligible public housing operating expenses that can be included in the public housing operating budget. At the HA's option, the cost of the computer software may include service contracts to provide maintenance or training, or both.

(b) *Sources of funding.* For public and Indian housing, costs may be covered from operating subsidy for which the HA is already eligible, or the initial cost may be covered by funds received by the HA under HUD's Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP). For Section 8 programs, the costs may be covered from ongoing administrative fees or the Section 8 operating reserve.

**§ 908.112 Extension of time.**

The HUD Field Office may grant an HA an extension of time, of a reasonable period, for implementation of the requirements of § 908.104, if it determines that such electronic submission is infeasible because of one of the following:

(a) Lack of staff resources;

(b) Insufficient financial resources to purchase the required hardware, software or contractual services; or

(c) Lack of adequate infrastructure, including, but not limited to, the inability to obtain telephone service to transmit the required data.

## PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

6. The authority citation for part 913 would continue to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437d, 1437n, and 3535(d).

7. In § 913.109, a new paragraph (c) would be added, to read as follows:

**§ 913.109 Initial determination, verification, and reexamination of family income and composition.**

* * * * *

(c) See 24 CFR part 908 for requirements for transmission of data to HUD.

* * * * *

Dated: September 23, 1994.

**Michael B. Janis,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 94–24626 Filed 10–5–94; 8:45 am]

BILLING CODE 4210–33–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Part 344

**[Department of the Treasury Circular, Public Debt Series No. 3–72]**

## United States Treasury Certificates of Indebtedness, Treasury Notes, and Treasury Bonds—State and Local Government Series

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Treasury hereby publishes, for comment, a proposed rule governing United States Treasury Certificates of Indebtedness, Notes, and Bonds of the State and Local Government Series. These securities are available for purchase, as provided in this offering, by State and local governments and certain other entities with proceeds (or amounts treated as proceeds) which are subject to yield restrictions or arbitrage rebate requirements under the Internal Revenue Code. The securities are characterized in the regulations as time deposit, demand deposit, and special zero interest.

This proposed rulemaking sets out the regulatory requirements which stem from the Department of the Treasury's new processing environment for United States Treasury Certificates of Indebtedness, Notes, and Bonds of the State and Local Government Series (SLGS).

The Bureau of the Public Debt is implementing operational and regulatory changes expected to benefit investors by providing streamlined procedures, a centralized processing facility, and improved customer services.

**DATES:** Comments must be received on or before October 21, 1994.

**ADDRESSES:** Comments should be sent to: Division of Special Investments, Bureau of the Public Debt, 200 Third Street, P.O. Box 1328, Parkersburg, West Virginia 26106–1328. Comments received will be available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to visit the library should call (202) 622–0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Fred Pyatt, Director, Division of Special Investments, Bureau of the Public Debt (304) 480–7752, Ed Gronseth, Deputy Chief Counsel, or Jim Kramer-Wilt, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–5190.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The proposed rule is a revision of existing regulations codified at 31 CFR part 344, published on July 7, 1989, at 54 FR 28752, with technical corrections published July 7, 1993, at 58 FR 31908.

In 1992, the Bureau of the Public Debt established the Division of Special Investments at its offices in Parkersburg, West Virginia (WV). The primary mission of the Division of Special Investments has been to provide policy guidance and direction for the State and Local Government Series securities program. The Division has reviewed the current processing environment and is implementing operational and regulatory changes which are expected to benefit investors in United States Treasury securities of the State and Local Government Series by providing streamlined procedures, a centralized processing facility, and improved customer services.

In the current processing environment for State and Local Government Series securities, the Bureau of the Public Debt has authorized selected Federal Reserve Banks or Branches, acting as fiscal agents of the United States, to provide services in connection with the purchase of, transactions involving, and redemption of, the securities. Subscriptions for the purchase of State and Local Government Series securities are accepted at designated Federal Reserve Banks or Branches, subject to verification by the Bureau of the Public Debt. Full payment for each subscription must be available in an account for debit by the Federal Reserve Bank or Branch on or before the date of issue.

The current processing environment requires that staffing and technical expertise be maintained at 12 designated Federal Reserve Banks or Branches to provide unique services in connection with State and Local Government Series securities. The Bureau of the Public Debt, Office of Securities and Accounting Services, Division of Special Investments (hereafter referred to as the Division of Special Investments) has determined that the volume of transactions in this securities program does not merit the expense of maintaining technical expertise at 12 different locations.

The Bureau of the Public Debt has decided to centralize all issuance, funds collection, and accounting functions for the State and Local Government Series securities program in the Division of Special Investments. The responsibility for these functions will be withdrawn from the designated Federal Reserve Banks beginning on a specific issue date which will be announced in the final rule. It is anticipated that this date will be January 3, 1995.

After centralization, Federal Reserve Bank or Branch involvement in this program will be limited to processing interest and redemption payments made through reserve account credits for a very small number of existing securities accounts. This method of payment is limited to securities for which subscriptions were submitted prior to February 1, 1987. More than 98% of all interest and redemption payments for State and Local Government Series securities are made by the Automated Clearing House method (ACH), with credit directed to the owner's account at a financial institution.

Beginning on the effective date of the final rule, subscriptions for the purchase of State and Local Government Series securities which request issuance on or after a designated date will only be accepted by the Division of Special Investments. Full payment for each subscription will be submitted by the investor's financial institution on or before the issue date utilizing the Fedwire funds transfer system which is available throughout the commercial banking industry. It will no longer be necessary for investors to deposit the funds in an account subject to debit by a Federal Reserve Bank or Branch on or before the date of issue.

This proposed rule change is expected to provide investors in State and Local Government Series securities with several benefits. Investors will enjoy a higher level of customer service and more consistent application of the regulations pertaining to this securities program. Investors will be dealing directly with staff in the Division of Special Investments who are trained

and skilled in the many unique aspects of this securities program and whose principal responsibility it is to manage the State and Local Government Series securities program.

In addition, United States taxpayers will benefit in terms of the reduced costs of operating this securities program which will be realized by centralizing operations within the Division of Special Investments.

Because the responsibility for all issuance, funds collection, and accounting functions for the State and Local Government Series securities program will be withdrawn from the designated Federal Reserve Banks and because the Division of Special Investments must assume these operations on or about January 3, 1995, the Bureau of the Public Debt has determined that a comment period of 15 days is necessary. This will allow time for comments to be incorporated in a final rule within operational time constraints. Although most of the changes in this proposed rule are ministerial in nature (for example, changes to increase the use of facsimile transmittals and to provide new addresses), proposed changes concerning amending subscriptions (§ 344.3(b)(3)(iv) and § 344.7(b)) and concerning waivers and fees associated with the failure to settle subscriptions (§ 344.4(b) and § 344.8(b)) merit special attention.

The Department of the Treasury is also in the process of considering the revision of the regulations governing the State and Local Government Series securities program, with a view to increasing the flexibility of the program. The proposed rule does not include these types of changes due to the need to adopt the proposed rule very quickly. Changes to the State and Local Government Series securities program could include changes in the certification requirements and in the rules relating to the redemption of SLGS securities before maturity.

## II. Section By Section Summary

*Subpart A—General Information*

Provisions included in the general information section apply to time deposit, demand deposit, and special zero interest State and Local Government Series securities. Proposed changes from the 1989 regulations are as follows:

(1) Section 344.0—The term "date telecopied" for material sent by facsimile equipment is defined as the date transmitted as it appears on the document received. In the case of other carrier services, the term "date-stamp" is defined as the date affixed by the carrier service upon the carrier's taking receipt of the material.

(2)–(3) Section 344.1(a) and Section 344.1(b)—The agency's Parkersburg, WV, address is substituted for its former Washington, DC, address.

*Subpart B—Time Deposit Securities*

Time deposit Treasury securities are offered to State and local government investors to enable these investors to satisfy yield restrictions prescribed by the Internal Revenue Code and regulations. Changes from the 1989 regulations are as follows:

(1) Section 344.2(b)—This section would delete reference to the Federal Reserve Banks as a receiving point for initial subscriptions to reflect the consolidation of program administration in Parkersburg, WV, and would expressly allow for sending of initial subscriptions by facsimile equipment (FAX) or other carriers, in addition to postal delivery.

(2) Section 344.2(c)(2)—This section would clarify the authority governing Automated Clearing House payments on account of United States securities.

(3) Section 344.2(c)(2)(iii)—This section would clarify that fiscal agency checks, rather than Treasury checks, are an alternative payment mechanism for securities for which subscriptions were submitted prior to February 1, 1987.

(4) Section 344.3(a)—This section would delete reference to the Federal Reserve Banks as the receiving point for subscriptions for purchase of securities under this offering, as well as the reference to in person delivery to such Banks, to reflect the consolidation of program administration in Parkersburg, WV. In addition, this section would expressly allow for sending of initial subscriptions by facsimile equipment. Whether subscriptions are sent by FAX, mail or other carrier, subscribers are encouraged to expedite delivery.

(5) Section 344.3(b)(1)—This section would permit sending of initial subscriptions by facsimile and other carriers. The Bureau of the Public Debt is substituted for the Federal Reserve Banks to reflect the consolidation of program administration in Parkersburg, WV.

(6) Section 344.3(b)(3)—The current rule requires that amendments to initial subscriptions be filed on or before the issue date. As proposed, this section would add a 3 p.m., Eastern time, submission deadline. In addition, this section would permit sending of amendments to initial subscriptions by facsimile, provided the notification is clearly identified as an amendment and is immediately followed by the submission by mail or other carrier of written notification of the amendment.

(7) Section 344.3(b)(3)(i)—This section would clarify that an amendment to an initial subscription may not change the issue date to require issuance earlier than the issue date originally specified. In this section, the Bureau of the Public Debt is substituted for the Federal Reserve Banks to reflect the consolidation of program administration in Parkersburg, WV. The current regulation requires that changes under this section be submitted no later than one business day before the originally specified issue date. As proposed, this section would add a 3 p.m., Eastern time, submission deadline.

(8) Section 344.3(b)(3)(ii) and (iii)—This section would make technical changes required by the addition of new section 344.3(b)(3)(iv).

(9) Section 344.3(b)(3)(iv)—This new section would govern amendments to initial subscriptions which are not submitted timely. Under this proposed new section, where an amendment is not submitted timely, the Division of Special Investments may determine, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126, that such an amendment is acceptable on an exception basis. Where an amendment is determined to be acceptable on an exception basis, the amended information shall be used as the basis for issuing the securities, and an administrative fee of $100 per subscription will be assessed. The Secretary reserves the right to reject amendments which are not submitted timely.

(10) Section 344.3(c)—In this section, the Bureau of the Public Debt is substituted for the Federal Reserve Banks to reflect the consolidation of program administration in Parkersburg, WV. The current rule requires that a final subscription must be submitted on or before the issue date. As proposed, this section would add a 3 p.m., Eastern time, submission deadline. In addition, this proposed section is updated to reflect sending of a final subscription by facsimile equipment.

(11) Section 344.3(c)(1)—A typographical error in the current regulation is corrected.

(12) Section 344.4—The current section is divided into two parts, (a) and (b).

(13) Section 344.4(a)—This section would require that the issue date selected by the subscriber must be a business day and would allow for the sending of initial subscriptions by facsimile or other carrier. In this section, the Bureau of the Public Debt is substituted for the Federal Reserve

Banks. The current rule requires investors to make payment by having their financial institution deposit funds in a reserve account for debit by a Federal Reserve Bank or Branch on or before the date of issue. Under the proposed section, full payment for each subscription must be submitted utilizing the Fedwire funds transfer system.

(14) Section 344.4(b)—The current regulation provides that any subscriber which fails to make settlement on a subscription once submitted is ineligible thereafter to subscribe for securities under this offering for a period of six months. Under the current regulation, the Commissioner of the Public Debt may determine, given the circumstances of the case, that the six month penalty need not apply. As proposed, the Division of Special Investments may determine to waive the six month penalty, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126. Where settlement occurs after the proposed issue date and the Division of Special Investments determines, pursuant to 31 CFR 306.126, that settlement is acceptable on an exception basis, the six month penalty will be waived, and the subscriber shall be subject to a late payment assessment. The assessment will include payment of an amount equal to the amount of interest that would have accrued on the securities from the proposed issue date to the date of settlement, as well as an administrative fee of $100 per subscription. Assessments under this subsection are due on demand. Failure to pay an assessment shall render the subscriber ineligible thereafter to subscribe for securities under this offering until the assessment is paid.

(15) Section 344.5(b)(2)—This section would add a reference to a designated Treasury form and delete a reference to wire as an authorized means of submitting notice for redemption prior to maturity. The agency's Parkersburg, WV, address is substituted for its former Washington, DC, address. This proposed section would allow the notice of redemption to be sent by facsimile or by other carriers. The current regulation provides that notice of redemption must be received no less than 15 calendar days before the requested redemption date. However, owners are encouraged to provide as much notice of redemption as possible to assure that payment can be timely made. As proposed, this section would provide that notice be submitted no less than 15 calendar days and no more than 60 calendar days before the requested redemption date.

(16) Section 344.5(b)(3)(ii)—The current regulation states that the applicable rate table for determining the "current borrowing rate" is the one in effect on the day the request for early redemption is received or, where mailed, the postmark date. This section would clarify that the applicable rate table is the one in effect on the day the request for early redemption is telecopied, postmarked, or where delivered by other carrier, date-stamped.

*Subpart C—Demand Deposit Securities*

The Tax Reform Act of 1986 imposed arbitrage rebate requirements on issuers of tax-exempt bonds and directed the Department of the Treasury to accommodate such requirements by enabling entities to invest qualifying funds in a Treasury money-market type investment vehicle. Accordingly, the Department expanded the State and Local Government Series program, beginning with its 1986 regulations, to include a demand deposit security offering. This security is not treated as investment property for purposes of sections 143(g)(3) and 148 of the Internal Revenue Code and, therefore, enables eligible entities to invest proceeds of tax-exempt bonds in an obligation which avoids the earning of arbitrage subject to rebate. Proposed changes from the current rule are as follows:

(1) Section 344.6(c)—A typographical error in the current regulation is corrected.

(2) Section 344.7(a)—A typographical error in the current regulation is corrected, and the Bureau of the Public Debt is substituted for the Federal Reserve Banks to reflect the consolidation of program activities in Parkersburg, WV. The current regulation provides that subscriptions must be received under this section at least three business days before the issue date, by a 1 p.m., Eastern time, deadline. The proposed section would clarify that subscriptions may be submitted by certified or registered mail, or by other carrier. In addition, the proposed section provides that a subscription may be submitted by facsimile equipment, at least three business days before the issue date, provided that the original subscription form is submitted by mail, or other carrier, and is received by the Bureau of the Public Debt by 3 p.m., Eastern time, on the issue date.

(3) Section 344.7(b)—Current § 344.7(b) is redesignated § 344.7(c) and a new § 344.7(b) is added. The current regulation provides that the principal amount to be invested may be changed without penalty so long as notice is provided by 1 p.m., Eastern time, at least one business day before the issue date. The proposed section provides that the principal amount to be invested may be changed without penalty on or before the issue date, but no later than 1 p.m., Eastern time, on the issue date. This section would allow for sending of amendments to original subscriptions by facsimile, provided the notification is clearly identified as an amendment and is immediately followed by the submission, by mail or other carrier, of written notification of the amendment. In addition, this section would provide that, where an amendment is not submitted timely, the Division of Special Investments may determine, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126, that such an amendment is acceptable on an exception basis. Where an amendment is determined to be acceptable on an exception basis, the amended information shall be used as the basis for issuing the securities, and an administrative fee of $100 per subscription will be assessed. The Secretary reserves the right to reject amendments which are not submitted timely.

(4) Section 344.7(c)—Current § 344.7(b) is redesignated as § 344.7(c). A typographical error in current § 344.7(b)(5)(vii) is corrected.

(5) Section 344.8—The current section is divided into two parts, (a) and (b).

(6) Section 344.8(a)—In this section, the Bureau of the Public Debt is substituted for the Federal Reserve Banks to reflect the consolidation of program activities in Parkersburg, WV. The current rule requires investors to deposit funds in an account for debit by a Federal Reserve Bank or Branch on or before the date of issue. As proposed, this section would require that full payment for each subscription be submitted utilizing the Fedwire funds transfer system.

(7) Section 344.8(b)—The current regulation provides that any subscriber which fails to make settlement on a subscription once submitted is ineligible thereafter to subscribe for securities under this offering for a period of six months. Under the current regulation, the Commissioner of the Public Debt may determine, given the circumstances of the case, that the six month penalty need not apply. As proposed, the Division of Special Investments may determine to waive the six month penalty, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126. Where settlement occurs after the proposed issue date and the Division of Special Investments determines, pursuant to 31 CFR

306.126, that such settlement is acceptable on an exception basis, the six month penalty will be waived, and the subscriber shall be subject to a late payment assessment. The assessment will include payment of an amount equal to the amount of interest that would have accrued on the securities from the proposed issue date to the date of settlement, as well as an administrative fee of $100 per subscription. Assessments under this subsection are due on demand. Failure to pay an assessment shall render the subscriber ineligible thereafter to subscribe for securities under this offering until the assessment is paid.

(8) Section 344.9(b)—The Bureau of the Public Debt is substituted for the Federal Reserve Banks to reflect the consolidation of program activities in Parkersburg, WV. This section would allow for sending of the notice of redemption by facsimile or by other carriers. The notice must show the account number and the tax identification number of the subscriber. Under this proposed section, the notice must be received at the Bureau of the Public Debt by 1 p.m., Eastern time, one business day prior to the requested redemption date.

*Subpart D—Special Zero Interest Securities*

To give investors flexibility in investing certain proceeds that may become subject to yield restrictions, a new special zero interest security was offered for the first time with the 1989 rule. Under the terms of this offering, subscribers are not required to certify that as of the date of investment all the proceeds subject to yield restrictions are being invested in State and Local Government securities. With exceptions, this offering is the same as that for time deposit securities. Proposed changes from the 1989 rule are as follows:

(1) Section 344.13—This section would add a reference to a designated Treasury form and delete a reference to wire as an authorized means of submitting notice for redemption prior to maturity. The agency's Parkersburg, WV, address is substituted for its former Washington, DC, address. In addition, the section would allow for sending of the notice for redemption by facsimile or by other carriers. The current regulation provides that notice of redemption must be received no less than 15 calendar days before the requested redemption date. However, owners are encouraged to provide as much notice of redemption as possible to assure that payment can be timely made. Under this proposed section, notice is to be submitted no less than 15 calendar days and no more than 60 calendar days before the requested redemption date.

*Procedural Requirements*

It has been determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, an assessment of anticipated benefits, costs and regulatory alternatives is not required.

Although this rule is being issued in proposed form to secure the benefit of public comment, the rule relates to matters of public contract, as well as the borrowing power and fiscal authority of the United States. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) do not apply.

The collections of information contained in this regulation have been previously reviewed and approved by the Office of Management and Budget, in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1535–0091. The principal purpose of the proposed rule is to change the address of the receiving entity. The revision would not impose a new collection of information requirement.

**List of Subjects in 31 CFR Part 344**

Bonds, Government securities, Securities.

Dated: September 30, 1994.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

For the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, Part 344 is proposed to be revised to read as follows:

## PART 344—REGULATIONS GOVERNING UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS—STATE AND LOCAL GOVERNMENT SERIES, UNITED STATES TREASURY NOTES—STATE AND LOCAL GOVERNMENT SERIES, AND UNITED STATES TREASURY BONDS—STATE AND LOCAL GOVERNMENT SERIES

**Subpart A—General Information**

Sec.

344.0 Offering of securities.
344.1 General provisions.

**Subpart B—Time Deposit Securities**

344.2 Description of securities.
344.3 Subscription for purchase.
344.4 Issue date and payment.
344.5 Redemption.

**Subpart C—Demand Deposit Securities**

344.6 Description of Securities.
344.7 Subscription for purchase.
344.8 Issue date and payment.
344.9 Redemption.

**Subpart D—Special Zero Interest Securities**

344.10 General.
344.11 Description of securities.
344.12 Subscription for purchase.
344.13 Redemption.

**Appendix A to Part 344—Early Redemption Market Change Formulas and Examples**

**Authority:** 31 U.S.C. 3102, *et seq.*

### Subpart A—General Information

**§ 344.0 Offering of securities.**

(a) In order to provide issuers of tax exempt securities with investments which allow them to comply with yield restriction and arbitrage rebate provisions of the Internal Revenue Code, the Secretary of the Treasury offers for sale the following State and Local Government Series securities:

(1) Time deposit securities:

(i) United States Treasury Certificates of Indebtedness,

(ii) United States Treasury Notes, and

(iii) United States Treasury Bonds.

(2) Demand deposit securities—United States Treasury Certificates of Indebtedness.

(3) Special zero interest securities:

(i) United States Treasury Certificates of Indebtedness.

(ii) United States Treasury Notes.

(b) As appropriate, the definitions of terms used in this Part 344 are those found in the relevant portions of the Internal Revenue Code and regulations. The term "government body" refers to issuers of State or local government bonds described in section 103 of the Internal Revenue Code, as well as to any other entity subject to the yield restrictions in sections 141–150 of the Internal Revenue Code, or the arbitrage rebate requirements in section 143(g)(3) or 148 of the Internal Revenue Code. The term "postmark date" refers to the date affixed by the U.S. Postal Service, not to a postage meter date. The "date telecopied" for material sent by facsimile equipment is the date transmitted as it appears on the document received. The term "date-stamp" refers to the date affixed by the carrier service upon the carrier's taking receipt of the material.

(c) This offering will continue until terminated by the Secretary of the Treasury.

**§ 344.1 General provisions.**

(a) *Regulations.* United States Treasury State and Local Government Series securities shall be subject to the general regulations with respect to

United States securities, which are set forth in the Department of the Treasury Circular No. 300 (31 CFR part 306), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Forms Management—Room 301, 200 Third Street, PO Box 396, Parkersburg, WV 26102–0396, or a Federal Reserve Bank or Branch.

(b) *Issuance.* The securities will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Parkersburg, WV 26102–0396. Transfer of securities by sale, exchange, assignment or pledge, or otherwise will not be permitted.

(c) *Transfers.* Securities held in an account of any one type, i.e., time deposit, demand deposit, or special zero interest, may not be transferred within that account or to an account of any other type.

(d) *Fiscal agents.* Selected Federal Reserve Banks and Branches, as fiscal agents of the United States, may be designated to perform such services as may be requested of them by the Secretary of the Treasury in connection with the purchase of, transactions involving, and redemption of, the securities.

(e) *Authority of subscriber.* Where a commercial bank submits an initial or final subscription on behalf of a government body, it must certify that it is acting under the latter's specific authorization; ordinarily, evidence of such authority will not be required. Subscriptions submitted by an agent other than a commercial bank must be accompanied by evidence of the agent's authority to act. Such evidence must describe the nature and scope of the agent's authorization, must specify the legal authority under which the agent was designated, and must relate by its terms to the investment action being undertaken. Subscriptions unsupported by such evidence will not be accepted.

(f) *Reservations.* Transaction requests, including requests for subscription and redemption, will not be accepted if unsigned, inappropriately completed, or not timely submitted. The Secretary of the Treasury reserves the right:

(1) To reject any application for the purchase of securities under this offering;

(2) To refuse to issue any such securities in any case or any class(es) of cases; and

(3) To revoke the issuance of any security, and to declare the subscriber ineligible thereafter to subscribe for securities under this offering, if any security is issued on the basis of an improper certification or other misrepresentation by the subscriber, other than as the result of an inadvertent error, if the Secretary deems such action to be in the public interest.

(4) Any of these actions shall be final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to this Part 344.

(g) *Debt limit contingency.* The Department of the Treasury reserves the right to change or suspend the terms and conditions of this offering, including provisions relating to subscriptions for, and issuance of, securities, interest payments, redemptions, and rollovers, as well as notices relating hereto, at any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit. Announcement of such changes shall be provided by such means as the Department deems appropriate.

(Approved by the Office of Management and Budget under control number 1535–0091)

## Subpart B—Time Deposit Securities

### § 344.2 Description of securities.

(a) *Terms.*

(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 30 calendar days up to and including one year, or for any intervening period.

(2) *Notes.* The notes will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from one year and one day up to and including 10 years, or for any intervening period.

(3) *Bonds.* The bonds will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 10 years and one day up to and including 30 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear such rate of interest as the government body shall designate, but the rate shall not exceed the maximum interest rate. The applicable maximum interest rates for each day shall equal rates shown in a table (Form PD 4262), which will be released to the public by 10 a.m., Eastern time, each business day. If the Treasury finds that due to circumstances beyond its control the rates will not be available to the public by 10 a.m., Eastern time, on any given business day, it will provide an immediate announcement of that fact and advise that the applicable interest for the last preceding business day shall apply. The applicable rate table for any subscription is the one in effect on the date the initial subscription is telecopied, if transmitted by facsimile equipment, postmarked, if mailed, or carrier date-stamped, if the initial subscription is delivered by other carrier. Subscriptions telecopied, postmarked, or date-stamped on a non-business day will be subject to those interest rates which are in effect for the next business day. The rates specified in the tables are one-eighth of one percent below the then current estimated Treasury borrowing rate for a security of comparable maturity.

(c) *Payment.*

(1) *Interest computation and payment dates.* Interest on a certificate will be computed on an annual basis and will be paid at maturity with the principal. Interest on a note or bond will be paid semiannually. The subscriber will specify the first interest payment date, which must occur any time between 30 days and one year of the date of issue, and the final interest payment date must coincide with the maturity date of the security. Interest for other than a full semiannual interest period is computed on the basis of a 365-day or 366-day year (for certificates) and on the basis of the exact number of days in the half-year (for notes and bonds). See appendix to subpart E of part 306 of this chapter for rules regarding computation of interest.

(2) *Method of payment.* For securities for which subscriptions are submitted on or after February 1, 1987, payment will only be made by the Automated Clearing House method (ACH) for the owner's account at a financial institution designated by the owner. To the extent applicable, provisions of § 357.26 on "Payments," as set forth in 31 CFR part 357 and provisions of 31 CFR part 370, shall govern ACH payments made under this offering. For securities for which subscriptions were submitted prior to February 1, 1987, payment will be made:

(i) By a direct credit to a Federal Reserve Bank or Branch for the account of the financial institution servicing the investor; or

(ii) By ACH for the owner's account at a financial institution; or

(iii) By fiscal agency check; or

(iv) In accordance with other prior arrangements made by the subscriber with the Bureau of the Public Debt.

### § 344.3 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to the Division of Special Investments,

Bureau of the Public Debt, 200 Third Street, PO Box 396, Parkersburg, WV 26102–0396. Initial and final subscriptions may be submitted by facsimile equipment at (304) 480–6818, by mail, or by other carrier. All subscriptions submitted by mail, whether initial or final, should be sent by certified or registered mail.

(b) *Initial subscriptions.* (1) An initial subscription, either on a designated Treasury form or in letter form, stating the principal amount to be invested and the issue date, must be telecopied, postmarked, or where delivered by other carrier, must be date-stamped at least 15 calendar days before issue date. For example, if the securities are to be issued on March 16, the subscription must be telecopied, postmarked, or date-stamped no later than March 1. If the initial subscription is in letter form, it should read substantially as follows:

To: Bureau of the Public Debt

Pursuant to the provisions of Department of the Treasury Circular, Public Debt Series No. 3–72, current revision, the undersigned hereby subscribes for United States Treasury Time Deposit Securities—State and Local Government Series, to be issued as entries on the books of the Bureau of the Public Debt, Department of the Treasury, in the total amount and with the issue date shown below, which date is at least 15 calendar days after the date of this subscription:

Principal Amount

$ _____

Issue Date

_____

The undersigned agrees that the final subscription and payment will be submitted on or before the issue date.

(Tax I.D. Number of State or local government body or other entity eligible to purchase State and Local Government Series securities)

(Name of State or local government body or other entity eligible to purchase State and Local Government Series securities)

_____

(Date)

by _____

(Signature and Title)

(2) The provisions set out in paragraph (e) of § 344.1, dealing with the authority of the subscriber to act on behalf of a government body, and in § 344.4, relating to the failure to complete a subscription, apply to initial, as well as final subscriptions.

(3) An initial subscription may be amended on or before the issue date, but no later than 3 p.m., Eastern time, on the issue date. Notification may be telecopied by facsimile equipment to the Bureau of the Public Debt at (304) 480–6818 provided the request is clearly identified as an amendment and is immediately followed by the submission, by mail or other carrier, of written notification. Amendments to initial subscriptions are acceptable with the following exceptions:

(i) The issue date may not be changed to require issuance earlier than the issue date originally specified or to require issuance more than seven calendar days later than originally specified. If such change is made, notification should be provided to the Bureau of the Public Debt as soon as possible, but no later than 3 p.m., Eastern time, one business day before the originally specified issue date;

(ii) The aggregate amount may not be changed by more than the ten percent limitation set out in paragraph (c) of this section;

(iii) An interest rate may not be changed to a rate that exceeds the maximum interest rate in the table that was in effect on the date the initial subscription was submitted; and

(iv) Where an amendment is not submitted timely, the Division of Special Investments may determine, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126, that such an amendment is acceptable on an exception basis. Where an amendment is determined to be acceptable on an exception basis, the amended information shall be used as the basis for issuing the securities, and an administrative fee of $100 per subscription will be assessed. The Secretary reserves the right to reject amendments which are not submitted timely.

(4) No initial subscription will be required where a final subscription is received or postmarked at least 15 calendar days before the issue date. Such final subscription will be treated as the initial subscription for purposes of determining the applicable interest rate table (see § 344.2(b)), and may be amended on or before the issue date, subject to the exceptions in paragraph (b)(3) of this section.

(c) *Final subscriptions.* A final subscription must be received by the Bureau of the Public Debt on or before the issue date, but no later than 3 p.m., Eastern time, on the issue date. The final subscription may be telecopied by facsimile equipment to the Bureau of the Public Debt at (304) 480–6818 provided the facsimile is properly identified as a final subscription and is immediately followed by the submission of the original subscription form by mail or other carrier. The final subscription must be for a total principal amount that is no more than ten percent above or below the aggregate principal amount specified in the initial subscription. The final subscription, dated and signed by an official authorized to make the purchase and showing the taxpayer identification number of the beneficial owner, must be accompanied by a copy of the initial subscription, where applicable. The various maturities, interest rates, and semiannual interest payment dates (in the case of notes and bonds), must be specified in the final subscription, as well as the title(s) of the designated official(s) authorized to request early redemption. Final subscriptions submitted for certificates, notes and bonds must separately itemize securities of each maturity and each interest rate. The final subscription must contain a certification by the subscriber that, as of the date of investment (without regard to any temporary period of no longer than 30 days):

(1) The total investment consists only of proceeds (including amounts treated as proceeds) of a tax-exempt bond issue which are subject to yield restrictions under sections 141–150 of the Internal Revenue Code during the entire period of investment;

(2) The total investment is not less than all of such proceeds except for—

(i) An amount not to exceed $100, and

(ii) Amounts required for payment due less than 30 days from the date of issue;

(3) None of the proceeds submitted in payment is derived (directly or indirectly) from the redemption before maturity of other securities of the State and Local Government Series; and

(4)(i) No portion of the investment is being made (directly or indirectly) with amounts that are to be used to discharge a tax-exempt bond issue and that are derived or are to be derived (directly or indirectly) from the sale of escrowed open market securities, the proceeds of which were to be used to discharge a tax-exempt bond issue; or

(ii) Although a portion of the investment is being made (directly or indirectly) with amounts that are to be used to discharge a tax-exempt bond issue and that are derived or are to be derived (directly or indirectly) from the sale of escrowed open market securities, the proceeds of which were to be used to discharge a tax-exempt bond issue, the composite yield to maturity of all investments being purchased with such amounts does not exceed the composite yield to maturity of the securities that were sold, based on the price at which they were sold.

(5) Where proceeds are subject to yield restrictions for a limited period of time, under paragraph (c)(1) of this section, no investment of such proceeds beyond such period may be made. For example, if a reserve fund of a refunding issue is subject to yield restrictions for a period of four years, the securities purchased as an investment of the reserve fund may not have a maturity longer than four years. With respect to obligations described in section 103 of the Internal Revenue Code issued after January 31, 1987, paragraph (c)(2) of this section is satisfied only if on the date of investment, all the proceeds of the issue which are subject to yield restrictions are invested in State and Local Government Series securities. Paragraph (c)(2) of this section does not apply to purpose investments, such as mortgage notes or student loan obligations. Transferred proceeds of the tax exempt bond issue that were proceeds of another issue shall not be treated as proceeds for purposes of paragraph (c)(2) of this section if no portion of the total investment consists of such proceeds. See § 344.1(f) as to improper certifications.

(Approved by the Office of Management and Budget under control number 1535-0091)

**§ 344.4 Issue date and payment.**

(a) *General.* The subscriber shall fix the issue date of each security in the initial subscription. The issue date must be a business day and may not exceed by more than 60 calendar days either the date the initial subscription was telecopied to the Bureau of the Public Debt or, where mailed, the postmark date, or where delivered by other carrier, the carrier date-stamp thereof. Full payment for each subscription must be submitted by the Fedwire funds transfer system with credit directed to the Treasury's General Account. Full payment should be submitted by 3 p.m., Eastern time, to ensure that settlement on the securities occurs on the date of issue.

(b) *Noncompliance.* The penalty imposed on any subscriber which fails to make settlement on a subscription once submitted shall be to render the subscriber ineligible thereafter to subscribe for securities under this offering for a period of six months, beginning on the date the subscription is withdrawn or the proposed issue date, whichever occurs first. The Division of Special Investments may determine to waive the six month penalty, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126. Where settlement occurs after the proposed issue date and the Division of Special Investments determines, pursuant to 31 CFR 306.126, that settlement is acceptable on an exception basis, the six month penalty will be waived, and the subscriber shall be subject to a late payment assessment. The assessment will include payment of an amount equal to the amount of interest that would have accrued on the securities from the proposed issue date to the date of settlement, as well as an administrative fee of $100 per subscription. Assessments under this subsection are due on demand. Failure to pay an assessment shall render the subscriber ineligible thereafter to subscribe for securities under this offering until the assessment is paid.

(Approved by the Office of Management and Budget under control number 1535–0091)

**§ 344.5 Redemption.**

(a) *General.* A security may not be called for redemption by the Secretary of the Treasury prior to maturity. Upon the maturity of a security, the Department will make payment of the principal amount and interest due to the owner thereof. A security scheduled for redemption on a non-business day will be redeemed on the next business day.

(b) *Before maturity.*

(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate, and one year after the issue date in the case of a note or bond. Partial redemptions may be requested in multiples of $100; however, an account balance of less than $1,000 will be redeemed in total.

(2) *Notice.* Notice of redemption prior to maturity must be submitted, either on a designated Treasury form or by letter, by the official(s) authorized to redeem the securities, as shown on the final subscription form, to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, PO Box 396, Parkersburg, WV 26102–0396. The notice may be submitted by facsimile equipment to the Bureau of the Public Debt at (304) 480–6818, by mail, or by other carrier. The notice must show the account number, the maturities of the securities to be redeemed, and the tax identification number of the subscriber. The notice of redemption must be telecopied, postmarked, or where delivered by other carrier, must be date-stamped no less than 15 calendar days before the requested redemption date, but no more than 60 calendar days before the requested redemption date. A notice of redemption prior to maturity may not be cancelled.

(3) *Redemption proceeds—Subscriptions on or after September 1, 1989.* For securities subscribed for on or after September 1, 1989, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be the present value of the future increased borrowing cost to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. For certificates, the increased borrowing cost for the remaining period to original maturity is determined by multiplying the annual cost by the number of days remaining until original maturity divided by the number of days in the calendar year. Present value shall be determined by using the current borrowing rate as the discount factor. The term "current borrowing rate" means the applicable rate shown in the table of maximum interest rates payable on United States Treasury securities—State and Local Government Series—for the day the request for early redemption is telecopied, postmarked, or where delivered by other carrier, date-stamped, plus one-eighth of one percentage point. Where redemption is requested as of a date less than 30 calendar days before the original maturity date, such applicable rate is the rate shown for a security with a maturity of 30 days. The market charge for bonds, notes, and certificates of indebtedness can be computed by use of the formulas in Appendix A to this part.

(4) *Redemption proceeds—Subscriptions from December 28, 1976 through August 31, 1989.* For securities subscribed for from December 28, 1976 through August 31, 1989, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* Interest for the entire period the security was outstanding shall be recalculated on the basis of the lesser of the original interest rate at which the security was issued, or the interest rate that would have been set at

the time of the initial subscription had the term for the security been for the shorter period. If a note or bond is redeemed before maturity on a date other than a scheduled interest payment date, no interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Overpayment of interest.* If there have been overpayments of interest, as determined under paragraph (b)(4)(i) of this section, there shall be deducted from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semiannually, thereon from the date of each overpayment to the date of redemption. The interest rate to be used in calculating the interest on the overpayment shall be one-eighth of one percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period.

(iii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be calculated using the formula in paragraph (b)(3)(ii) of this section.

(5) *Redemption proceeds—Subscriptions on or before December 27, 1976.* (i) For securities subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated as follows.

(ii) The interest for the entire period the security was outstanding shall be recalculated on the basis of the lesser of the original interest rate at which the security was issued, or an adjusted interest rate reflecting both the shorter period during which the security was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issuance for a marketable Treasury certificate, note, or bond maturing on the quarterly maturity date prior to redemption (in the case of certificates), or on the semiannual maturity period prior to redemption (in the case of notes and bonds), reduced in either case by a penalty which shall be the lesser of:

(A) One-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption, or

(B) One-fourth of one percent.

There shall be deducted from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

(Approved by the Office of Management and Budget under control number 1535–0091)

## Subpart C—Demand Deposit Securities

### § 344.6 Description of securities.

(a) *Terms.* The securities are defined as one-day certificates of indebtedness. The securities will be issued in a minimum of $1,000 and any increment above that amount. Each subscription will be established as a unique account. Securities will be automatically rolled over each day unless redemption is requested.

(b) *Interest rate.* (1) Each security shall bear a variable rate of interest based on an adjustment of the average yield for three-month Treasury bills at the most recent auction. A new rate will be effective on the first business day following the regular auction of three-month Treasury bills and will be shown in the table (Form PD 4262), available to the public on such business day. Interest will be accrued and added to the principal daily. Interest will be computed on the balance of the principal, plus interest accrued through the immediately preceding day.

(2)(i) The annualized effective demand deposit rate in decimals, designated "I" in Equation 1 is calculated as:

$$I=[(100/P)^{Y/DTM}-1]\ (1-MTR)-TAC$$

(Equation 1)

where

P=The average auction price for the Treasury bill, per hundred, to three decimal places.

Y=365 if the year following issue date does not contain a leap year day and 366 if it does contain a leap year day.

DTM=The number of days from date of issue to maturity for the auctioned Treasury bill.

MTR=Estimated average marginal tax rate, in decimals, of purchasers of short-term tax exempt bonds.

TAC=Treasury administrative costs, in decimals.

(ii) The daily factor for the demand deposit rate is then calculated as:

$$DDR=(1+I)^{1/Y}-1$$

(Equation 2)

(3) Information as to the estimated average marginal tax rate and costs for administering the demand deposit State and Local Government Series securities program, both to be determined by Treasury from time to time, will be published in the **Federal Register.**

(c) *Payment.* Interest earned on the securities will be added to the principal and will be reinvested daily until redemption. At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, the Department will invest any unredeemed demand deposit securities in special 90-day certificates of indebtedness. These 90-day certificates will be payable at maturity, but redeemable before maturity, provided funds are available for redemption, or reinvested in demand deposit securities when regular Treasury borrowing operations resume, both at the owner's option. Funds invested in the 90-day certificates of indebtedness will earn simple interest equal to the daily factor in effect at the time demand deposit security issuance is suspended, multiplied by the number of days outstanding.

### § 344.7 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, PO Box 396, Parkersburg, WV 26102–0396. Subscriptions must be submitted on a designated Treasury form, must specify the principal amount to be invested and the issue date, and must be signed by an official authorized to make the purchase. The Bureau of the Public Debt must receive the subscription at least three business days before the issue date. The subscription may be submitted by certified or registered mail, or by other carrier. The subscription may also be submitted by facsimile equipment at (304) 480–6818, at least three business days before the issue date, provided that the original subscription form is submitted by mail, or by other carrier, and is received by the Division of Special Investments by 3 p.m., Eastern time, on the issue date.

(b) *Amending subscriptions.* The principal amount to be invested may be changed without penalty on or before the issue date, but no later than 1 p.m. Eastern time, on the issue date. Notification may be telecopied by facsimile equipment to the Division of Special Investments at (304) 480–6818, provided the request is clearly identified as an amendment and is immediately followed by the submission, by mail or other carrier, of written notification. Where an amendment is not submitted timely, the Division of Special Investments may

determine, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126, that such an amendment is acceptable on an exception basis. Where an amendment is determined to be acceptable on an exception basis, the amended information shall be used as the basis for issuing the securities, and an administrative fee of $100 per subscription will be assessed. The Secretary reserves the right to reject amendments which are not submitted timely.

(c) *Certification.* By completing the subscription form, subscribers certify to the following:

(1) Neither the aggregate issue price nor the stated redemption price at maturity of the bonds that are part of the tax-exempt issue exceeds $35 million. Issue price and stated redemption price at maturity have the meanings given such terms in sections 1273 and 1274 of the Internal Revenue Code;

(2) No portion of the tax-exempt bond issue has been or will be issued or permitted to remain outstanding, and the expenditure of gross proceeds of the tax-exempt bond issue has not and will not be delayed, for the principal purpose of investing in demand deposit securities;

(3) Only eligible gross proceeds of the tax-exempt bond issue have been and will be submitted in payment for demand deposit securities. Eligible gross proceeds are all gross proceeds of the tax-exempt bond issue except—

(i) Gross proceeds of an advance refunding issue to be used to discharge another issue;

(ii) Gross proceeds accumulated in a reserve or replacement fund (other than a bona fide debt service or reasonably required reserve or replacement fund); and

(iii) Solely for purposes of this paragraph (c)(3), gross proceeds previously invested at any time pursuant to any exception in paragraph (c)(5) of this section, other than paragraph (c)(5)(vi) (Exception 6) (relating to amounts of less than $25,000) and paragraph (c)(5)(viii) (Exception 8) (relating to inadvertent error).

(4) At least 25 percent of the eligible gross proceeds received from the sale of the tax-exempt bond issue have been or will be invested in demand deposit securities within three business days of the date of receipt thereof;

(5) All eligible gross proceeds of the tax-exempt bond issue have been and will be invested within four business days of the date of receipt thereof in demand deposit securities (principal repayments on purpose investments are treated as gross proceeds received on the date of repayment). This paragraph (c)(5) shall not apply to gross proceeds that are at all times (prior to the date of expenditure thereof) invested pursuant to one of the exceptions:

(i) *Exception 1.* Gross proceeds that are invested solely in investments the earnings on which are not subject to rebate under section 148(f) or 143(g)(3) of the Internal Revenue Code (whichever applies).

(ii) *Exception 2.* Gross proceeds that are invested in obligations the earnings on which are not reasonably expected to be subject to rebate by reason of section 148(f)(4)(A)(ii) (relating to certain bona fide debt service funds) of the Internal Revenue Code or section 148(f)(4)(B) (relating to exception for temporary investments) of the Internal Revenue Code.

(iii) *Exception 3.* Gross proceeds that are not reasonably expected to be gross proceeds of the tax-exempt bond issue for more than seven business days.

(iv) *Exception 4.* Gross proceeds that are part of a reasonably required reserve or replacement fund (other than a bona fide debt service fund) for the tax-exempt bond issue.

(v) *Exception 5.* Gross proceeds that are invested in taxable obligations, but only if the yield on each obligation (computed separately and on the basis of an arm's length purchase price) is no higher than the yield on the tax-exempt bond issue.

(vi) *Exception 6.* Eligible gross proceeds that are not invested in one-day certificates of indebtedness or pursuant to paragraphs (c)(5)(i–v) (Exceptions 1 through 5), but only if the total amount of such eligible gross proceeds on any particular day is less than $25,000. This paragraph (c)(5)(vi) (Exception 6) shall not apply to gross proceeds that are part of a reasonably required reserve or replacement fund (other than a bona fide debt service fund).

(vii) *Exception 7.* Gross proceeds that are not invested pursuant to paragraph (c)(5)(iv) (Exception 4) or paragraph (c)(5)(vi) (Exception 6), and that are invested in any taxable obligation the yield on which is higher than the yield on the tax-exempt bond issue, but only if taxable obligations described in paragraph (c)(5)(v) (Exception 5), and the tax-exempt obligations described in (c)(5)(i) (Exception 1) are not available for investment (for example, because market interest rates are too high and statutory or indenture restrictions prevent investments in tax-exempt obligations).

(viii) *Exception 8.* Gross proceeds that are not invested in demand deposit securities due to an inadvertent error.

(6) See § 344.1(f) as to improper certifications.

**§ 344.8 Issue date and payment.**

(a) *General.* The subscriber shall fix the issue date on the subscription, the issue date to be a business day at least three business days after receipt of the subscription by the Division of Special Investments. Full payment for each subscription must be submitted by the Fedwire funds transfer system with credit directed to the Treasury's General Account. Full payment should be submitted by 3 p.m., Eastern time, to ensure that settlement on the securities occurs on the date of issue.

(b) *Noncompliance.* The penalty imposed on any subscriber which fails to make settlement on a subscription once submitted shall be to render the subscriber ineligible thereafter to subscribe for securities under this offering for a period of six months, beginning on the date the subscription is withdrawn or the proposed issue date, whichever occurs first. The Division of Special Investments may determine to waive the six month penalty, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126. Where settlement occurs after the proposed issue date and the Division of Special Investments determines, pursuant to 31 CFR 306.126, that settlement is acceptable on an exception basis, the six month penalty will be waived, and the subscriber shall be subject to a late payment assessment. The assessment will include payment of an amount equal to the amount of interest that would have accrued on the securities from the proposed issue date to the date of settlement, as well as an administrative fee of $100 per subscription. Assessments under this subsection are due on demand. Failure to pay an assessment shall render the subscriber ineligible thereafter to subscribe for securities under this offering until the assessment is paid.

(Approved by the Office of Management and Budget under control number 1535–0091)

**§ 344.9 Redemption.**

(a) *General.* A security may be redeemed at the owner's option, provided a request for redemption is received not less than one business day prior to the requested redemption date. Partial redemptions may be requested; however, an account balance of less than $1,000 will be redeemed in total. Payment will be made by crediting the reserve account maintained at the

Federal Reserve Bank or Branch by the financial institution servicing the account owner.

(b) *Notice.* Notice of redemption must be submitted, either on a designated Treasury form or by letter, by the official(s) authorized to redeem the securities, as shown on the subscription form, to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, PO Box 396, Parkersburg, WV 26102–0396. The notice may be submitted by facsimile equipment to the Bureau of the Public Debt at (304) 480–6818, by mail, or by other carrier. The notice must show the account number and the tax identification number of the subscriber. The notice of redemption must be received at the Bureau of the Public Debt by 1 p.m., Eastern time, one business day prior to the requested redemption date.

(c) *Certification.* By completing the redemption form, subscribers certify to the fact that the proceeds to be received will be expended within one day of receipt thereof for the purpose for which the tax-exempt bond was issued.

## Subpart D—Special Zero Interest Securities

### § 344.10 General.

Provisions of subpart B of this part (Time Deposit Securities) apply except as specified in subpart D of this part.

### § 344.11 Description of securities.

(a) *Terms.* Only certificates of indebtedness and notes are offered.

(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from 30 calendar days up to and including one year, or for any intervening period.

(2) *Notes.* The notes will be issued in a minimum amount of $1,000, or in any larger amount, in multiples of $100, with maturity periods fixed by the government body, from one year and one day up to and including 10 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear no interest.

### § 344.12 Subscription for purchase.

In lieu of the certification under § 344.3(c), the final subscription must contain a certification by the subscriber that:

(a) The total investment consists only of original or investment proceeds of a tax-exempt bond issue that are subject to yield restrictions under sections 141–150 of the Internal Revenue Code;

(b) None of the original proceeds of the tax-exempt bond issue were subject to arbitrage yield restrictions under section 148 of the Internal Revenue Code on the date of receipt thereof; and

(c) None of the proceeds submitted in payment are proceeds of an advance refunding issue to be used to discharge another issue or part of a reserve or replacement fund for the advance refunding issue.

### § 344.13 Redemption.

(a) *General.* Provisions of § 344.5(a) apply.

(b) *Before maturity.*

(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate and one year after the issue date in the case of a note. No market charge or penalty shall apply in the case of the redemption of a special zero interest security before maturity.

(2) *Notice.* Notice of redemption prior to maturity must be submitted, either on a designated Treasury form or by letter, by the official(s) authorized to redeem the securities, as shown on the final subscription form, to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, PO Box 396, Parkersburg, WV 26102–0396. The notice may be submitted by facsimile equipment to the Bureau of the Public Debt at (304) 480–6818, by mail, or by other carrier. The notice must show the account number, the maturities of the securities to be redeemed, and the tax identification number of the subscriber. The notice of redemption must be telecopied, postmarked, or where delivered by other carrier, must be date-stamped no less than 15 calendar days before the requested redemption date, but no more than 60 calendar days before the requested redemption date. A notice of redemption prior to maturity cannot be cancelled.

(Approved by the Office of Management and Budget under control number 1535–0091)

### Appendix A to Part 344—Early Redemption Market Change Formulas and Examples

A. The amount of the market charge for bonds and notes can be determined through use of the following formula:

$$M = \frac{\left(\frac{b}{2}\right)\left(\frac{r}{s}\right)+\left(\frac{b}{2}\right)(a)}{1+\left(\frac{r}{s}\right)\left(\frac{i}{2}\right)}$$

(Equation 1)

where

M=market charge

b=increased annual borrowing cost (i.e., principal multiplied by the excess of the current borrowing rate for the period from redemption to original maturity of note or bond over the rate for the security)

r=number of days from redemption to beginning of next semiannual interest period

s=number of days in current semiannual period

i=current borrowing rate for period from redemption to maturity (expressed in decimals)

n=number of remaining full semiannual periods to the original maturity date

$$a = \frac{\left(1-v^n\right)}{\frac{i}{2}}$$

(Equation 2)

$$v^n = \frac{1}{\left(1+\frac{i}{2}\right)^n}$$

(Equation 3)

B. The application of this formula may be illustrated by the following example:

(1) Assume that a $600,000 note is issued on July 1, 1985, to mature on July 1, 1995. Interest is payable at a rate of 8% on January 1 and July 1.

(2) Assume that the note is redeemed on February 1, 1989, and that the current borrowing rate for Treasury at that time for the remaining period of 6 years and 150 days is 11%.

(3) The increased annual borrowing cost is $18,000. ($600,000)x(11%-8%)

(4) The market charge is computed as follows:

$$M = \frac{\left(\frac{\$18,000}{2}\right)\left(\frac{150}{181}\right)+\left(\frac{\$18,000}{2}\right)(a)}{1+\left(\frac{150}{181}\right)\left(\frac{.11}{2}\right)} =$$

(Equation 4)

$$\frac{\$7,458.56+(\$9,000)(a)}{1.045580111} =$$

(Equation 5)

$$\$7,458.56+(\$9,000)\left(\frac{1-\frac{1}{\left(1+\frac{.11}{2}\right)^{12}}}{\frac{.11}{2}}\right)=$$

$$1.045580111$$

(Equation 6)

$$\frac{\$7.458.56+(\$9,000)(8.618517849)}{1.045580111}=$$

(Equation 7)

$$\frac{\$7.458.56+\$77,566.66}{1.045580111}=$$

(Equation 8)

$81,318.71

(Equation 9)

C. The amount of the market charge for certificates can be determined through use of the following formula:

$$M=\frac{(b)\left(\frac{r}{s}\right)}{1+\frac{r}{s}(i)}$$

(Equation 10)

where
M=market charge
b=increased borrowing cost for full period
r=number of days from redemption date to original maturity date
s=number of days in current annual period (365 or 366)
i=current borrowing rate expressed in decimals (discount factor)

D. The application of this formula may be illustrated by the following example:

(1) Assume that a $50,000 certificate is issued on March 1, 1987, to mature on November 1, 1987. Interest is payable at a rate of 10%.

(2) Assume that the certificate is redeemed on July 1, 1987, and that the current borrowing cost to Treasury for the 123-day period from July 1, 1987, to November 1, 1987, is 11.8%.

(3) The increased annual borrowing cost is $900. ($50,000–11.8%-10%)

(4) The market charge is computed as follows:

$$M=\frac{\$900\left(\frac{123}{365}\right)}{1+\left(\frac{123}{365}\right)(.118)}=$$

(Equation 11)

$$\frac{303.29}{1.039764384}=$$

(Equation 12)

$291.69

(Equation 13)

[FR Doc. 94–24682 Filed 10–5–94; 8:45 am]
BILLING CODE 4810–39–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MI26–02–6660; FRL–5075–3]

### Approval and Promulgation of Implementation Plans; Michigan: Extension of Public Comment Period

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

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** On August 10, 1994 the EPA proposed to approve, through "direct final" procedure, the exemption request from the requirements contained in section 182(f) of the Clean Air Act (Act) for the Detroit-Ann Arbor ozone nonattainment area in Michigan. See 59 FR 40840 (proposed rule) and 59 FR 40826 (final rule). The EPA has received adverse comments and requests for an extension of the public comment period. As a result, the public comment period will be extended an additional 30 days from the date of the publication of this action. Under the "direct final" procedures all public comments received will be addressed in a subsequent final rule (based upon the proposed rule cited above).

**DATES:** The public comment period is extended until November 7, 1994.

**ADDRESSES:** All written comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Douglas Aburano, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590.

Dated: September 7, 1994.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 94–24676 Filed 10–5–94; 8:45 am]
BILLING CODE 6560–50–P

### 40 CFR Part 300

[FRL–5087–3]

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Radium Chemical Company Superfund site from the National Priorities List: Request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Radium Chemical Company site from the National Priorities List (NPL) and requests public comment on these actions. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further fund-financed remedial action is appropriate at the site and actions taken to date are protective of public health, welfare, and the environment.

**DATE:** Comments concerning the site may be submitted on or before November 15, 1994.

**ADDRESSES:** Comments may be mailed to: Kathleen C. Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 737, New York, NY 10278.

**FOR FURTHER INFORMATION CONTACT:** Comprehensive information on this site is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. For further information or to request an appointment to review the

public docket, please contact: Ms. Janet Cappelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 29–100, New York, NY 10278, (212) 264–8679.

Background information from the Regional pubic docket related to the Radium Chemical Company site is also available for viewing at information repositories noted below:

Sunnyside Branch, Queens Public Library, 43–06 Greenpoint Avenue, Sunnyside, New York 11107

Woodside Branch, Queens Public Library, 54–22 Skillman Avenue, Woodside, New York 11377.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

## I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Radium Chemical Company site, Woodside, Queens County, New York from the NPL and requests public comment on these actions. The NPL constitutes appendix B to the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

The EPA will accept comments concerning the Radium Chemical Company site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for these actions. Section IV discusses how the sites meet the deletion criteria.

## II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

## III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Radium Chemical Company site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New York has concurred with the deletion decisions.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion package, which starts two weeks from the date of the notice, October 15, 1994, and will conclude on November 15, 1994.

4. The Region has made all relevant documents available in the Regional Office and local site information repositories.

The comments received during the notice and comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

The deletion will occur after the EPA Regional Administrator places a Notice in the **Federal Register.** The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Region II Office.

## IV. Basis for Intended Deletion of the Radium Chemical Company Site

The Radium Chemical Company (RCC) site is located at 60–06 27th Avenue in Woodside, Queens County, New York, in a light industrial/residential sector. The site consisted of a 1-story brick building (and a part of a second brick building which shared a wall with this building) bordered on the west by 27th Avenue and on the east by the Brooklyn-Queens Expressway (BQE), a major roadway into New York City.

Founded in New York in 1913, RCC initially produced luminous paint for watch dials and instruments. Later, the company manufactured, leased and sold radium-226 in the form of implant sources to hospitals, medical centers, and research laboratories. In the late 1950's, RCC transferred its operations to the present location in Woodside, New York. The radium and radon devices were stored on-site in lead containers in a brick vault room. Eventually the demand for radium sources lagged as they were replaced with advanced radiotherapy techniques using cesium and cobalt sources. Subsequently, many leased radium sources were returned to RCC and were stored on-site.

In 1983, the State of New York suspended the RCC operating license due to various disposal and safety infractions. RCC attempted to obtain permission to begin operations again in 1986, but was denied. The New York State Department of Labor issued its first Stipulation and Order against RCC on October 17, 1987, for the removal of the radium sources and decontamination of the building. The owner was unable to finance the remediation and, subsequently, abandoned the building. This resulted in a second Stipulation and Order, issued on July 20, 1988, determining that the facility could not be maintained and that it was *de facto* abandoned by RCC. Remaining on-site were a large number of radium-containing sealed devices, some of which were suspected of releasing radium and radon gas. The amount of radium-226 at the site was established to be 110 Curies (Ci). Also on-site were hundreds of containers of

laboratory chemicals, many of which were reactive, corrosive, flammable, and/or potentially shock-sensitive.

In July 1988, at the request of the State of New York, the U.S. Environmental Protection Agency (EPA) undertook a limited emergency removal action under CERCLA, et seq., to secure the facility and remove the radioactive sources. EPA provided 24-hour security and initiated measures to stabilize the site. By August 1988, EPA had erected fencing around the perimeter and installed remote monitoring surveillance, a foam fire suppressant system, special vents, and other safety measures. In February 1989, EPA contracted with Chem-Nuclear Systems, Inc. to remove the radium sources and other hazardous materials from the site and transport them to approved disposal facilities. The removal action was completed in October 1989. Approximately 120 Ci of radium in the form of sources, contaminated debris, and loose radium salts and luminous compounds were removed from the site. This material was disposed of at facilities located in Richland, Washington and Beatty, Nevada, both operated by U.S. Ecology.

On February 10, 1989, at EPA's request, the U.S. Agency for Toxic Substances and Disease Registry (ATSDR) issued a Public Health Advisory to alert the public, EPA, and the State of New York of a serious threat to human health, based on the threatened release of radium-226 from the RCC site. In an August 1989 special NPL update, EPA proposed the RCC site for the NPL based on the ATSDR advisory. On November 21, 1989, the RCC site was added to the National Priorities List.

EPA completed a Focused Feasibility Study (FFS) of the site in April 1990. Excessive levels of Rn-222 and Ra-226 remained in the RCC facility, along with various radium contaminated hazardous chemicals. On June 21, 1990, EPA signed a Record of Decision (ROD) selecting a remedy for the RCC site. The ROD called for the following remedial activities at the site: decontamination of the RCC facility; dismantlement of the RCC building; excavation of contaminated soils and subsurface structures; and transport and disposal of wastes to an approved waste disposal facility.

The EPA community relations activities at the site included a public meeting in May 1990 to present the results of the FFS and the preferred alternative for remediation of the site. All public comments received were addressed. A major concern of the public was the disruption to the local businesses caused by street closings. EPA held subsequent meetings with the local business owners to determine the least obtrusive method for achieving our needs.

The remedial action at the site began in September 1990 with limited mobilization of the Site for surveying purposes. On-site decontamination began on November 16, 1990 and the first shipment of radioactive wastes left the Site on July 11, 1991. The RCC building was decontaminated and dismantled. A portion of an adjoining building, leased by RCC, was fully decontaminated and restored. Dismantling, excavation, and restoration activities were essentially completed by January 1993. Removal of all wastes from the site and revegetation was completed in August 1993. A limited excavation of soils surrounding a sewer line adjacent to the RCC property was conducted during July 1994.

Approximately 812 tons of radioactive soil and debris and 92 cubic feet of radium-contaminated hazardous wastes were transported to the Envirocare of Utah, Inc. facility in Clive, Utah for disposal. Approximately 862 tons of uncontaminated masonry and concrete building debris were transported to the Fresh Kills Landfill on Staten Island, New York for disposal. Other wastes, including approximately 45 tons of elemental lead and 20 tons of structural steel, were transported to the Scientific Ecology Group (SEG), Inc. facility in Oak Ridge, Tennessee for decontamination and recycling to the nuclear industry. Approximately 2.5 Ci of tritium watch faces were transported to the Chem-Nuclear Systems, Inc. facility in Barnwell, South Carolina for disposal. Approximately 36.7 kilograms of radium-contaminated elemental mercury were transported to the University of Tennessee for decontamination, followed by ultimate disposal of the treated residuals at the Chem-Nuclear facility in Barnwell, South Carolina and recycling of the decontaminated elemental mercury. Approximately 1.03 millicuries, associated with a radium calibration source, was transported to Rutgers University for use in radon-generation research. Confirmatory sampling showing the site has been decontaminated below the required levels, that contaminated soils have been excavated and disposed of off-site, and that the site has been backfilled with clean soil, provide further assurance that the site no longer poses any threats to human health or the environment.

EPA, with concurrence of the State of New York, has determined that all appropriate Fund-financed responses under CERCLA at the Radium Chemical Company site have been completed, and that no further cleanup is necessary.

Dated: September 21, 1994.

**Jeanne M. Fox,**

*Regional Administrator, USEPA Region II.*

[FR Doc. 94–24806 Filed 10–5–94; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 94–133, RM–8514]**

### Radio Broadcasting Services; Cape Girardeau, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Kevin G. Greaser proposing the allotment of Channel 230A to Cape Girardeau, Missouri, as that community's third FM broadcast service. The channel can be allotted to Cape Girardeau without a site restriction at coordinates 37-18-21 and 89-31-05.

**DATES:** Comments must be filed on or before November 25, 1994, and reply comments on or before December 12, 1994.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 Nineteenth Street NW., Suite 400, Washington, D.C. 20036.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 534–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–113 adopted September 23, 1994, and released October 3, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037, (202) 857–3800.

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

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

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

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–24765 Filed 10–5–94; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 94–114, RM–8515]**

**Radio Broadcasting Services; Ettrick, VA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Hoffman Communications, Inc., proposing the allotment of Channel 226A to Ettrick, Virginia, as the community's first local aural transmission service. Channel 226A can be allotted to Ettrick in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) northwest in order to avoid a short-spacing conflict with Station WFOG(FM), Channel 225B, Suffolk, Virginia. The coordinates for Channel 226A at Ettrick are 37–17–53 and 77–32–53.

**DATES:** Comments must be filed on or before November 25, 1994, and reply comments on or before December 12, 1994.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Silverman, Esq., Cole, Raywid & Braverman, 1919 Pennsylvania Avenue NW., Suite 200, Washington, D.C. 20006 (Counsel for petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–114, adopted September 21, 1994, and released October 3, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's cop contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

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

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

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

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–24766 Filed 10–5–94; 8:45 am]

BILLING CODE 6712–01–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Part 391**

**[FHWA Docket No. MC–91–1]**

**Qualification Of Drivers; Vision Deficiencies; Waivers**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Determination; request for comments.

**SUMMARY:** The FHWA announces a Determination which will extend, for thirty days, waivers issued to certain vision-impaired drivers as part of a study instituted in July, 1992. The purpose of the study is to gather information and data to determine whether there should be a change in the current vision standards for operators of commercial motor vehicles (CMVs) in interstate commerce, or provision for individualized waivers. This action is directed solely at those drivers who had been granted temporary waivers to participate in the previously authorized vision waiver study, who numbered 2,411 as of September 30, 1994. This Notice also proposes to revalidate the waivers, allowing the aforementioned drivers to continue to participate in the study until its conclusion, which will occur on or before March 31, 1996. This revalidation would be based upon the Determination made in this document. This action follows, and is consistent with, the decision of the U.S. Court of Appeals for the D.C. Circuit in the case captioned Advocates for Highway and Auto Safety v. Federal Highway Administration, 28 F.3d 1288, D.C. Cir. 1994, which vacated the rule authorizing the temporary waivers and remanded the matter to the agency for further action not inconsistent with the Court's ruling.

**DATES:** Comments must be received on or before October 21, 1994.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. MC–91–1, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** The FHWA has established a special telephone number to receive inquiries regarding this notice. The number is 1–800–832–5660. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays. No Further Waiver Applications Are Required To Be Submitted, Nor Will Any New Waiver Applications For Participation In This Study Be Considered As A Result Of This Action.

**SUPPLEMENTARY INFORMATION:** Section 206(f) of the Motor Carrier Safety Act of 1984, (MCSA) Pub. L. No. 98–554, 98 Stat. 2832 (codified at 49 U.S.C. 31136(e), formerly 49 U.S.C. app. 2505(f)) allows the Secretary of Transportation to grant waivers from the Federal Motor Carrier Safety Regulations only after a determination that such waivers are not contrary to the public interest and are consistent with the safe operation of CMVs. Historically, except for a limb-handicap waiver program established in 1979 (49 CFR 391.49), the agency had granted no individual waivers to drivers who did

not meet the physical qualification requirements set forth at 49 CFR 391.41.

**Current Vision Standard**

The current Federal vision standard for CMV drivers requires:

> Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

49 CFR 391.41(b)(10).

This standard has been applied absolutely in the sense that any individual who does not meet the standard is determined to be physically unqualified to drive a CMV in interstate commerce without further consideration of individual ability. Public policy enunciated in the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 355, as amended) and the Americans with Disabilities Act of 1991 (Pub. L. 101–336, 104 Stat. 327, as amended) indicates that a preferable standard would allow drivers to demonstrate their individual ability to drive safely, in spite of their vision deficiency. However, because no practical means of testing the ability of an individual with various vision deficiencies to safely operate a CMV were known to exist, except actual driving experience, the agency could not grant waivers and be certain that such waivers were "consistent with the safe operation of commercial motor vehicles" as required by the MCSA. The FHWA determined that a group of drivers did exist who, although they did not meet the standard, had already demonstrated their ability to drive safely. These drivers were either operating in intrastate commerce and subject to a less stringent State vision standard, or were operating, unwittingly or otherwise, in contravention of the existing interstate standard. Adoption of the Federal standard by many States, along with stepped-up enforcement at both the State and Federal levels, exposed these drivers to disqualification determinations. This was not inadvertent, however. Laws enacted over the past ten years have effectively increased resources dedicated to the enforcement of the Federal safety regulations or compatible State regulations by a factor of ten. Congress has insisted on uniform standards consistent with Federal regulations issued pursuant to the MCSA of 1984, and has authorized programs to encourage states to adopt those standards. Moreover, Federal regulations implementing the Commercial Motor Vehicle Safety Act of 1986 and its commercial driver's license provisions, have further helped detect drivers operating in interstate commerce who did not meet the Federal physical qualification requirements. Because of these efforts, more than 5,000 unqualified drivers have been identified and removed from interstate driving positions. That is, in fact, the intent of establishing minimum Federal standards and insuring they are enforced.

**Vision Waiver Study**

At the same time that these enforcement efforts were increasing, heightened awareness of the rights of disabled individuals, and the fact that some of the physical qualification standards were absolute in that they permitted no demonstration of ability notwithstanding the physical deficit, caused the FHWA to reexamine its vision standard. Several research studies, although acknowledging that visual capacity was an essential element of safe commercial vehicle operation, had failed to fully resolve the issue of what level of visual capacity would be required to assure safety. The FHWA decided to conduct a further study in an attempt to gather essential information that would lead to an improved standard. The difficulties with some of the previous studies included insufficient subjects and the absence of exposure data. The FHWA believed these difficulties could be overcome, in part, by using as subjects drivers who, although they did not meet the Federal vision standards, had been safely operating CMVs for some time and were now, for the reasons mentioned above, becoming more readily identifiable.

The FHWA announced its vision waiver study in a Notice of Intent to accept applications for waivers on March 25, 1992, (57 FR 10295). The intent of the proposed program was to obtain valuable information on the relationship between visual capacity and the ability to operate a CMV safely. This vision waiver study was initiated as part of an overall regulatory review of the medical qualification standards applicable to interstate CMV drivers. It was also responsive to several Congressional Committee reports accompanying the Americans With Disabilities Act directing the Secretary within two years to "undertake a thorough review of (the driver qualification) regulations to ascertain whether the standards conform with current knowledge * * * and whether such regulations are valid under this Act." (42 U.S.C. 12101, Pub. L. 101–336, 104 Stat. 327). (See H. Rep. 596, 101st Cong., 2d Sess. 60–61 (1990) (conference report); H. Rep. 485, Part 2, 101st Cong., 2d Sess. 57 (1990) (House Committee on Education and Labor); H. Rep. 458, Part 3, 101st. Cong., 2d Sess. 34 (1990) (House Committee on the Judiciary); S. Rep. 116, 101st Cong., 1st Sess. 27–28 (1989) (Senate Committee on Labor and Human Resources).

A further notice with request for comments was published on June 3, 1992, (57 FR 23370), and a notice of final disposition was published on July 16, 1992, (57 FR 31458). The period during which applications for participation in this waiver program would be considered expired on December 31, 1992, after having been extended from September 21, 1992 (57 FR 45002, September 30, 1992). Over 3,700 applications were received.

To assure consistency with safety, the FHWA set minimum requirements which a driver would have to meet before being considered eligible for a waiver. These included visual acuity of at least 20/40 (Snellen) in the better eye, three years driving experience with the vision deficiency, a safe driving record for that period, and a report on the condition of the applicant's vision from an ophthalmologist or optometrist, including an opinion as to the driver's ability to operate a CMV safely with the condition. A safe driving record was defined as the absence of chargeable accidents, no convictions for serious traffic offenses, and no more than two convictions for other moving violations. The agency based its requirement that drivers participating in the study have a three-year safe driving history with their vision impairment upon studies (discussed more fully in "Rationale for the Determination") indicating that past experience can be used to predict future performance, especially when combined with other predictive factors such as geographic location, mileage driven, and conviction history. The agency also relied upon opinions from the medical community that individuals with vision impairments are often able to compensate for that impairment over a period of time. Because of the discrepancy as to how much time is necessary to allow an individual to compensate for an impairment (which generally ranged from several months to a full year), the agency's choice of three years provided added assurance that drivers would have had sufficient time to develop compensatory behavior. It was also the longest period for which driver histories were uniformly

available from State motor vehicle departments (MVD).

**Court Decision**

The Advocates for Highway and Auto Safety (Advocates) filed suit in the United States Court of Appeals for the D.C. Circuit, requesting a review of the FHWA's notice of final disposition granting waivers to individuals who otherwise did not meet the Federal vision standard required for the qualification of CMV drivers in interstate commerce. The Advocates asserted that the waiver program was in violation of the Administrative Procedures Act (5 U.S.C. 553) because the rule implementing the program was not issued with opportunity for meaningful comment and was otherwise arbitrary, capricious, or not in accordance with law.

A three-judge panel for the D.C. Circuit issued its opinion in the case on August 2, 1994. The Court found that the FHWA's notices of the program did provide for meaningful comment and that the comments received were given consideration. The Court also held that the FHWA's approach, given the apparently conflicting demands, was reasonable, and therefore not arbitrary and capricious. The Court observed, however, that the FHWA "initiated a program to issue temporary waivers to visually impaired drivers in order to procure the hard evidence needed to determine the effect of visual deficiencies on safety. Yet, before it may grant a waiver, the Safety Act required the agency to determine that such waiver * * * is consistent with the safe operation of commercial motor vehicles." 28 F.3d at 1294. The Court found that the agency's "determination that the waiver program will not adversely affect the safe operation of CMVs is devoid of empirical support in the record," 28 F.3d at 1294, and that "the FHWA has failed to meet the exacting requirements of section 2505(f) (now 49 U.S.C. 31136(e))." 28 F.3d at 1294. Consequently, the Court concluded that the FHWA's adoption of the waiver program was contrary to law, and vacated and remanded the rule to the agency.

**Rationale for the Determination**

This notice of determination is issued in response to the Court's remand. The FHWA has analyzed the Court's decision and its effect on the vision waiver study, and has evaluated evidence that was not before the Court, including considerable data gathered through the vision waiver study during its two years of operation. As of September 30, 1994, there were 2,411 individuals participating in the vision waiver study. Unless the agency acts on the D.C. Circuit Court's remand, the waivers, without which most of these drivers would not be qualified, would have to be rescinded immediately because the decision of the Court, when mandated, will invalidate the existing rule authorizing the waivers.

Generally, a truck driver's ability to operate is demonstrated by possession of a currently valid commercial driver's license or other authorized license, and based upon other safety-related information pertaining to the type of vehicle to be operated. A commercial driver's license or other authorized license is issued after subjecting the driver to knowledge and performance tests usually administered in the course of a few hours. Some employers may add a performance test, or a safe driving probationary period before permanent employment. How safely the driver may operate thereafter is based on compliance with traffic laws and regulations and involvement in accidents.

The drivers accepted for the waiver study had to meet the licensing requirement of their States and any employer-mandated prerequisites, in addition to demonstrating beforehand a safe driving record for three years as required by the Vision Waiver Program.

By allowing these drivers to continue to drive under a waiver program, i.e., in effect, grandfathering them, the FHWA placed itself in the position of receiving information on the relationship between visual capacity and the ability to operate a CMV safely. Because they did not meet existing vision standards, these drivers could not be allowed to operate in interstate commerce, unless they obtained waivers. The Court acknowledged that "this approach may be entirely reasonable," but it found that the FHWA lacked data to support the conclusion that the conditions it imposed on the granting of waivers assured consistency with the safe operation of CMVs.

In order to revalidate the waivers, and to remain consistent with the Court's remand, the FHWA is relying upon several research studies demonstrating the effectiveness of methods to ascertain the probability of an individual experiencing accidents in the future based on accident history. The first major effort in this area was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June, 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This California study used three consecutive years of data, comparing the experience of drivers in the first two years with the experience of those same drivers the final year. Copies of the several studies relied upon here have been added to the docket.

Based upon the studies and practices noted above, the FHWA has determined that three years safe driving experience with the vision deficiency not only allowed for sufficient adjustment by drivers to the condition, but also provided for the longest period of experience for which records were uniformly available from which to predict future performance. As noted above, the California study was limited to a two-year base period because, like many jurisdictions, the accumulation of accurate driver histories does not exceed three years. The use of a three-year base period improves the predictability of the future period because the longer the period, the more likely the elimination of random anomalies. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Therefore, the FHWA believes it has required and applied a sufficiently long period of safe driving to project continued safe driving over a future period of the same duration.

The FHWA accepted only those drivers with no chargeable accidents for the three-year period of most recent driving experience. This translated into no chargeable accidents, as verified through motor vehicle records, in approximately 300 million vehicle miles travelled (VMT), as reported by the applicants. Although the FHWA certainly could not conclude that this rate would remain at zero, some of the studies noted above concluded that the correlation between the accident

experience of the same individual over two different time periods was strongest when the rate of accidents was lowest. Moreover, the FHWA is confident that the chargeable accident rate of the general commercial driving population over three years could not be less than 0. In fact, the chargeable accident rate for the year 1991, the year prior to the inception of the vision study, for the general truck driving population was 0.46 per 1 million vmt.

If the waived drivers were not permitted to continue to drive, they would have to be replaced by other drivers. These "replacement" drivers come from the general commercial driving population, which includes new, inexperienced commercial drivers. The FHWA has established that the chargeable accident rate for the general commercial driving population for the year 1992 well exceeds that of the drivers participating in the vision waiver program. Information about the past performance of new, inexperienced commercial drivers, many of whom are younger in age, does not exist. Studies have shown, however, that younger drivers of passenger vehicles produce the highest accident rates. Consequently, the agency required a three-year experience factor for applicants to the waiver program as a means of eliminating a similar risk posed by inexperienced commercial drivers. See Wyckoff, D. Truck Drivers in America, D.C. Heath & Co., Lexington, Mass. 1979.

The good driving record demonstrated by the waiver applicants not only required the absence of chargeable accidents over a three-year period, but also the absence of serious traffic violations and no more than two minor traffic violations. According to the California Driver Record Study mentioned above, this is the best predictor of future safe driving.

The requirement of three years safe driving experience with the vision deficit severely limited participation by the highest accident-risk age group. Each driver's application was individually examined, any missing information was required to be furnished, and each driver was measured against the waiver standards to assure that all the conditions were met, i.e., individualized determinations were made on the basis of complete data submitted by each applicant, to determine eligibility for participation in the waiver program.

The FHWA now has new, significant data, which had also not been considered by the Court in reaching its decision, to support its present determination. The vision waiver study has now been in effect since July 1992, and has collected driver safety and performance data periodically for approximately two years. Individuals driving pursuant to waivers are required to submit reports of vehicle miles travelled monthly. They are also required to report any citation for a moving violation involving a CMV and the judicial or administrative disposition of such charge, and, within 15 days of occurrence, any accident involvement whatsoever while operating a CMV. All accident information is verified periodically through each driver's State motor vehicle record (MVR) by the FHWA's contractor, Conwal, Inc. of Falls Church, Virginia. Participants in the waiver program also submitted, prior to their acceptance, detailed information of their individual vital statistics, employment history, current status of driving privilege as recorded on the licensing State's MVR and the license status for the past three years, and expert medical opinion by an ophthalmologist or optometrist as to current visual acuity and its effect on his or her ability to perform the driving task safely. Participating drivers are required to submit annual reports from an ophthalmologist or optometrist attesting to the present condition of their vision. Any loss of vision bringing them below the waiver standard of 20/40 in the better eye results in immediate discharge from the program.

Drivers participating in the program are subject to revocation of their waiver for failure to meet certain reporting requirements or if the vision in their better eye falls below the required standard. The agency strictly holds waived drivers to these requirements and standards. As of September 30, 1994, a total of 201 drivers have had their waivers revoked. Of that number, 21 drivers were revoked for failing to submit an annual medical exam. The remaining 180 drivers were revoked for failing to submit monthly driving reports on time. No drivers have had their waivers revoked for decreasing visual acuity; however, two drivers have voluntarily withdrawn from the program on this basis.

Based upon statistical analysis of this information conducted by the contractor, the agency can conclude that the driving performance of individuals participating in the vision waiver program is better than the driving performance of all CMV drivers collectively, based on data obtained from the General Estimates Service (GES). The GES is a national survey conducted by the National Highway Traffic Safety Administration, and was selected for use as the best measure of the prevailing national norm relative to large truck accidents.

The Third Interim Monitoring Report, prepared by the contractor responsible for FHWA's vision waiver program, dated June 27, 1994, reported on the cumulative driving performance of those individuals participating in the waiver group between July 1992 and February 1994. During that period, a total of 211 accidents were reported and a total of 136.4 million VMT had been recorded. The number of accidents in this period divided by the VMT give an accident rate of 1.547 accidents per million VMT. The national accident rate for large truck accidents, as reported by the GES for the year 1992, is 2.531 accidents per million VMT. A copy of this report is contained in the docket.

The reports submitted by the drivers are independently verified through periodic records checks with State MVDs. While drivers in the study are required to report all accident involvement, the State MVDs only record accidents warranting reports under existing State requirements. Similarly, the GES data only contain accidents recorded by State MVDs. Therefore, the drivers in the waiver study are held accountable for more accidents than those included in GES statistics.

The FHWA's contractor, which is performing the data collection, the statistical analysis and preparation of the interim reports, was subjected to a peer review of its procedures and methodology, a summary of which is included in the docket. A Fourth Interim Report is in preparation at this time, and covers cumulative activities and mileage through June 30, 1994. A review of the data indicates that the performance of the study group remains relatively unchanged, as the accident rate is only slightly higher than previously reported, i.e. 1.636 accidents per one million VMT. The completed report will be placed in the docket along with all preceding Interim Reports.

**FHWA's Determination**

Statistical studies mentioned above support the proposition that accident-free performance coupled with low numbers of traffic violations over a three-year period is a reliable predictor of continued safe performance over a similar period in the future. As a condition of admission into the waiver program, each applicant had to demonstrate a three-year period of safe driving performance prior to being admitted into the study group. The performance data obtained from the waived drivers since the study began

confirms the FHWA's determination that the continued operation of the waived group, as provided for in this notice, will not diminish safety. The data also show that this class of drivers performed and is performing more safely than the pool of drivers from which its replacements would have to be drawn, that is, the general driving population. Accordingly, the FHWA has determined that to revalidate waivers, as stated in this notice, for drivers in the class of drivers defined by the study and operating under the conditions of the study is consistent with the safe operation of CMVs.

This evidence, examined in conjunction with the previously available medical and scientific evidence, and detailed driving records provided prior to acceptance into the waiver program and periodically thereafter by each individual participating in the waiver group, clearly indicates that the continued operation of CMVs by the group of drivers currently participating in the waiver program will not adversely affect CMV safety.

The FHWA has also determined that to conduct the waiver study program under the conditions prescribed herein is consistent with the public interest of assuring the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely and of providing opportunities for drivers with real or perceived visual disabilities to demonstrate their ability to drive safely and continue in their chosen field of occupation.

Finally, the FHWA believes that the information contained in this notice provides a sufficient degree of empirical evidence to satisfy the safety requirement mandated by both the MCSA and the D.C. Circuit Court.

### Revalidation of Waivers and Request for Comments

In view of the above, the agency is revalidating the vision waivers possessed by drivers as of September 30, 1994, for thirty days from the date of this notice.

The FHWA is also proposing that this evidence is sufficient to allow those drivers currently participating in the vision waiver study (2,411 as of September 30, 1994) to continue operating CMVs with waivers, subject to the same standards and conditions applicable to the original waivers, for the duration of the study, which shall conclude not later than March 31, 1996. By that date, approximately 93 percent of the drivers presently participating in the study will have completed at least three years driving in the study program.

The FHWA is requesting comments on this proposal. A short comment period is necessitated by the precarious position in which the drivers participating in the study, as well as the FHWA, are placed by virtue of the Court's decision. If this determination is delayed, individuals who have received a waiver from the application of certain regulations will immediately be subject to irreparable harm in the form of job loss and financial hardship. Moreover, if the agency allows the waiver program to continue without presenting a reasoned analysis and justification, it could be found to be acting contrary to the order of the Court. Finally, this additional period of 15 days for comments will allow for the submission of persuasive reasons why the FHWA should not complete its study by revalidating waivers to the study participants subject to the same standards or conditions.

### Public Hearing on the Vision Standard and Waiver Program

Due to the strong public interest surrounding this matter, the FHWA will conduct a public hearing within six months of the date of this notice of determination to explore the remaining issues surrounding the vision standard and the vision waiver program. Examples of issues to be addressed at the public hearing include:

(1) The relationship of visual capacity to the commercial driving task;

(2) Identification of research and data helpful in defining the vision standard;

(3) What additional research is needed to help the FHWA define its vision standard;

(4) Upon conclusion of the Vision Waiver Program, what should be the driving status of waived drivers, assuming continued safe driving performance.

The FHWA is eager to gain a broader perspective of the public's viewpoint concerning other studies, data and experiences which will enhance the agency's knowledge on the subject. The FHWA is also interested in sharing its data with other researchers and modes which may undertake useful analysis and initiate studies leading to more enlightened approaches to establishing future physical qualification standards, standards that are both necessary and valid to increasing opportunities in the truck-driving profession while ensuring that society's high expectations of CMV safety are realized. Notice of the hearing will be published in the **Federal Register** and will contain further questions to which the agency seeks responses, as well as directions on how to obtain information about the data collected during the vision waiver study.

### Conclusion

The FHWA will publish, within 30 days of the date of publication of this notice, its determination regarding the continuation of the vision waiver program through the proposed March 31, 1996 deadline. This determination will be based upon comments received in response to this notice, as well as all empirical evidence gathered to date.

If the FHWA determines, based upon comments and related information, not to extend the program to such date, the agency will publish its rationale for such determination and the date upon which waived drivers may no longer operate in interstate commerce. Additionally, waived drivers will be notified directly of the agency's decision to terminate the program.

If the FHWA determines, based upon comments and related information, that the waiver program may continue until March 31, 1996, the agency will also publish that determination as well in the **Federal Register**.

### Appendix—The Vision Waiver Standards and Conditions

The vision waiver application procedure, standards and conditions are being reproduced here for informational purposes only. The agency *is not* accepting applications for vision waivers at this time.

Applicants for a waiver from the vision qualification requirement were required to submit their applications on plain paper (there is no application form), include all supporting documents, and use the format set forth below. Each information item must have been completed by an appropriate answer or marked "None", or "NA" if not applicable.

#### Vital Statistics

*Name of applicant* (first name, middle initial, last name);
*Address* (street number and name);
*City, State, and Zip Code;*
*Telephone Number* (area code and number);
*Sex* (male or female);
*Date of Birth* (month, day, and year);
*Age;*
*Social Security Number;*
*State Driver's License Number* (List all licenses held during the three-year period either immediately preceding the date of application, or the three-year period immediately preceding the date you last held a license (after April 1, 1990) to operate a CMV.);
*Issuing State;*

*Driver's License Expiration Date;* and
*Driver's License Classification Code* (If not a CDL classification code, specify what vehicles may be operated under such code).

**Experience**

**Note:** List separately the number of years and the number of miles driving for each type of vehicle specified below. If you have no experience in a particular type of vehicle, indicate with "0" or "None."

*Total number of years driving a commercial motor vehicle;*
*Number of years driving straight trucks;*
*Approximate number of miles driving straight trucks;*
*Number of years driving tractor/trailer combinations;*
*Approximate number of miles driving tractor/trailer combinations;*
*Number of years driving buses; and*
*Approximate number of miles driving buses.*

**Anticipated Operations After Waiver is Issued**

*Your employer's/prospective employer's name, address,* and telephone number;
*The type of vehicle you will operate* (straight truck, tractor/trailer combination, bus);
*The commodities that will be transported* (e.g., general freight, liquids in bulk (in cargo tanks), steel, dry bulk, large heavy machinery, refrigerated products);
*The States in which you will drive;*
*The estimated number of miles you will drive per year;*
*The estimated number of daylight driving hours per week; and*
*The estimated number of nighttime driving hours per week;*

**Experience Factor**

An applicant must have accumulated at least three years of experience operating a CMV on a regular basis. If the applicant does not currently hold a commercial license, that experience must have been accumulated during the three years that the applicant most recently held a commercial license after April 1, 1990.

**Note:** To qualify for a waiver, an applicant must have been vision-impaired during the period from the date of the application back through the date the documented cumulative three-years of driving experience began.

**Supporting Documents**

The application must include supporting documents for each of the four areas listed below:

(1) You must submit one of the following:

(a) A legible photostatic copy of both sides of the commercial driver's license (CDL) you now possess; or

(b) A legible photostatic copy of both sides of the driver's license (non-CDL) you now possess; or

(c) A legible photostatic copy of both sides of the driver's license you last possessed to operate a CMV after April 1, 1990; or

(d) A certification from the State licensing agency showing the type and effective dates of your last license;

(2) That you have operated a CMV for the three-year period immediately preceding:

(a) The date of the application, if you are currently licensed to drive a CMV; or

(b) The date (after April 1, 1990) you last held a valid license to operate a CMV by submitting the following:

(i) A signed statement from all your present and/or past employer(s) on company letterhead. If letterhead is unavailable, you must obtain a notarized statement from the employer(s). In the event your previous employer(s) are no longer in business, or you were operating as an independent motor carrier, submit a notarized statement, signed by you;

(ii) Information in the statements must indicate if your job was driving a CMV; the type of vehicles you operated; whether it was full-time or part-time employment (part-time employment must be explained in detail); and the dates (month and year) you started and stopped driving a CMV;

(3) A State-issued motor vehicle driving record (MVR) for the period from the date of the application back to the date the documented cumulative three-years of driving experience began, which:

(a) Contains no suspensions, cancellations, or revocations of your driver's license for the operation (moving violations) of any motor vehicle (including your personal vehicle);

(b) Contains no involvement in an accident, as defined in 49 CFR 390.5, for which you received a citation and were subsequently convicted for a moving traffic violation while operating a CMV;

(c) Contains no convictions for a disqualifying offense, as defined in 49 CFR 383.51(b)(2), or more than one serious traffic violation, as defined in 49 CFR 383.5, while driving a CMV which disqualified, or should have disqualified, you in accordance with the driver disqualification provisions of 49 CFR 383.51; and

(d) Contains no more than two convictions for any other moving traffic violations in a CMV; (You must submit an MVR from each State in which you were licensed during that cumulative three-year period);

**Note:** The driving record must be furnished by an official State agency, on its letterhead, bear the State seal, or official stamp and be signed by an authorized State official. No other documentation will be accepted. If the MVR shows either convictions for moving violations or accident involvement but does not indicate the type of vehicle operated or the number of miles above the posted speed limit, additional official documentation must be provided by you (e.g., a copy of the citation or accident report, or copies of court records).

**Special Note:** Any waiver applicant who is arrested or cited for, or convicted of, any disqualifying offense or other moving violation during the period of time the application is pending must immediately report such arrests, citations, or convictions to the Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to do so may result in a denial or rescission of the waiver. No waiver will be issued while any charge against an applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of the application will be considered in the overall driving record.

(4) That you have been examined by an ophthalmologist or an optometrist after the FHWA reaches its decision on the reopening of the vision waivers program, and a notice of final disposition announcing such decision has appeared in the **Federal Register**; and that ophthalmologist or optometrist, in writing, has:

(a) Identified and defined the visual deficiency;

(b) Certified that the visual deficiency has not worsened since the last vision examination required by your State's driver licensing agency;

(c) Certified that your visual acuity is at least 20/40 (Snellen), corrected or uncorrected, in the better eye; and

(d) Certified that in his/her professional opinion, you are able to perform the driving tasks required to operate a commercial motor vehicle.

**Note:** Do not submit other medical records, bills, etc.

**Conditions for Retaining A Vision Waiver Once Issued**

There would be special requirements attached to any waiver issued to a vision-impaired driver. These requirements would be imposed to ensure that the FHWA receives the data needed to complete the research effort. The reporting requirements, a six month verification of every waived driver's MVR, and the CDL standards applicable to waived drivers will ensure that unsafe, vision-impaired drivers are removed from operation in the same manner as other unsafe drivers. Waived

drivers will not be afforded any additional privileges that would allow them to operate differently from other CMV drivers in interstate commerce. Each driver would be required to:

(a) Report, in writing, any citation for a moving violation involving the operation of a CMV to the Vision Waiver Program within 15 days following issuance (a photostatic copy of the citation issued must accompany the written report);

(b) Report, in writing, the judicial or administrative disposition of any citation for a moving violation involving the operation of a CMV to the Vision Waiver Program within 15 days following the notice of disposition;

(c) Report, in writing, any accident involvement whatsoever while operating a CMV to the Vision Waiver Program within 15 days following the accident (include State, insurance company, and/or motor carrier accident reports);

(d) Report, in writing, any change of residential address or telephone number to the Vision Waiver Program within 15 days after such a change;

(e) Report, in writing, any change of employer, (include name, address, and telephone number of new employer), or type of vehicle operated to the Vision Waiver Program within 15 days after such a change.

(f) Submit documentation of an annual examination by an ophthalmologist or an optometrist to the FHWA at least 15 days before each anniversary of the waiver issuance date, that you have been reexamined within the past 6 weeks. The documentation must contain the medical specialist's certification that the individual is still eligible under the waiver's vision criteria and the vision deficiency has not worsened since the last vision examination required by the waiver; and

(g) Report to the Vision Waiver Program, by the 15th calendar day of each month (not including the month in which the waiver becomes effective), the following information:

(1) The number of interstate/intrastate miles you drove a commercial motor vehicle (CMV) during the preceding month. For example, if you drove 3,000 miles for the preceding month (July), you must report that information by the 15th day of the next month (August);

(2) The number of daylight hours and the number of nighttime hours you drove a CMV during the preceding month. For example, if you drove 170 daylight hours and 50 nighttime hours during the preceding month (July), you must report that information by the 15th day of the next month (August); and

(3) The number of days you did not drive a CMV during the preceding month. For example, if you did not drive a CMV a total of 9 days during the preceding month (July), you must report that information by the 15th day of the next month (August).

**Note:** The monthly report should be mailed within the first few days of each month in order to ensure that the report will be received at the office of the Vision Waiver Program by the 15th day of each month.

If the answer to one or all of the above questions is 0, then state "0" or "none", do not leave any question unanswered or it will be considered "Failure to report," and your waiver is in jeopardy. All documentation described in items (a) through (g) above, must be mailed to the Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to submit reports within the time periods described above may be cause for revocation of the waiver.

(49 U.S.C. 31136 and 31502; 49 CFR 1.48).

Issued on: September 30, 1994.

**Rodney E. Slater,**

*Federal Highway Administrator.*

[FR Doc. 94–24802 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 675

**[I.D. 092694A]**

### Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Notice of availability of an amendment to a Fishery Management Plan (FMP) and request for comments.

**SUMMARY:** NMFS announces that the North Pacific Fishery Management Fishery Management Council (Council) has submitted Amendment 21a to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) for Secretarial review and is requesting comments from the public. The amendment would establish an area around the Pribilof Islands closed to trawl fishing to protect crab, seabird and marine mammal populations.

**DATES:** Comments on the FMP amendment should be submitted by November 29, 1994.

**ADDRESSES:** Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS., P.O. Box 21668, Juneau, AK 99802 Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 21a and the environmental assessment/regulatory impact review prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** Ellen R. Varosi, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

If approved, Amendment 21a would establish an area closed to fishing with trawl gear. The area surrounds the waters off St. Paul, St. George, Walrus and Otter Islands (the Pribilof Islands in the BSAI), to protect habitat areas of importance to blue king and Korean hair crab, seabird and marine mammal populations.

Dated: September 29, 1994

**David S. Crestin,**

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

[FR Doc. 94–24683 Filed 9–30–94; 4:11 pm]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 59, No. 193

Thursday, October 6, 1994

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.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Meetings

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that the Advisory Council on Historic Preservation will meet on Wednesday, October 19, 1994. The meeting will be held in the Rotunda at the Telfair Academy of Arts and Sciences, 121 Barnard Street, Savannah, Georgia (Telfair Square), beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Discussion of Affordable Housing and Historic Preservation Issues
III. Discussion of Proposed Federal Courthouse Annex
IV. Consideration of Proposed Regulation Revisions
V. Section 106 Cases
VI. Executive Director's Report
VII. New Business
VIII. Adjourn

**Note:** The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C., 202–606–8503, at least seven (7) days prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the meeting is available from the Executive Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: October 3, 1994.

**Robert D. Bush,**

*Executive Director.*

[FR Doc. 94–24740 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–10–M

## DEPARTMENT OF AGRICULTURE

### Agriculture Marketing Service

**[DA–93–06]**

### Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies

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

**ACTION:** Notice of intent to amend.

**SUMMARY:** This document proposes to amend the recommended manufacturing milk requirements (Recommended Requirements) by reducing the maximum allowable bacterial estimate and somatic cell count in producer herd milk, and by reducing the maximum allowable bacterial estimate in commingled milk. In addition, this proposal would modify the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. The proposal to reduce somatic cell count and bacterial estimate was initiated at the request of the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA, dairy trade associations, and producer groups.

**DATES:** Comments should be filed by December 5, 1994.

**ADDRESSES:** Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be made available for public inspection at the Dairy Division in room 2750–S during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202)720–7473.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Agricultural Marketing Act of 1946, the U.S. Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These Recommended Requirements are available for adoption by the various States. The purpose of the model requirements is to promote, through State adoption and enforcement, uniformity in State dairy laws and regulations relating to manufacturing grade milk.

In July 1992, the Dairy Division of NASDA passed a resolution recommending that certain milk quality requirements be tightened. The Dairy Division of NASDA requested that the maximum allowable bacterial estimate in producer herd milk be reduced from 1,000,000 per ml. to 500,000 per ml. and that the maximum allowable somatic cell count in producer herd milk be reduced from 1,000,000 per ml. to 750,000 per ml. (The changes for somatic cell count only apply to milk from cows, not milk from goats.) The Dairy Division of NASDA also requested that the maximum allowable bacterial estimate in commingled milk be reduced from 3,000,000 per ml. to 1,000,000 per ml.

Their desire to have these changes were further reinforced in a resolution passed in July 1994. In this resolution, the Dairy Division of NASDA requested that USDA expedite the printing of this proposal.

In addition, certain State regulatory agencies have requested modifications to the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. Changes are being proposed that will provide uniformity with producer herd milk bacteria and somatic cell follow-up

procedures. The modified follow-up program is also more adaptable to computer-based recordkeeping.

In order to align the bacterial estimate and somatic cell count requirements contained in the Recommended Requirements with the resolution passed by NASDA, this document proposes the following changes:

1. Reduce the maximum somatic cell count in producer herd milk (no change for goat milk).

The number of leukocytes (somatic cells) present in milk increases as a result of mammary gland infection (mastitis). The number of somatic cells present in milk provides information regarding the health of the dairy herd. The National Mastitis Council (NMC) is an organization that promotes research and provides education to help dairy producers reduce the incidence of mastitis and thus enhance milk quality. In their publication entitled *Current Concepts of Bovine Mastitis*, the NMC states that "Presence of more than 500,000 leukocytes per milliliter of mixed herd milk suggests a significant incidence of mastitis in a given herd". Changes in the Recommended Requirements are being proposed that would reduce the maximum somatic cell count permitted in producer herd milk (cows milk only) from 1,000,000 to 750,000 per ml. Through effective herd management, many dairy farmers have reduced the number of somatic cells well below the maximum limit being considered. Since the number of somatic cells found in milk produced from healthy goats is normally higher than the number found in cows milk, similar reductions are not being proposed for goat milk.

2. Delete the laboratory screening tests for somatic cells in producer herd milk samples (no change for goat milk).

The California Mastitis Test (CMT) and the Wisconsin Mastitis Test (WMT) are used as screening tests for somatic cells. These screening tests are accurate for samples containing 1,000,000 or more somatic cells per ml. When the maximum somatic cell count is reduced to 750,000 per ml., the CMT and WMT screening tests are not accurate. Since the maximum somatic cell count for goat milk remains at 1,000,000 per ml., the CMT and WMT tests can still be used to screen goat milk. The proposal identifies those tests which may be used for cow milk somatic cell counting. The appropriate tests are those listed in this document or other methods identified in the latest edition of Standard Methods for the Examination of Dairy Products.

3. Reduce the maximum bacterial estimate permitted in producer herd milk.

The number of bacteria present in milk increases when the equipment and utensils used to collect and store the milk is improperly cleaned and sanitized. This number increases rapidly in milk that is not cooled promptly or is not maintained at refrigerated temperatures throughout storage. Enhanced milk quality can be attained when dairy equipment is properly cleaned and sanitized, and when milk is promptly cooled and stored at refrigerated temperatures. Improvements in sanitation practices and milk cooling equipment has resulted in enhanced milk quality. Changes in the Recommended Requirements are being proposed that would reduce the maximum permissible bacteria count in producer herd milk from 1,000,000 to 500,000 per ml.

4. Modify the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate.

Changes are being proposed that will modify the follow-up procedures when producer herd milk exceeds the maximum permitted bacteria estimate. These changes would require the dairy plant to notify the producer with a warning whenever an excessive bacterial estimate is found. When two of the last four consecutive bacterial estimates exceed the maximum permitted, the dairy plant would be required to notify the appropriate State regulatory authority. The State Regulatory authority would then send a written warning letter to the producer. After 3 days, but within 21 days, an additional sample of herd milk is tested. If this sample also exceeds the maximum permitted, that producer's herd milk is excluded from the market until satisfactory compliance is obtained.

These changes would provide uniformity with producer herd milk bacteria and somatic cell follow-up procedures. The modified follow-up program is also more adaptable to computer-based recordkeeping.

5. Reduce the maximum permitted bacterial estimate in commingled milk.

Commingled milk is the combined milk from more than one producer. Proposed reductions in the maximum bacterial estimate for producer herd milk should result in improved commingled milk quality. Changes in the Recommended Requirements are being proposed that reduce the maximum permissible bacterial estimate in commingled milk from 3,000,000 to 1,000,000 per ml.

6. In order to provide consistency throughout the Recommended Requirements, changes in terminology and formatting are being proposed.

The proposal would: (a) Amend the definitions for "acceptable milk" and "probational milk" by deleting the reference to bacterial estimate; (b) amend the requirements for "excluded milk" by incorporating provisions for milk with a history of excessive bacteria counts; (c) amend the bacterial requirements under the terms of quality testing of milk from producers; and (d) instruct plants to provide field assistance to farmers concerning excessive bacteria counts.

For the reasons set forth in the preamble, the Recommended Requirements which were published in the **Federal Register** issued April 7, 1972 (37 FR 7046) and amended August 27, 1985 (50 FR 34726) and May 6, 1993 (58 FR 86) are proposed to be amended as follows:

1. Sec. B2. is amended by revising paragraphs (n) and (o) to read as follows:

* * * * *

(n) *Acceptable milk.* Milk that qualifies under sec. C2. as to sight and odor and that is classified No. 1 or No. 2 for sediment content (sec. C3.).

(o) *Probational milk.* Milk classified No. 3 for sediment content that may be accepted by plants for not over 10 days (sec. C3.).

* * * * *

2. Sec. C4. is revised to read as follows:

Sec. C4. *Bacterial estimate classification.*

(a) A laboratory examination to determine the bacterial estimate shall be made on each producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory approved by the State regulatory agency.

(b) Milk shall be tested for bacterial estimate by using one of the following methods or by any other method approved by Standard Methods for the Examination of Dairy Products:

(1) Direct microscopic clump count
(2) Standard plate count
(3) Plate loop count
(4) Pectin gel plate count
(5) Petrifilm ™ aerobic count
(6) Spiral plate count
(7) Hydrophobic grid membrane filter count
(8) Impedance/conductance count

(c) Whenever the bacterial estimate indicates the presence of more than 500,000 bacteria per ml., the following procedures shall be applied:

(1) The producer shall be notified with a warning of the excessive bacterial estimate.

(2) Whenever two of the last four consecutive bacterial estimates exceed 500,000 per ml., the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two of the last four consecutive samples exceed 500,000 per ml.

(d) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (c)(2) of this section. If this sample also exceeds 500,000 per ml., subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer shall be assigned a full reinstatement status when three out of four consecutive bacterial estimates do not exceed 500,000 per ml. The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

3. Sec. C7. is amended by revising paragraphs (a), (c) and (d) to read as follows:

Sec. C7. *Excluded milk.* A plant shall not accept milk from a producer if:

(a) The producer's initial milk shipment to a plant is classified as No. 3 for sediment content;

(b) * * *

(c) Three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml. (sec. C4.);

(d) Three of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml. (1,000,000 per ml. for goat milk) (sec. C11.);

* * * * *

4. Sec. C8. is amended by: revising paragraph (a)(1)(i), adding a new paragraph (a)(1)(ii), and redesignating present paragraphs (a)(1)(ii) and (iii) as (a)(1)(iii) and (iv); revising paragraph (b)(1)(i), adding a new paragraph (b)(1)(ii), and redesignating present paragraphs (b)(1)(ii) and (iii) as (b)(1)(iii) and (iv); and revising paragraph (b)(3)(i), adding a new paragraph (b)(3)(ii), and redesignating present paragraphs (b)(3)(ii), (iii), and (iv) as (b)(3)(iii), (iv) and (v) as follows:

Sec. C8. *Quality testing of milk from producers.*

(a) *New Producers.*

(1) * * *

(i) "Acceptable milk" (sec. C2. and C3.);

(ii) Bacterial estimate (sec. C4.);

(iii) Somatic cell count (sec. C11.); and

(iv) Drug residue level (sec. C12.).

(2) * * *

(b) *Transfer producers.*

(1) * * *

(i) "Acceptable milk" (sec. C2. and C3.);

(ii) Bacterial estimate (sec. C4.);

(iii) Somatic cell count (sec. C11.); and

(iv) Drug residue level (sec. C12.).

(2) * * *

(3) * * *

(i) The milk is currently classified "acceptable" for sediment;

(ii) Three of the last five consecutive milk samples do not exceed the maximum bacterial estimate;

(iii) Three of the last five consecutive milk samples do not exceed the maximum somatic cell count level requirements;

(iv) The last shipment of milk received from the producer by the former plant did not test positive for drug residue; and

(v) Milk shipments currently are not excluded from the market due to a positive drug residue test.

* * * * *

5. Sec. C10. is revised to read as follows:

Sec. C10. *Field service.*

A representative of the plant shall arrange to promptly visit the farm of each producer whose milk tests positive for drug residue, exceeds the maximum somatic cell count level, exceeds the maximum bacterial estimate, or does not meet the requirements for acceptable milk. The purpose of the visit shall be to inspect the milking equipment and facilities, to offer assistance to improve the quality of the producer's milk, and eliminate any potential cause of drug residue. A representative of the plant should routinely visit each producer as often as necessary to assist and encourage the production of high quality milk.

6. Sec. C11. is revised to read as follows:

(a) A laboratory examination to determine the level of somatic cells shall be made on each producer's milk at least four times in each 6-month period at irregular intervals. Samples shall be analyzed at a laboratory approved by the State regulatory agency.

(b) A screening test may be conducted on goat herd milk. When a goat herd screening sample exceeds either of the following screening test results, a confirmatory test shall be conducted.

(1) California Mastitis Test—Weak Positive (CMT 1).

(2) Wisconsin Mastitis Test—WMT value of 18 mm.

(c) Milk shall be tested for bacterial estimate by using one of the following methods or by any other method approved by Standard Methods for the Examination of Dairy Products:

(d) Milk shall be tested for somatic cell content by using one of the following procedures (confirmatory test for somatic cells in goat milk):

(1) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-Methyl green stain or "New York" modification shall be used for goat milk.

(2) Electronic Somatic Cell Count.

(3) Flow Cytometry/Opto-Electronic Somatic Cell Count.

(4) Membrane Filter DNA Somatic Cell Count.

(e) The results of the confirmatory test on goat milk for somatic cells shall be the official results.

(f) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,000,000 somatic cell per ml. for goat milk), the following procedures shall be applied:

(1) The producer shall be notified with a warning of the excessive somatic cell count.

(2) Whenever two of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,000,000 per ml. for goat milk), the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two of the last four consecutive samples exceed 750,000 per ml. (1,000,000 per ml. for goat milk).

(g) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (e)(2) of this section. If this sample also exceeds 750,000 per ml. (1,000,000 per ml. for goat milk), subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer shall be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,000,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

7. Sec. E1.8 is amended by revising paragraph (b) to read as follows:

Sec. E1.8 *Raw product storage.*

(a) * * *

(b) The bacteriological estimate of commingled milk in storage tanks shall be 1 million per ml. or lower.

Dated: October 3, 1994.

**Kenneth C. Clayton,**

*Deputy Administrator, Marketing Programs.*

[FR Doc. 94–24778 Filed 10–5–94; 8:45 am]

BILLING CODE 3410–02–P

## Forest Service

### Management of Vegetation Within Electric Utility Rights-of-Way on the Allegheny National Forest in Elk, Forest, McKean and Warren Counties, PA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** A draft and a final environmental impact statement is being prepared for the management of vegetation on 776 acres of land associated with 120 miles of electric utility rights-of-way on the Allegheny National Forest. Herbicide application, mechanical clearing and manual cutting alone, and in combination, are alternatives that will be considered.

The herbicides being considered in the analysis include glyphosate (trade names are Roundup® Rodeo®, and Accord®), metsulfuron methyl (trade names is Escort®), triclopyr (trade names are Garlon 3A® and Garlon 4®), picloram (trade names are Tordon K® and Access®), imazapyr (trade name is Arsenal®), and fosamine (trade name is Krenite UT®). The herbicide would be applied in water or mineral oil, depending on the formulation used and the method of application.

Various manual and mechanical herbicide application methods are being considered. Manual ground level applications include low volume basal, low volume foliar and stump treatment. Mechanical ground level applications include low volume selective foliar and high volume foliar. The specific herbicide formulation (trade named product), carrier and method of application will vary with the characteristics of the site, the components of the vegetation community and other factors. Aerial application of herbicide is not being considered in this analysis.

The purpose of these treatments is to ensure safe and reliable transmission and distribution of electric power across portions of the Allegheny National Forest. This environmental impact statement will amend the Allegheny National Forest Land and Resource Management Plan completed in 1986.

The environmental impact statement will be site specific on approxiamtely 120 miles of electric utility rights-of-way located on the Forest. The electric utility lines are owned and operated by the Pennsylvania Electric Company or West Penn Power Company.

The environmental impact statement is being prepared by Environmental Consultants, Incorporated, jointly funded by the Allegheny National Forest and the two electric utility companies. The decision that will be made in the EIS is to determine the site specific treatments for vegetation management projects on the specific sites. The decision will be made with full public participation and is appealable under 36 CFR part 217.

The Agency invites written comments and suggestions on the scope and substance of the analysis and the environmental impact statement. In addition, the agency gives notice that the environmental impact statement preparation process will be conducted so that interested and affected people are aware of how they may participate in and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis should be submitted in writing and postmarked by October 31, 1994, to ensure timely consideration.

**ADDRESSES:** Send written comments to Powerline Vegetation Management Analysis, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren PA 16365.

**FOR FURTHER INFORMATION CONTACT:** Bob White, Allegheny National Forest Silviculturist at 814/723–5150 about the Environmental Impact Statement. For information about vegetation management under power lines, contact Charles Olenik, Forestry Manager, Pennsylvania Electric Company at 814/533–8868.

**SUPPLEMENTARY INFORMATION:** The Allegheny National Forest Land and Resource Management Plan completed in 1986, provides for management of electric power transmission and distribution corridors on parts of the Forest. Management of vegetation that can interfere with reliable and efficient transmission and distribution of electric power is needed for approximately 776 acres of land under approximately 120 miles of power lines on the Allegheny National Forest. The purpose of this vegetation management is to produce a plant community that is generally low growing, will stabilize the site against erosion, will provide a diversity of wildlife habitat, and will minimize power outages and costs of management.

A range of alternatives will be considered, including herbicide application, mechanical clearing and manual cutting alone, and a combination of these techniques. The "no action alternative" is the method of vegetation management currently in use on a site-specific basis. Activities carried out on the ground under this alternative vary from site to site, but will be described and analyzed in the draft and the final environmental impact statements.

The decision that will be made in the EIS is a site specific determination of the treatments the power companies may use on each site. The decision is appealable under 36 CFR part 217. Federal, state and local agencies, and other individuals and organizations who may be interested or affected by the decision are invited to participate in the scoping process. This process will include (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Please include your name, address, and telephone number (organization represented and your title, if applicable).

Preliminary issues that have been identified are: (1) What is the fate of herbicides, carriers and inert ingredients in the environment; (2) what are the effects of herbicides, carriers and inert ingredients on human health; (3) what are the effects on fish and wildlife; (3) what are the impacts on water quality; and, (4) what are the costs and effectiveness of various vegetation management strategies that will ensure the reliability of electric power service.

The analysis is expected to take about 10 months. The draft environmental impact statement will be filed with the Environmental Protection Agency (EPA) and will be available for public review in early July 1995. At that time EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Allegheny National Forest participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed

(see the Council on Environmental Quality Regulations (CEQ) for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposals so that it is meaningful and alerts an agency to the reviewers position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 45 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived if not raised until after completion of the final environmental impact statement, *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1988),* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F.supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to CEQ Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 is addressing these points).

After the comment period ends on the draft environmental impact statement, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed in December 1995. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is John E. Palmer, Forest Supervisor, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren PA 16365.

Dated: September 21, 1994.

**John E. Palmer,**

*Forest Supervisor.*

[FR Doc. 94–24757 Filed 10–5–94; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on October 20, 1994, and from 9:00 a.m. to 5:00 p.m. on October 21, 1994, at the Pasadena Convention Center, 300 East Green Street, Pasadena, California 91101. The purpose of the meeting is to gather information on employment patterns in the Los Angeles television news media of minorities and women.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 30, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 94–24728 Filed 10–5–94; 8:45 am]

BILLING CODE 6335–01–P

### Amendment to Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission announced at FR Doc 94–23802, 59 FR 49233–49234, vol 59 #186, published September 27, 1994, will convene 12:30 p.m. and adjourn at 6:00 p.m. on Friday, November 4, 1994, at the San Juan College, 4601 College Boulevard, Farmington, New Mexico 87402. (This amendment is for change of day only.)

Dated at Washington, DC, September 30, 1994.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 94–24727 Filed 10–5–94; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Survey of Census Needs of Non–Federal Data Users.

*Form Number(s):* S–631.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 25,000 hours.

*Number of Respondents:* 50,000.

*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* The Census Bureau requests OMB clearance to conduct the Survey of Census Needs of Non–Federal Data Users. This survey is part of the overall content development program for the Year 2000 Decennial Census, which includes soliciting content requirements from both the Federal and non–Federal sectors. The survey is necessary to implement the requirements of the Non–Federal User Requirements Action Plan developed by the Census Bureau at the request of OMB. The survey will collect information on the subject content, uses of specific content, and geographic needs of non–Federal users such as state, local, and tribal governments, the business sector, academic researchers, community organizations, and the general public. The information we obtain from this survey will be used to develop the content of the 2000 census questionnaires, as well as to identify possible new content topics appropriate for measurement on a continuous basis through a series of large surveys.

*Affected Public:* Individuals or households, State or local governments, Businesses or other for–profit organizations, Non–profit institutions, Small businesses or organizations.

*Frequency:* One–time only.

*Respondent's Obligation:* Voluntary.
*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 30, 1994.

**Gerald Taché,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 94–24726 Filed 10–5–94; 8:45 am]

BILLING CODE 3510–07–F

## National Oceanic and Atmospheric Administration

**[Docket No. 940978–4278]**

## Private Enterprise Government Interactions Task Group Fellowship Program

**AGENCY:** Office of Global Programs, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Private Enterprise Government Interactions Task Group (PEGI) is establishing a Private Sector Fellowship Program to provide an opportunity for scientists or scientific managers from private industry to participate for eighteen months in the PEGI Task Group activities. PEGI is under the purview of the Committee on the Environment and Natural Resources Research (CENR) which is under the National Science and Technology Council (NSTC). On November 23, 1993, President Clinton established by executive order the cabinet-level NSTC to coordinate science, space, and technology policies throughout the Federal Government. An important objective of the NSTC is to establish clear national goals for Federal science and technology investments and to ensure that science, space, and technology policies and programs are developed and implemented to effectively contribute to those national goals. CENR will advise and assist the NSTC to increase the overall effectiveness and productivity of Federal R&D efforts in the area of the environment and natural resources improving the coordination of all Federal environmental and natural resource research and development and the link between science and policy. PEGI's purpose is to foster and facilitate earth and natural resource research interactions and collaborative efforts between the private sector and Federal Government.

**DATES:** Applications will be accepted until December 9, 1994.

**ADDRESSES:** Please send applications by either mail or Federal Express to: Dr. William S. Busch, Director, Emerging Technologies, NOAA/Office of Global Programs, 1100 Wayne Avenue, Suite 1225, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. William S. Busch, TEL (301) 427–2089 ext. 718, FAX (301) 427–2082.

**SUPPLEMENTARY INFORMATION:** The objectives of the program are to: (1) Provide liaison between the private sector and government agencies with the common purpose of understanding earth and natural resource sciences and in devising appropriate response strategies; (2) advise government officials of the concerns, interests, and strengths of the private sector regarding earth and natural resource issues; (3) advise the private sector of government actions regarding earth and natural resource issues; and (4) identify opportunities for the synergistic cooperation and collaboration of government and private sector agents.

The duties of the designated Fellow would include, but not be limited to: (1) Developing an in-depth knowledge of the Federal environment and natural resources research programs, including both basic science and response technologies; (2) identifying private sector consortia, alliances, and organizations whose member companies are conducting research and development programs related to Federal programs; (3) serving as point of contact for private sector groups, including telephone and written contact, attendance at their meetings, and presentations on current PEGI activities relevant to the group's area of interest; (4) arranging joint exploratory meetings between the identified private sector organizations and the appropriate Federal agency(s) representatives; (5) writing short descriptive articles for various trade journals and association publications on the work of PEGI and CENR; (6) working with the participating private sector organizations to develop an inventory of private sector capabilities, interests, data holdings, and informational needs related to earth and natural resources; and reporting on same to the CENR and PEGI; (7) researching potential vehicles for joint Federal-private sector cooperative efforts and making recommendations to PEGI; and (8) where appropriate, working with PEGI and CENR to propose additional mechanisms that would facilitate and enhance Federal-private enterprise cooperative efforts.

Applicants selected to participate in this program must: (1) Be sponsored by a private sector organization; e.g., consortium, institute, association, non-governmental organization or alliance that represents several companies in a common industry involved in some aspect of environmental technology research, development, service or commercialization; (2) have a proven track record of research and/or management in the private sector in a company, corporation, or industrial consortium directly involved in and/or affected by earth natural resources, and related technology development; (3) have demonstrated personal research and/or management leadership in an environmental and natural resources area; (4) have demonstrated experience in representing the parent company in negotiations and in industrial alliances; (5) have a working knowledge of the Technology Transfer Act of 1986 and the National Cooperative Research Act of 1984; (6) have a demonstrated interest in advancing government/private/academic cooperation in the areas of earth and natural resource issues; (7) have a statement of support from the parent company for the applicant's participation in the Industrial Fellowship Program; (8) all qualified applicants will be considered regardless of age, race, color, sex, creed, national origin, lawful political affiliation, non-disqualifying physical handicap, marital status, affiliation with an employee organization, or other non-merit factor. Agencies will comply with all EEO requirements and guidelines.

**Note:** Selected applicants will be required to file Federal Financial Disclosure Forms, and appropriate recusal statements.

Fellows will be located in appropriate host Federal agencies having a group working on CENR and PEGI issues related to his/her experience and interests. Salary, fringe benefits, and relocation and housing allowances, if required, will be paid by the sponsoring organization or the selectee's parent company. Office space, office costs, and necessary travel and per diem expenses associated with the Fellowship will be provided by the respective host Federal agencies.

Completed applications will consist of the following: (1) Curriculum vitae and biographical statement, including education and employment history; (2) memorandum (1,000 words or less) describing the applicant's objectives for participation in the program; (3) sponsoring organizations shall provide: (a) Letters of support from both the supporting private sector organization and the parent company; (b) acknowledgment of the costs to be borne by the company or supporting organization; (c) a statement that the applicant will be released from normal duties for the duration of the Fellowship; and (d) acknowledgment that the applicant must recuse himself/herself from matters involving the parent company or the sponsoring organization during the term of the Fellowship; (4) a letter of recusal for matters stemming from the Fellowship that could involve the parent company or the sponsoring organization; and (5) the selectee is required to file Financial Disclosure Statements.

Applications will be reviewed based upon personal qualifications, work experience, demonstrated abilities, publications, honors, awards, and participation in professional organizations. Final selection will be made by an ad hoc task group consisting of CENR Subcommittee Chairs and private sector representatives. Selectees will be notified and will be expected to begin the Fellowship period within one month of the notification date.

Dated: September 30, 1994.

**J. Michael Hall,**

*Director, NOAA, Office of Global Programs.*

[FR Doc. 94-24771 Filed 10-5-94; 8:45 am]

BILLING CODE 3510-12-M

---

[I.D. 092994A]

## Public Display of Marine Mammals

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

**ACTION:** Notice.

**SUMMARY:** NMFS is announcing that the American Zoo and Aquarium Association (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance) have submitted, for reference purposes, the professionally accepted standards on which their members base their education and conservation programs. The Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361 *et seq.*) was amended substantially on April 30, 1994 (P.L. 103-238) (1994 Amendments). These 1994 Amendments require that persons holding marine mammals for purposes of public display, or requesting issuance of a permit to capture or import a marine mammal for purposes of public display, must offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community. The AZA and Alliance together represent approximately 60 percent of U.S. facilities that currently hold marine mammals. Where applicable, the AZA or Alliance standards may be referenced by public display permit applicants and holders of marine mammals when exercising the rights established and submitting the documentation required under the MMPA. If alternative standards are provided as a part of a permit application to capture or import marine mammals, such standards will be published as part of the notice of receipt of the application that is published by NMFS in the **Federal Register**. Other holders of marine mammals or organizations representing members of the public display community may submit, for reference purposes, alternative standards on which education or conservation programs are based.

**FOR FURTHER INFORMATION CONTACT:** Ann Terbush, Permits Division, Office of Protected Resources, F/PR1, 1335 East-West Highway, Silver Spring, MD 20910-3226, (301) 713-2289.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1988 the MMPA was amended to require, among other things, that a permit be issued for public display purposes only to an applicant which offers a program for education or conservation that, based on professionally recognized standards of the public display community, is acceptable to the Secretary (i.e., Secretary of Commerce or Interior, depending upon the marine mammal species involved). In March 1989, NMFS initiated a comprehensive review of the permit program. At the beginning of this permit program review, it became clear that the phrase "based on professionally recognized standards of the public display community" did not refer to any existing standards already established by the public display community. Therefore, on May 22, 1989, NMFS published in the **Federal Register** (54 FR 22001) a notice of interim policy regarding the education or conservation programs of applicants requesting permits to take or import marine mammals for public display. This notice announced the criteria that NMFS would use in determining the acceptability of education or conservation programs pending the promulgation of regulations for this purpose. The notice stated that in order to be determined acceptable by NMFS, "an applicant's education or conservation program must include a program of formal or informal learning that conveys accurate information about the marine mammals being displayed and communicates in an effective manner a message and purpose that are consistent with the policies of the MMPA."

After conducting a comprehensive review of the entire permit program, NMFS published a proposed rule on October 14, 1993 (58 FR 53320), to revise existing permit regulations for taking and importing marine mammals for purposes of public display, scientific research, and enhancement under the MMPA and the Endangered Species Act. This proposed rule included criteria for determining whether an applicant's education or conservation program is acceptable. These standards were based on the interim policy previously published in the **Federal Register** and the numerous comments and recommendations on the subject received during the permit program review.

On April 30, 1994, the 1994 Amendments to the MMPA were enacted. Under the 1994 Amendments, the requirement that applicants for a permit for purposes of public display must offer an education or conservation program acceptable to the Secretary was eliminated and replaced by a requirement that, for purposes of public display, persons holding marine mammals and those issued a permit to capture or import must "offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community." Essentially, although the Secretary is no longer required to determine whether education/conservation programs are acceptable, the Secretary must still determine whether a person offers a program for education or conservation purposes based on professionally recognized standards of the public display community. To ensure compliance with this requirement of the MMPA, applicants for a public display permit to capture or import marine mammals and persons holding marine mammals for purposes of public display must identify, by reference or description, the professionally recognized standards of the public display community on which their

education or conservation programs are based.

Although there are no professionally recognized standards for education or conservation programs that are uniformly accepted as such by the public display community, such standards are not required by the 1994 Amendments. The 1994 Amendments require only that for purposes of public display persons holding marine mammals or requesting a permit to capture or import marine mammals must offer a program for education or conservation purposes that is based on professionally recognized standards of the public display community. And, because any person holding marine mammals for purposes of public display is a member of the public display community and, therefore, may identify the professionally recognized standards on which their education or conservation program is based, for such persons this requirement is essentially one that relies on self-regulation. NMFS, therefore, asked the AZA and Alliance, as organizations which together represent approximately 60 percent of the public display facilities holding marine mammals, to identify the standards on which their members base their education and conservation programs. In making this request, NMFS stated that the standards identified by the AZA and Alliance would be published in the **Federal Register**; thus, enabling persons who offer an education or conservation program based on either the AZA or Alliance standards to use this notice as a reference instead of listing such standards repeatedly.

NMFS recognizes that the AZA and Alliance do not represent the entire public display community and that some members of that community may offer education or conservation programs based on professionally recognized standards of the public display community that are different from those identified by either the AZA or Alliance. Consequently, other members or representative organizations of the public display community may also submit, for reference purposes, alternative standards on which education or conservation programs are based. NMFS may also publish in the **Federal Register** notice of such alternative standards for reference by the public display community. In addition, if alternative standards are provided as a part of a permit application, such standards will be published as a part of the notice of receipt of an application and opportunity for public comment that is published by NMFS in the **Federal Register**.

**Standards**

The Alliance and AZA identified the following as the professionally recognized standards of the public display community on which their members have based their education and conservation programs:

**Standards of the American Zoo and Aquarium Association**

1. Education must be an element of the mission statement of the institution.

2. All institutions must have structured education programs, including a written education plan.

3. The education program should be under the direction of a paid professional trained in educational programming. In those cases where employees have not yet been retained, someone should be assigned the responsibility to implement and manage the programs.

4. Education programs should be evaluated on a regular basis for effectiveness and content and current scientific information included.

5. Cooperative programs with institutions of higher learning should be developed.

6. If animal demonstrations are a part of the institution's programs, an educational/conservation message must be incorporated.

7. A reference library appropriate to the size and complexity of the institution should be available to all staff members.

8. The graphics program must include information regarding the animal collection's conservation/ecology relation to humans/natural history and other interpretive elements.

9. Exhibits in which endangered animals are displayed must include the designation as an endangered species and those displaying Species Survival Plan (SSP) animals should include a statement that the animals are a part of AZA's SSP program. It is recommended that the SSP program be highlighted by utilization of AZA's SSP logo and text.

10. Recruitment, interviewing, training, and evaluation programs should exist for all programs utilizing volunteers/ docents.

**Standards of the Alliance of Marine Mammal Parks and Aquariums**

1. Education programs about marine mammals must promote an improved understanding of and an appreciation for these animals and their ecosystems.

NOTE: In addition to direct observation, a variety of other techniques and stimuli may be used to effectively communicate member programs' educational messages. These methods may include, but are not limited to, some of the following:

* Audio-visual materials
* Community outreach
* Formal education programs
* Guided tours
* Instructional guides/curricula
* Interactive exhibits/programs
* Interpretive graphics
* Narration at exhibits
* Off-site education programs
* Public presentations
* Public Shows
* Recreation programs
* Special needs programs (e.g., disabled, senior citizens)
* Species identification labels
* Teacher training
* Written materials/publications

2. Education programs about marine mammals must offer multiple levels of learning opportunities for visitors to expand their knowledge about these animals.

NOTE: Multiple levels of learning opportunities refers to providing educational information for visitors who have different levels of knowledge and interest. For example, basic introductory programming might offer viewing of animals, species identification, and/or a public show or presentation. More advanced programming might include, for example, formal education programs, guided tours, and/or written or audio-visual material designed to meet the needs of individuals who which additional information.

3. Education programs about marine mammals must present information about these animals, their ecosystem, or marine wildlife conservation that is based upon the best current scientific knowledge.

NOTE: The best current scientific knowledge refers to information based on the growing body of scientific research about marine mammals science and the basic knowledge that is professionally recognized by relevant disciplines, such as biology, physiology, anatomy, veterinary medicine, and/or animal behavior science.

4. A qualified individual must be designated and responsible for the development of, and administration of, education programs about marine mammals.

NOTE: Qualified refers to having a bachelor's degree, education experience, administrative skills, and knowledge about marine mammals.

5. Education programs about marine mammals must include a written education plan consisting of a mission statement, goals, and an evaluation strategy.

NOTE: The education plan should reflect current facility programs.

Evaluations are intended for internal program review, and each facility will have discretion in determining the methods used and the scope and frequency of the evaluations.

6. Education programs about marine mammals must include availability of institution experts as a marine science resource to professional groups and the education community when appropriate and practicable.

NOTE: Public display facilities employ and collaborate with many highly knowledgeable and experienced marine mammal experts, such as animal behaviorists, veterinarians, research scientists, trainers, and marine education and other specialists. When appropriate and practicable, facilities should encourage and facilitate opportunities for these specialists to serve as marine science resources and share their expertise with interested professional groups and the education community.

Dated: September 30, 1994.

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

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 94–24787 Filed 10–5–94; 8:45 am]

BILLING CODE 3510–22–F

---

**[I.D. 091694C]**

## Marine Mammals

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

**ACTION:** Modification No. 1 to scientific research permit no. 835 (P250D).

**SUMMARY:** Notice is hereby given that a request for modification of scientific research permit No. 835 submitted by the Washington Department of Wildlife, Marine Mammal Institute, 7801 Phillips Road, SW., Tacoma, WA 98498, the National Marine Fisheries Service, National Marine Mammal Laboratory, 7600 Sand Point Way, NE. BIN C15700, Building 1, Seattle, WA 98115–0070, and the Oregon Department of Fish and Wildlife, Marine Region, Marine Science Drive, Building 3, Newport, OR 97365 has been granted.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

**SUPPLEMENTARY INFORMATION:** On August 15, 1994, notice was published in the **Federal Register** (59 FR 41750) that a modification of Permit No. 835, issued April 27, 1993 (58 FR 26288), had been requested by the above-named organizations. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 835 authorized the permit holders for the inadvertent harassment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and elephant seals (*Mirounga angustirostris*) incidental to the conduct of aerial, ground, and boat surveys. The permit holders were also authorized to capture, mark, tag, brand, and sample harbor seals.

Permit No. 835 has now been modified to authorize the permit holders to mark and tag up to 50 male California sea lions annually; to capture, mark, brand, tag, and release up to 150 male California sea lions annually, of which up to 50 may be instrumented with radio/satellite tags or time-depth recorders (TDRs); and for the harassment of up to 1,000 additional sea lions annually incidental to the proposed activities.

Issuance of this modification, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in § 2 of the Endangered Species Act.

Dated: September 29, 1994.

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

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 94–24788 Filed 10–5–94; 8:45 am]

BILLING CODE 3510–22–F

---

**[I.D. 090994A]**

## Marine Mammals

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

**ACTION:** Issuance of scientific research permit No. 936 (P8G).

**SUMMARY:** Notice is hereby given that the Naval Command, Control and Ocean Surveillance Center (Principal Investigators Mr. Donald A. Carder and Dr. Sam H. Ridgway), San Diego, CA 92152 has been issued a permit to take several species of cetaceans and sea turtles for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (301/980–4001);

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 (813/570–5301);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Director, Northwest Region, NMFS, 7600 San Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

**SUPPLEMENTARY INFORMATION:** On July 1, 1994, notice was published in the **Federal Register** (59 FR 33957) that a request for a scientific research permit to administer audiograms to several species of cetaceans and sea turtles, which become accidentally entrapped or stranded in U.S. waters, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species

which are the subjects of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 30, 1994.

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

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 94–24700 Filed 10–5–94; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF DEFENSE

### Meeting of the Advisory Council on Dependents' Education

**AGENCY:** Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

**DATES:** October 28, 1994, 9 a.m. to 4:30 p.m. and October 29, 1994, 9 a.m. to 12 noon.

**ADDRESSES:** Hotel Continental, Tirrenia, Italy.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marilyn Witcher, Public Affairs Officer, DoD Education Activity, 4040 N. Fairfax Drive, Arlington, Virginia 22203–1635; Telephone number: 703–696–4236, extension 121.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Departments, 12 members are appointed jointly by the Secretaries of Defense and Education. Members include representatives of educational institutions and agencies, professional employee organizations and unions, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about observations made by teams of ACDE members who visited DoDDS schools prior to the full Council meeting, the National Education Goals, academic achievement encouragement, multicultural/multiracial diversity and awareness, education of children with disabilities, communications throughout the system, increased parental involvement, drawdown planning, educational technologies, and responses to the recommendations made by the Council during its April 1994 meeting.

Dated: September 30, 1994.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–24680 Filed 10–5–94; 8:45 am]

BILLING CODE 5000–04–M

### Office of the Secretary

### Defense Science Board Task Force on C–17 Review, Phase II

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on C–17 Review, Phase II will meet in closed session on October 17–18, 1994 at McDonnell Douglas, Long Beach, California.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will access the current status of the C–17 program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: October 3, 1994.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–24756 Filed 10–5–94; 8:45 am]

BILLING CODE 5000–04–M

### U.S. Strategic Command Strategic Advisory Group

**AGENCY:** Department of Defense, USSTRATCOM.

**ACTION:** Notice.

**SUMMARY:** The Strategic Advisory Group (SAG) will meet in closed session on October 27 and 28, 1994.

The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic warplans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, April 2, 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II (1988)), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that, accordingly, this meeting will be closed to the public.

Dated: September 30, 1994.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–24681 Filed 10–5–94; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as

required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by October 31, 1994.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Act Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: September 29, 1994.

**Ingrid Kolb,**

*Acting Director, Information Resources Management Service.*

**Office of Postsecondary Education**

*Type of Review:* Expedited.
*Title:* Request for Designation as an Eligible Institution Under the Urban Community Service Program.
*Abstract:* This information is needed to designate eligible institutions separately from the solicitation of grants under this program. In this way, institutions can be informed of their eligibility to participate in the program prior to undertaking the burden of developing a grant application. Also, the Secretary identifies those institutions that are eligible to join the legislatively mandated network of "urban grant institutions".
*Additional Information:* ED is requesting, from OMB, an expedited review and approval by October 31, 1994. An expedited review is requested because ED will need time to conduct this review in addition to its review of project applications in FY 1995. It is estimated, based on calls of inquiry received by the Department, that as many as 500 eligibility applications may be submitted. The Department will need time to process these applications and notify respondents of the results before undertaking the grant solicitation process. In addition, grant applicants will need adequate time to prepare their proposals after being informed of their eligibility. If sufficient time is not allowed, the Department will not be able to conduct both reviews effectively and the Secretary's statutory obligation to publish a list of urban grant institutions will be further delayed.
*Frequency:* Annually.
*Affected Public:* Non-profit institutions.
*Reporting Burden:*
*Responses: 500.*
*Burden Hours:* 5,500.
*Recordkeeping Burden:*
*Recordkeepers:* 0.
*Burden Hours:* 0.

**Office of Postsecondary Education**

*Type of Review:* Expedited.
*Title:* Income Contingent Repayment Plan Consent to Disclosure of Tax Information.
*Abstract:* The Student Loan Reform Act of 1993 (P.L. 103–66) authorized the Federal Direct Student Loan (Direct Loan) Program to make loans beginning July 1, 1994. On July 1, 1994 the regulations implementing the Income Contingent Repayment Plan, as a repayment option under the Direct Loan Program, was published in the **Federal Register**. In order to participate in the Income Contingent Repayment Plan, a borrower must give written consent for the Internal Revenue Service to disclose certain tax information to the Department of Education. The Consent to Disclosure to Tax Information (consent to disclosure form) will provide that consent.
*Additional Information*: ED is requesting, from OBM, an expedited review and approval by October 31, 1994. An expedited review is requested because the consent to disclosure from must be available in order for these borrowers to choose to repay under the Income Contingent Repayment Plan. Having the consent to disclosure form approved by October 31 will allow the Servicer to pre-print forms for borrowers and allow borrowers to participate in the Income Contingent Repayment Plan which is an important feature of the President's initiative to implement the Direct Loan Program.
*Frequency*: One time.
*Affected Public*: Individuals or households.
*Reporting Burden:*
*Responses*: 12,350.
*Burden Hours*: 2,470.
*Responses*: 0.
*Burden Hours*: 0.

[FR Doc. 94–24689 Filed 10–5–94; 8:45 am]
BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Advisory Committee on Human Radiation Experiments

**AGENCY:** Department of Energy.
**ACTION:** Notice of open meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463,86 Stat. 770), notice is hereby given of the following meeting:
*Date and Time:* October 21, 1994, 9:00 a.m.–5:30 p.m.
*Place:* The Regal Cincinnati Hotel (formerly the Clarion Hotel), 141 West 6th Street, Cincinnati, Ohio

**FOR FURTHER INFORMATION CONTACT:** Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795 Fax:(202) 254–9828

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Committee:**

The Advisory Committee on Human Radiation Experiments was established

by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

**Tentative Agenda**

Friday, October 21, 1994

9:00 a.m. Call to Order and Opening Remarks
9:15 a.m. Congressional Remarks
9:30 a.m. Public Comment
11:00 a.m. Break
11:15 a.m. Public Comment (continued)
12:30 p.m. Lunch
1:30 p.m. Public Comment (continue)
3:30 p.m. Break
3:45 p.m. Public Comment (continue)
5:15 p.m. Closing Remarks
5:30 p.m. Meeting Adjourn

A final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above.

Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

*Transcript:* Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 3, 1994.

**Rachel M. Samuel,**

*Acting Advisory Committee Management Officer.*

[FR Doc. 94–24809 Filed 10–5–94; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. EG94–102–000, et al.]**

## Vista Energy, L.P., et al. Electric Rate and Corporate Regulation Filings

September 29, 1994.

Take notice that the following filings have been made with the Commission:

**1. Vista Energy, L.P.**

[Docket No. EG94–102–000]

On September 22, 1994, Vista Energy, L.P., 12500 Fair Lakes Circle, Suite 300, Fairfax, Virginia 22033, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a limited partnership that will be exclusively engaged in owning and operating an approximately 181 MW coal-fired electric power production facility in West Deptford Township, New Jersey, and selling electric power at wholesale.

Comment date: October 21, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**2. Crown Energy, L.P.**

[Docket No. EG94–103–000]

On September 22, 1994, Crown Energy, L.P., 12500 Fair Lakes Circle, Suite 300, Fairfax, Virginia 22033, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a limited partnership that will be exclusively engaged in owning and operating an approximately 181 MW coal-fired electric power production facility in West Deptford Township, New Jersey, and selling electric power at wholesale.

Comment date: October 21, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the applicants.

**3. Entergy Power Development Corporation**

[Docket No. EG94–104–000]

On September 22, 1994, Entergy Power Development Corporation, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, several electric power facilities. Applicant has previously been found to be an exempt wholesale generator. This application is occasioned by Applicant's intended acquisition of interests in two approximately 181 MW coal-fired electric power production facilities in West Deptford Township, New Jersey, and its proposal to engage in certain development activities.

Comment date: October 21, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the applicants.

**4. Consumers Power Company**

[Docket No. ES94–41–000]

Take notice that on September 22, 1994, Consumers Power Company filed an application under § 204 of the Federal Power Act seeking authorization to issue and sell, or guarantee, up to $900 million in secured and/or unsecured short-term debt and/or evidences of indebtedness, including but not limited to notes, drafts, debentures and commercial paper to be issued during the period from January 1, 1995 through December 31, 1996, with maturities of 364 days or less.

Comment date: October 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

**5. Commonwealth Edison Company**

[Docket No. ES94–42–000]

Take notice that on September 23, 1994, Commonwealth Edison Company filed an application under section 204 of the Federal Power Act seeking authorization to issue one billion dollars of unsecured short-term obligations on or before December 31, 1996, with maturities of twelve months or less from date or dates of issuance.

Comment date: October 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

**6. Netherlands Generating Trust I**

[Docket No. EG94–98–000]

On September 22, 1994, Netherlands Generating Trust I, c/o Wilmington

Trust Company, Rodney Square North, 1100 North Market Square, Wilmington, Delaware, 19890–0004, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Netherlands Generating Trust I is a business trust under Delaware law, which has been formed to purchase an undivided interest in Unit 9 of the Amercentrale cogeneration facility ("Facility" or "Unit 9"), a 650 MW (gross) facility located in Geertruidenberg, The Netherlands. PCI Netherlands Corporation is the sole beneficiary of Netherlands Generating Trust I. PCI Netherlands Corporation is a wholly-owned subsidiary of Potomac Capital Investment Corporation, which in turn is a wholly-owned subsidiary of Potomac Electric Power Company. The undivided interest in the Facility will be leased to N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland EPZ ("EPZ"), a Netherlands generating utility company. The lease will allow EPZ to use the undivided interest in the Facility, which can be fueled by either coal or gas, to produce steam and electricity. The Applicant states that no rate or charge in connection with Unit 9 was in effect under the laws of any state as of October 24, 1992 or at any time thereafter. The Applicant further states that copies of the application were served upon the Securities and Exchange Commission, the District of Columbia Public Service Commission, and the Maryland Public Service Commission.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 7. Netherlands Generating Trust III

[Docket No. EG94–99–000]

On September 22, 1994, Netherlands Generating Trust III, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Square, Wilmington, Delaware, 19890–0004, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Netherlands Generating Trust III is a business trust under Delaware law, which has been formed to purchase an undivided interest in Unit 9 of the Amercentrale cogeneration facility ("Facility" or "Unit 9"), a 650 MW (gross) facility located in Geertruidenberg, The Netherlands. PCI Netherlands Corporation is the sole beneficiary of Netherlands Generating Trust III. PCI Netherlands Corporation is a wholly-owned subsidiary of Potomac Capital Investment Corporation, which in turn is a wholly-owned subsidiary of Potomac Electric Power Company. The undivided interest in the Facility will be leased to N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland EPZ ("EPZ"), a Netherlands generating utility company. The lease will allow EPZ to use the undivided interest in the Facility, which can be fueled by either coal or gas, to produce steam and electricity. The Applicant states that no rate or charge in connection with Unit 9 was in effect under the laws of any state as of October 24, 1992 or at any time thereafter. The Applicant further states that copies of the application were served upon the Securities and Exchange Commission, the District of Columbia Public Service Commission, and the Maryland Public Service Commission.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 8. Netherlands Generating Trust IV

[Docket No. EG94–100–000]

On September 22, 1994, Netherlands Generating Trust IV, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Square, Wilmington, Delaware, 19890–0004, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Netherlands Generating Trust IV is a business trust under Delaware law, which has been formed to purchase an undivided interest in Unit 9 of the Amercentrale cogeneration facility ("Facility" or "Unit 9"), a 650 MW (gross) facility located in Geertruidenberg, The Netherlands. PCI Netherlands Corporation is the sole beneficiary of Netherlands Generating Trust IV. PCI Netherlands Corporation is a wholly-owned subsidiary of Potomac Capital Investment Corporation, which in turn is a wholly-owned subsidiary of Potomac Electric Power Company. The undivided interest in the Facility will be leased to N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland EPZ ("EPZ"), a Netherlands generating utility company. The lease will allow EPZ to use the undivided interest in the Facility, which can be fueled by either coal or gas, to produce steam and electricity. The Applicant states that no rate or charge in connection with Unit 9 was in effect under the laws of any state as of October 24, 1992 or at any time thereafter. The Applicant further states that copies of the application were served upon the Securities and Exchange Commission, the District of Columbia Public Service Commission, and the Maryland Public Service Commission.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 9. Netherlands Generating Trust II

[Docket No. EG94–101–000]

On September 22, 1994, Netherlands Generating Trust II, c/o Wilmington Trust Company, Rodney Square North, 1100 North Market Square, Wilmington, Delaware, 19890–0004, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Netherlands Generating Trust II is a business trust under Delaware law, which has been formed to purchase an undivided interest in Unit 9 of the Amercentrale cogeneration facility ("Facility" or "Unit 9"), a 650 MW (gross) facility located in Geertruidenberg, The Netherlands. PCI Netherlands Corporation is the sole beneficiary of Netherlands Generating Trust II. PCI Netherlands Corporation is a wholly-owned subsidiary of Potomac Capital Investment Corporation, which in turn is a wholly-owned subsidiary of Potomac Electric Power Company. The undivided interest in the Facility will be leased to N.V. Elektriciteits-Produktiemaatschappij Zuid-Nederland EPZ ("EPZ"), a Netherlands generating utility company. The lease will allow EPZ to use the undivided interest in the Facility, which can be fueled by either coal or gas, to produce steam and electricity. The Applicant states that no rate or charge in connection with Unit 9 was in effect under the laws of any state as of October 24, 1992 or at any time thereafter. The Applicant further states that copies of the application were served upon the Securities and Exchange Commission, the District of Columbia Public Service Commission, and the Maryland Public Service Commission.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**10. South Carolina Electric & Gas Company**

[Docket No. ER94–256–000]

Take notice that South Carolina Electric & Gas Company (SCG&E) on December 15, 1993, tendered for filing a Interchange Agreement between South Carolina Electric & Gas Company and Oglethorpe Power Corporation. By letters dated February 11, March 10, and June 1, 1994, South Carolina Electric & Gas Company requested that Staff defer action under this docket for up to thirty (30) additional days each. On September 21, 1994, SCE&G filed revised sheets to Appendix A of this Agreement, incorporating, among other things, an 11.4% return on equity.

Under the proposed Interchange Agreement between SCG&E and Oglethorpe Power Corporation, the parties agree to service schedules for Reserve, Short Term Power, Limited Term Power, Economy Interchange and Other Energy transactions. A supplemental filing is hereby submitted in order to provide further clarification and explanation of data contained in the Agreement.

Copies of this filing were served upon Oglethorpe Power Corporation.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

**11. Illinois Power Company**

[Docket No. ER94–1505–000]

Take notice that on September 27, 1994, Illinois Power Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

**12. New York State Electric & Gas Corporation**

[Docket Nos. ER94–1535–000 and ER94–1536–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on September 23, 1994, tendered for filing a supplementary filing in the above dockets. Docket No. ER94–1535–000 pertains to an agreement between NYSEG and Allegheny Electric Cooperative, Inc. (AEC), and Docket No. ER94–1536–000 pertains to an agreement between NYSEG and Enron Power Marketing, Inc. (ENRON). The agreements provide for NYSEG's sale of energy or electric generating capacity and associated energy as may be scheduled by NYSEG and AEC, or NYSEG and ENRON from time to time. The current filing is being made at Commission's Staff request, and explains and modifies certain aspects of the agreements.

NYSEG requests that the agreements become effective on August 5, 1994 and requests waiver of the 60-day notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Pennsylvania Public Utility Commission, AEC and ENRON.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

**13. The Union Light, Heat and Power Company**

[Docket No. ES94–43–000]

Take notice that on September 23, 1994, The Union Light, Heat and Power Company filed an application under § 204 of the Federal Power Act seeking authorization to issue $35 million of unsecured promissory notes from time to time through December 31, 1996, with no note maturity more than nine months from date of issuance or renewal or later than December 31, 1996.

Comment date: October 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

**14. Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)**

[Docket No. EL94–94–000]

Take notice that on September 20, 1994, Northern States Power Company tendered for filing a request for waiver from fuel clause regulations.

Comment date: October 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24715 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–P

---

**[Project No. 10873 North Carolina]**

## Michael P. O'Brien and Robert A. Davis, III; Notice of Availability of Draft Environmental Assessment

September 30, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the existing, unlicensed Cullasaja Hydroelectric Project, located on the Cullasaja River in Highlands, North Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Please submit any comments within 45 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please affix Project No. 10873 to all comments. For further information, please contact Jennifer Hill, Environmental Coordinator, at (202) 219–2797.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24720 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. CP94–791–000, et al.]**

## Koch Gateway Pipeline Company, et al.; Natural Gas Certificate Filings

September 29, 1994.

Take notice that the following filings have been made with the Commission.

**1. Koch Gateway Pipeline Co.**

[Docket No. CP94–791–000]

Take notice that on September 22, 1994, Koch Gateway Pipeline Company (Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–791–000 an application pursuant to §§ 157.205(b) and 157.211(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install an eight-inch delivery tap, meter and regulator station to be used to deliver natural gas to Entex, Inc. (Entex), under the blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Gateway proposes to install an eight-inch tap, and construct and operate the appurtenant meter and regulator station near Westlake, Louisiana, to provide natural gas service to Olin Chemical on behalf of Entex. The facilities would be used to deliver up to 12,000 per day under a TF–1 transportation agreement between Entex and Gateway. Gateway states that the total cost of the proposed project is estimated to be $80,000.

*Comment date:* November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

**2. National Fuel Gas Supply Corp.**

[Docket No. CP94–802–000]

Take notice that on September 26, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–802–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to perform construction on two existing delivery taps that provide service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution), under the blanket certificate issued in Docket No. CP83–4–000, 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.

National proposes to replace the 2″ regulator and the 4″ relief valve at the Arcade, Wyoming County, New York location with a 3″ regulator and a 6″ relief valve, within the pipeline right-of-way of National's Line PY. Additionally, National proposes to replace the ½″ regulator and the 3″ relief valve at the Orchard Park, Erie County, New York location with a ½″ regulator and a 4″ relief valve, within the pipeline right-of-way of National's Line K. National indicates the cost of construction for the two taps is estimated to be $27,000, for which National will be reimbursed by Distribution.

National asserts the actual throughput at these delivery taps will remain the same: 1,500 Mmcf/year for the Arcade, New York location and 385 Mmcf/year for the Orchard Park, New York location. National states its FERC Gas Tariff does not prohibit the addition of new delivery taps. National relates that it has sufficient capacity to accomplish the proposed deliveries without detriment or disadvantage to its other customers.

*Comment date:* November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

**3. Texas Gas Transmission Corp.**

[Docket No. CP94–805–000]

Take notice that on September 26, 1994, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–805–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new delivery point in Carroll County, Kentucky to serve an existing customer, Carrollton Utilities (Carrollton), under Texas Gas's blanket certificate issued to Texas Gas in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that the new delivery point will enable Carrollton to provide natural gas service to a new industrial customer, Gallatin Steel, as well as accommodate additional load growth in the area. The proposed delivery point, to be known as the Carrollton #2 Delivery Point, will be located on Texas Gas's No. 1 and No. 2 main lines near Wright's Ridge Road in Carroll County, Kentucky. The estimated maximum annual quantity of natural gas to be delivered to Carrollton at the new point will be 7,000,000 MMBtu, with a proposed maximum daily quantity of 28,800 MMBtu. Texas Gas states that service to this new delivery point will be accomplished within Carrollton's existing contract quantities and without detriment to Texas Gas's other customers.

*Comment date:* November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

**4. Shell Gas Pipeline Company and BP Exploration & Oil, Inc.**

[Docket No. CP94–808–000]

Take notice that on September 27, 1994, Shell Gas Pipeline Company, P.O. Box 576, Houston, Texas 77001, and BP Exploration & Oil, Inc. (BP), P.O. Box 4527, Houston, Texas 77210–4587, referred to together as Petitioners, jointly filed a petition for declaratory order in Docket No. CP94–808–000, requesting that the Commission declare that facilities to be constructed on the Outer Continental Shelf (OCS) would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioners state that they propose to construct the MARS Gas Gathering System to attach natural gas produced from the Mississippi Canyon 807 Unit (MARS), produced by Shell Offshore, Inc. (SOI) and BP, to a point on interconnection with the existing offshore jurisdictional natural gas transmission infrastructure. Petitioners state that the MARS project would be located about 130 miles southeast of New Orleans in a water depth of 2,940 feet and is estimated to have approximately 700 million barrel equivalent of oil and natural gas reserves. Petitioners indicate that the MARS prospect was discovered in 1989 and is reported to be the largest discovery in the Gulf of Mexico in the past 20 years. It is stated that SOI and BP have committed $1.2 billion for the initial development of the MARS prospect.

It is stated that phase 1 of the MARS prospect would be developed by installing a tension leg platform (TLP) which would be secured to the ocean floor by vertical tendons. It is also indicated that up to 24 oil and gas production wells would be drilled and completed from the TLP via sub-sea flowlines. Petitioners state that initial production from the TLP is expected to commence in the second half of 1996 and production is forecasted to eventually reach peak daily rates of approximately 100,000 barrels of oil and 110,000 Mcf on natural gas.

Petitioners state that the system would consist of a 14-inch pipeline extending approximately 45 to 60 miles from the TLP to a shelf interconnection platform in the OCS area, Offshore Louisiana. It is also indicated that the project would also include certain related facilities, that may include one

or more gas sales meter stations, a pig launcher and receivers, risers, slug catcher, sumps, drains, over-pressure protection facilities, gas and condensate meters and condensate pumps.

Petitioners state that the exact terminus of the MARS Gas Gathering Pipeline at which the TLP would be located is still under evaluation and negotiation, with the petitioners intending to select an interconnection platform or platforms allowing connection to one or more pipelines in the South Pass and Mississippi Canyon Areas. Petitioners indicates that the design capacity of the pipeline would be 160,000 Mcf per day at an operating pressure of 1,650 psig. It is stated that the production would be separated and dehydrated on the TLP as this is necessary to prevent the formation of hydrates in the line, and compressed on the platform to a pressure which is sufficient to overcome the pressure drop in the proposed MARS pipeline as well as to allow the gas to flow into the downstream interstate pipeline. It is also stated that the gas may be processed onshore for the removal of liquids.

Petitioners seek a declaratory order holding that the proposed facilities would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act. In support of its claim that the primary function of the proposed facility is gathering, Petitioners point out the following: (1) The length (45 to 60 miles) and diameter (14 inches) are comparable to other OCS facilities previously determined to be gathering, (2) the geographic configuration of the facility (a, straight line, relatively small diameter gathering line feeding production into an interstate pipeline) is consistent with other OCS gathering facilities, (3) preliminary separation, dehydration, and compression will be done on the MARS TLP, (4) the facility will be located entirely behind onshore processing plants, and (5) the facility would be owned and operated by companies engaging primarily in exploration, production and non-jurisdictional gas gathering activities.

*Comment date:* November 1, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

**5. Southern Natural Gas Co.**

[Docket No. CP94–809–000]

Take notice that on September 27, 1994, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–809–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to abandon certain regulating and measurement facilities and change the operation of an existing delivery point for Alabama Gas Corporation (Alagasco), under the blanket certificate issued in Docket No. CP82–406–000, pursuant to Sections 7(b) and 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.

Southern states that it is currently authorized to sell and deliver natural gas to the Chilton County Gas District (Chilton) at the Chilton County Delivery Point (Chilton County), in Shelby County, Alabama, and to transport and sell natural gas to Alagasco at the Montevallo Point of Delivery, also in Shelby County. Southern states that, in October 1993, Alagasco acquired the distribution facilities of Chilton. It is indicated that the two above-mentioned delivery points lie adjacent to each other. Southern states that, since Alagasco now serves the distribution facilities behind both of these delivery points, Alagasco has requested and Southern has agreed to consolidate deliveries at these two delivery points so that all gas that is now delivered to Alagasco at Chilton County would be delivered to Alagasco at Montevallo. Accordingly, Southern proposes to abandon the measurement facilities at Chilton County.

Southern states that, in order to accommodate the combined stream of volumes at Montevallo, Southern requests authorization under § 157.212(a) of the Commission's Regulations to deliver gas to Montevallo at a contract delivery pressure of mainline pressure not less than 150 psig and to install a 3-inch rotary meter to have the ability to measure accurately the additional level of flow at the higher pressure. Southern also indicates that, to implement the change in contract delivery pressure, it requests authorization to abandon two 3-inch regulators at Montevallo which had been used to reduce pressure from Southern's mainline to the present contract delivery pressure of 75 psig. In addition, Southern proposes to abandon the meter station at Chilton County.

Southern states that the modification of the Montevallo Station would eliminate the need to continue the Chilton County Station. In addition, Southern states that the abandonment of the Chilton County Station would decrease Southern's maintenance costs.

Southern advises that the total volumes to be delivered to Alagasco after the request do not exceed the total volumes authorized prior to the request. Also, Southern indicates that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Southern's other customers. In addition, Southern indicates that the changes in operations at Montevallo would have no impact on Southern's ability to serve its peak day and annual requirements.

*Comment date:* November 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 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 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 and/or permission and approval for the proposed abandonment are 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 applicant to appear or be represented at the hearing.

G. 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. 94–24714 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–P

---

**[Docket No. RP94–369–001]**

## Algonquin Gas Transmission Co.; Notice of Tariff Filing

September 30, 19884.

Take notice that on September 22, 1994, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 1994:

Sub First Revised Sheet No. 172
Sheet No. 712

Algonquin states that the language on Sub First Revised Sheet No. 172 has been revised to accommodate a request made by Algonquin Customer Group in comments filed in this proceeding, that certain language be reinstated that had been inadvertently deleted. Algonquin states that it agrees with these comments, and Sub First Revised Sheet No. 172 if being filed to reinstate language that permits Algonquin to delivery to an AIT–1 customer an hourly quantity exceeding the Customer's Maximum Hourly Transportation Quantity.

Algonquin further states that pro forma Sheet No. 712 is being filed to respond to comments made in a protest filed by Distrigas of Massachusetts Corporation (DOMAS) in this proceeding. In the event the Commission adopts DOMAC's position regarding the apportionment of upstream capacity release credits, Algonquin requests that the Commission also accept revised Sheet No. 712, which is responsive to DOMAC's comments.

Algonquin states that copies of the filing has been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rule 211 of the Commission's Rules of practice and procedure. All such protests should be filed on or before October 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24821 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP93–14–022]**

## Algonquin Gas Transmission Company; Tariff Filing

September 30, 1994.

Take notice that on September 27, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, certain revised tariff sheets listed in Appendix A to its "Motion for Leave to Answer Protest and Answer to Protest" in this proceeding.

Algonquin states that the revised tariff sheets are being filed in order to eliminate the Gas Research Institute (GRI) surcharge for Rate Schedule X–37. That surcharge was inadvertently included for Rate Schedule X–37 service on the tariff sheets originally filed to implement the March 1, 1994, Stipulation approved by the Commission's July 8, 1994, Order Approving Settlements in Docket Nos. RP93–14–000, *et al.*[1] Algonquin further states that acceptance of the filing resolves the issue of the collection of a GRI surcharge from New England Power company (NEP) under Rate Schedule X–37, and renders moot NEP's protest objecting to the GRI surcharge.

Algonquin states that copies of the filing have been served upon all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of practice and procedure. All such protests should be filed on or before October 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24723 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

---

**[Project No. 11261–002 California]**

## City of Anaheim et al.; Surrender of Preliminary Permit

September 30, 1994.

Take notice that City of Anaheim et al., Permittee for the Lake Elsinore Project No. 11261, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11261 was issued May 17, 1993, and would have expired April 30, 1996. The project would have been located in Cleveland National Forest, at Lake Elsinore, in Riverside County, California.

The Permittee filed the request on September 15, 1994, and the preliminary permit for Project No. 11261 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24721 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP94–342–001]**

## Colorado Interstate Gas Company; Tariff Compliance Filing

September 30, 1994.

Take notice that on September 28, 1994, Colorado Interstate Gas Company (CIG), tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. CIG states that the new tariff sheets are filed to comply

[1] 68 FERC ¶ 61,039 (1994).

with Ordering Paragraph (B) of the Order Accepting Certain Tariff Sheets, Subject to Modification, Accepting and Superseding One Tariff Sheet Subject to Refund, and Rejecting Tariff Sheets As Moot issued September 14, 1994, in Docket No. RP94–342–000.

Accordingly, CIG submitted for filing the following tariff sheets to become effective on September 15, 1994:

Substitute Original Sheet No. 40A
Substitute First Revised Sheet No. 67
Substitute Original Sheet No. 78A
Substitute First Revised Sheet No. 167
Substitute First Revised Sheet No. 293
Substitute First Revised Sheet No. 358

CIG states that a copy of this filing was served upon all parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24724 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP91–161–023]**

## Columbia Gas Transmission Corporation; Refund Report

September 30, 1994.

Take notice that on September 2, 1994, Columbia Gas Transmission Corporation filed with the Federal Energy Regulatory Commission (Commission) a report summarizing refunds disbursed on July 29, 1994, to the cities of Charlottesville and Richmond, Virginia (the Cities). Columbia states that these refunds covered the period December 1, 1991, through May 31, 1994, in the total amount of $2,967,033.96 including $232,266.96 in interest.

On November 9, 1992, Columbia and Columbia Gulf Transmission Company submitted to the Commission a joint offer of settlement in the above referenced dockets (Settlement). On April 2, 1993, the Commission issued an order approving the Settlement. On September 29, 1993, the Commission issued an order on rehearing approving the Settlement for all consenting parties and severing certain non-consenting parties (the Cities) from the Settlement. On October 13, 1993, Columbia notified the Commission that it accepted the Settlement and filed rates to be applicable to settling parties with a proposed effective date of October 1, 1993. Columbia states that refunds were made to consenting parties on October 25, 1993, and a refund report concerning such refunds was filed on November 24, 1993.

On May 5, 1994, the Cities filed a motion for confirmation of status as supporting parties to the Settlement. The Cities' motion was unopposed and was granted by the Commission order issued on June 22, 1994. This refund report addresses the refunds made to the Cities as supporting parties.

Columbia states that it computed the refunds to the Cities in accordance with the terms of Article I, Section E of the Settlement. The principal refund represents the difference between the amounts computed under settlement rates and the rates actually charged those customers for gas service during the refund period. Included in each refund amount is interest through July 28, 1994, computed in accordance with § 154.67(c)(2) of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24722 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

---

**[Project No. 2004 Massachusetts]**

## Holyoke Water Power Company; Intent to File an Application for A New License

September 30, 1994.

Take notice that Holyoke Water Power Company, the existing licensee for the Holyoke Project No. 2004, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2004 was issued effective July 5, 1949 and expires August 31, 1999.

The project is located on the Connecticut River in Franklin, Hampshire and Hampden counties, Massachusetts. The principal works of the Holyoke Project include a 1,020-foot-long masonry dam constructed to elev 97.47 NGVD; an impoundment about 25 miles long; a three level canal system adjacent to the river with headgates at the Holyoke end of the dam; six separate hydroelectric generating facilities referred to as Hadley Falls Station, Riverside Station, Boatlock Station, Beebe-Holbrook Units, Skinner Unit and Chemical Units with a total capacity of 43,756 kW; all have transmission line connections and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at Holyoke Water Power Company, 1 Canal Street, Holyoke, MA 01040, telephone (413) 536–9428.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 1997.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24719 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. TM95–2–16–002]**

## National Fuel Gas Supply Corp.; Notice of Tariff Filing

September 30, 1994.

Take notice that on September 26, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute Fifth Revised Sheet No. 6.

National states that this tariff sheet is submitted to correct Substitute Fifth Revised Sheet No. 6 filed on September 6, 1994, in the above-captioned proceeding, as that sheet did not include Rate Schedules IR–2 and P–2 that have been proposed in National's Hub proceeding at Docket No. RP94–80–000.

National states that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commissions of the States of

New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 7, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24822 Filed 10–5–94; 8:45 am]

BILLING CODE 6717–01–M

## Office of Fossil Energy

**[FE Docket No. 94–64–NG]**

### Bay State Gas Company; Order Granting Long-Term Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Bay State Gas Company authorization to import from Canada up to 6,423 Mcf per day of natural gas. The gas would be purchased from Renaissance Energy Ltd. over a period of 10 years beginning on or about November 1, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on September 26, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–24812 Filed 10–5–94; 8:45 am]

BILLING CODE 6450–01–P

**[FE Docket No. 94–62–NG]**

### Greenfield Fuel Oil Co., Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada and Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Greenfield Fuel Oil Co., Inc., blanket authorization to import up to 146 Bcf of natural gas from Canada, and to export up to 146 Bcf of natural gas to Canada. In addition, the company is authorized to import up to 146 Bcf of natural gas from Mexico, and to export up to 146 Bcf of natural gas to Mexico. This authorization to import and export natural gas from and to Canada and Mexico is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on September 14, 1994.

**Clifford Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–24813 Filed 10–5–94; 8:45 am]

BILLING CODE 6450–01–P

**[FE Docket No. 94–61–NG]**

### Louis Dreyfus Energy Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice that it has issued an order granting Louis Dreyfus Energy Corp. authorization to import up to a combined total of 182.5 Bcf of natural gas and liquefied natural gas (LNG) from Canada; to export back to Canada up to 182.5 Bcf of imported Canadian natural gas and LNG; and to export up to 182.5 Bcf of domestically produced natural gas and LNG to Canada and Mexico. The term of the authorization is for a period of two years beginning on the date of first import or export after October 1, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., September 15, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–24814 Filed 10–5–94; 8:45 am]

BILLING CODE 6450–01–P

**[FE Docket No. 94–65–NG]**

### Northern Utilities, Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Utilities, Inc. authorization to import from Canada up to 990 Mcf per day of natural gas. The gas would be purchased from Renaissance Energy Ltd. over a period of 10 years beginning on or about November 1, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on September 29, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–24811 Filed 10–5–94; 8:45 am]

BILLING CODE 6450–01–P

**[FE Docket No 94–66–NG]**

### Portland General Electric Company; Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Portland General Electric Company authorization to import up to 90 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of the first import delivery after September 30, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585,

(202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 26, 1994.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–24810 Filed 10–5–94; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–5088–1]

### Acid Rain Program: Draft Permits and Permit Modification

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

**ACTION:** Notice of draft permits and permit modification.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing for comment one draft substitution plan and five draft nitrogen oxides (NOx) compliance plans for two utility plants in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76).

**DATES:** Comments on the draft permits and modification must be received on or before November 7, 1994 or the date of publication of a similar notice in a local newspaper, whichever is later.

**ADDRESSES:** Administrative Records. The administrative record for the draft compliance plans, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to EPA Region 5 (A–18J), Air and Radiation Division, Attn: David Kee, Director (address above).

Submit all comments in duplicate and identify the compliance plan to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the plan. All timely comments will be considered, except comments on aspects of the permit other than the compliance plan and comments not relevant to the compliance plan.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a compliance plan.

**FOR FURTHER INFORMATION:** Contact Genevieve Nearmyer, (312) 353–4761.

**SUPPLEMENTARY INFORMATION:** Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. On January 11, 1993, EPA promulgated final rules implementing the $SO_2$ portion of the program. Subsequently, several parties filed petitions for review of the rules with the U.S. Court of Appeals for the District of Columbia Circuit. On May 4, 1994, EPA and other parties signed a settlement agreement addressing the substitution and reduced utilization issues. In today's action, EPA proposes to approve substitution and NOx compliance plans and include them in final permits for the following utility plants consistent with the May 4, 1994 settlement and 40 CFR part 76:

Petersburg in Indiana: one substitution plan for 1995, in which units 1 and 2 designate H T Pritchard units 3 and 4 as substitution units; five NOx averaging plans, one for each calendar year 1995–1996 in which the actual annual average emission rates for NOx shall not exceed the alternative contemporaneous annual emission limitations of 0.60 lbs/MMBtu for unit 1, 0.44 lbs/MMBtu for unit 2, 0.41 lbs/MMBtu for unit 3, and 0.41 lbs/MMBtu for unit 4, and the actual annual heat input shall not be greater than the annual heat input limit of 10,635,000 MMBtu for unit 1, and shall not be less than the annual heat input limits of 23,670,000 MMBtu for unit 2, 36,935,000 MMBtu for unit 3, and 36,118,000 MMBtu for unit 4. The other units designated in the plans are H T Pritchard units 3, 4, 5, and 6 and Elmer W Stout units 50, 60, and 70. The designated representative is Robert A. McKnight.

H T Pritchard in Indiana: 586 substitution allowances for 1995 to unit 3; 1,305 substitution allowances for 1995 to unit 4; one substitution plan for 1995 in which Petersburg units 1 and 2 designate units 3 and 4 as substitution units; five averaging plans, one for each calendar year 1995–1996 for units 3, 4, 5, and 6 in which the actual annual average emission rates for NOx shall not exceed the alternative contemporaneous annual emission limitations of 0.80 lbs/MMBtu for units 3 and 4 and 0.54 lb/MMBtu for units 5 and 6, and the actual annual heat input shall not be greater than the annual heat input limits of 1,312,000 MMBtu for unit 3, 1,883,000 MMBtu for unit 4, 2,044,000 MMBtu for unit 5, and 4,766,000 for unit 6. The other units designated in the plans are Petersburg units 1, 2, 3, and 4 and Elmer W Stout units 50, 60, and 70. The designated representative is Robert A. McKnight.

Dated: October 4, 1994.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 94–24912 Filed 10–5–94; 8:45 am]

BILLING CODE 6560–50–P

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board Action to Bar Claims, Discharge and Release Receiver, and Cancel Charter (Articles of Incorporation) of Coleman Production Credit Association

**AGENCY:** Farm Credit Administration (FCA).

**ACTION:** Notice.

On September 29, 1994, the Farm Credit Administration (FCA) Board approved FCA Board Action No. BM–29–SEP–94–02 barring claims, discharging and releasing the Receiver, and cancelling the Articles of Incorporation of the Coleman Production Credit Association arising out of the involuntary liquidation of the association. The text of the FCA Board Action is set forth below:

Farm Credit Administration Board Action to Bar Claims, to Discharge and Release Receiver, and Cancel Charter (Articles of Incorporation) of Coleman Production Credit Association

Whereas, the Farm Credit Administration (FCA) Board determined that the Coleman Production Credit Association (Coleman PCA), headquartered in Coleman, Texas, was in an unsafe and unsound condition to transact business and, under its authority in section 4.12(b) of the Farm Credit Act of 1971, as amended, and 12 CFR 611.1160(b), did place the Coleman PCA into receivership on April 26, 1989;

Whereas, on April 26, 1989, the FCA Board, by FCA Board Action #DA–45 (26–APR–89), did appoint James C. Larson as the Receiver for the Coleman PCA (Receiver), and published the notice of appointment in the **Federal Register** on May 4, 1989, at 54 FR 19236, as required by FCA regulations;

Whereas, by May 1, 1992, all territory served by the Coleman PCA was reassigned by the FCA to adjoining

production credit associations affiliated with the Farm Credit Bank of Texas;

Whereas, all assets of the Coleman PCA have been disposed of by the Receiver in accordance with the provisions of FCA regulations and the written agreement between the Receiver and the FCA (Receivership Agreement);

Whereas, in accordance with the provisions of FCA regulations and the Receivership Agreement, all claims filed by creditors and holders of equities have been paid or provided for, including, without limitation, certain administrative expenses that the Receiver has paid;

Whereas, the final audit of the Coleman PCA was completed by KPMG Peat Marwick LLP, an independent auditor, as of June 15, 1994; and

Whereas, on September 20, 1994, the FCA issued to the Receiver a final Report of Examination of the Coleman PCA as of June 30, 1994;

Now, therefore, it is hereby ordered that:

1. All claims of creditors, stockholders, and holders of participation certificates and other equities, and of any other persons and/or entities against the Coleman PCA, or to the extent arising out of the actions of the Receiver in carrying out the liquidation of the Coleman PCA, as approved by the FCA Board on April 26, 1989, against the Receiver are hereby forever discharged, and the commencement of any action, the employment of any process, or any other act to collect, recover, or offset any such claims are hereby forever barred.

2. The accounts of the Coleman PCA for the period from April 26, 1989, through the date of this FCA Board Action are hereby approved.

3. Mr. James C. Larson (Receiver) is hereby finally discharged and released from all responsibility or liability to the FCA or any other person or entity arising out of, related to, or in any manner connected with the administration and liquidation of the Coleman PCA during the period April 26, 1989, through the date of this FCA Board Action. FCA Board Action #DA–45 (26–APR–89) is hereby revoked.

4. The Articles of Incorporation of the Coleman Production Credit Association are hereby cancelled.

Signed by Billy Ross Brown, Chairman, Farm Credit Administration Board, on September 29, 1994.

Dated: September 30, 1994.

**Floyd Fithian,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 94–24725 Filed 10–5–94; 8:45 am]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[PR Docket No. 94–105; DA 94–1083]**

## Commercial Mobile Radio Services; California State Petition Draft Protective Order

**AGENCY:** Federal Communications commission.

**ACTION:** Notice.

**SUMMARY:** A Protective Order has been drafted addressing confidentiality issues raised by the Request for Proprietary Treatment of Documents Used in Support of the Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates filed by the State of California and the Public Utilities Commission of the State of California. This Notice requests comments of all interested parties on a draft Protective Order.

**DATES:** Comments must be filed on or before October 7, 1994.

**ADDRESSES:** Send comments to the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Gina Harrison, Private Radio Bureau, Land Mobile and Microwave Division, (202) 632–7125.

**SUPPLEMENTARY INFORMATION:** At an ex parte meeting held on September 30, 1994, in the proceeding on the *Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service*, referenced above, to which all parties of record were invited, representatives of the private Radio Bureau requested that all interested parties submit their comments on the attached Draft Protective Order on or before Friday, October 7, 1994. This Draft Protective Order addresses confidentiality issues raised by the Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates filed by the State of California and the Public Utilities Commission of the State of California on August 8, 1994.

By the action of the Chief, Land Mobile and Microwave Division, Private Radio Bureau. For further information contact Gina Harrison, Private Radio Bureau, (202) 632–7125.

**Draft Protective Order**

Adopted: ;
Released:

By the Chief, Private Radio Bureau:
It is hereby ordered:

1. For purposes of this Order, "Confidential Information" shall mean and include trade secrets and commercial or financial information which is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), as well as material claimed to be gathered in an ongoing antitrust investigation of the cellular industry by the Attorney General of the State of California (Investigation).

2. Confidential Information submitted herein by the People of the State of California and the Public Utilities Commission of the State of California (California) shall be segregated from all material filed and deemed non-confidential as generally set forth in the pleadings filed publicly by California on August 9, 1994, and subsequent revisions filed on September 13, 1994, in PR Docket No. 94–105. Confidential information, as redacted, shall consist of:

a. Market share data as contained in pages 29 to 34 of the unredacted Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain State Regulatory Authority Over Intrastate Cellular Service Rates (Petition) and Appendix E thereto. The data on page 29 is disaggregated by carrier, and on pages 30–35, aggregated by market. Some data on page 30 is further aggregated by combining data in two markets. The data in Appendix E is aggregated as to resellers by market, and disaggregated for cellular carriers.

b. Capacity utilization figures as contained in pages 50–53 of the Petition, and in Appendix M. This data is aggregated for Los Angeles market on page 51 and Appendix M–1, and disaggregated as to specific carriers on pages 52–53 of the Petition and Pages M–1 to M–3 of Appendix M.

c. Financial data per subscriber unit, including revenues, operating expenses, plant, operating income, subscriber growth percentages for 1989–93, found in Appendix H to the Petition. This data is disaggregated as to specific cellular carriers.

d. Number of customers per year, per rate plan, both wholesale and retail as contained in Appendix J to the Petition. This data is disaggregated as to specific cellular carriers.

e. Material redacted from pages 42, 45 and 75 of the Petition which California claims to have been gathered in the Investigation.

3. Confidential Information may be disclosed:

a. to counsel for the Parties listed hereinafter in Appendix A (Parties) and their associated attorneys, paralegals and clerical staff predicated on a "need to know" basis.

b. to specified persons, including employees of the Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in connection with PR Docket No. 94–105.

4. Counsel may request the Commission to provide one copy of Confidential Information (for which counsel must, as a prerequisite, acknowledge receipt pursuant to this Order), and counsel may thereafter make no more than two additional copies but only to the extent required and solely for the preparation

and use in this proceeding, and provided further, that all such copies shall remain in the care and control of counsel at all times. Following the filing of Further Comments on _____, 1994, counsel shall retain custody of the Confidential Information until such time as it is necessary to prepare additional filings in connection with PR Docket No. 94–105 in the discretion of counsel. If such additional filings are necessary, counsel shall retain custody of the Confidential Information following submission of such additional filings. Counsel shall return to the Commission within forty-eight hours after the final resolution of PR Docket No. 94–105 all Confidential Information originally provided by the Commission as well as all copies made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel may retain copies of pleadings submitted on behalf of clients.

5. Confidential Information shall not be used by any person granted access under this Order for any purpose, other than for use in this proceeding, and shall not be used for competitive business purposes or otherwise disclosed by such persons to any other person except in accordance with this Order. This shall not preclude the use of any material or information in the public domain or which has been developed independently by any other person.

6. a. Counsel inspecting or copying Confidential Information shall apply for access to the materials covered by this Order under and by use of the "Attorney Application For Access To Materials Under Protective Order" appended to this Order.

b. Counsel may disclose Confidential Information to persons to whom disclosure is permitted under the terms of this Order only after advising such persons of the terms and obligations of this Order.

c. Counsel shall provide to the FCC and, in the absence of a need for confidentiality, to California, the name and affiliation of each person other than counsel to whom disclosure is made or to whom actual physical control over the documents is provided. To the extent that anyone's name is not disclosed to California, that fact shall be disclosed to the FCC and California.

7. Parties may in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. any portions of the pleadings that contain or disclose Confidential Information are physically segregated from the remainder of the pleading:

b. the portions containing or disclosing Confidential Information are covered by a separate letter referencing this Protective Order:

c. each page of any Party's filing that contains or discloses Confidential Information subject to this Order is clearly marked "confidential information included pursuant to Protective Order, DA 94–_____."

d. the confidential portion of the pleading shall be served upon the Secretary of the Commission, California and the other Parties and not placed in the Commission's Public File, unless the Commission directs otherwise. The Parties may provide courtesy copies to the Legal Advisor to the Private Radio Bureau Chief, who will distribute the copies to the appropriate Commission personnel.

8. Disclosure of materials described herein shall not be deemed a waiver by California or any other Party in any other proceeding, judicial or otherwise, of any privilege or entitlement to confidential treatment of such Confidential Information. Inspecting parties, by viewing said documents: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceedings; and (c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

9. The entry of this Order is without prejudice to the rights of California to apply for additional or different protection where it is deemed necessary or to the rights of the Parties to request further or renewed disclosure of Confidential Information. Moreover, it in no way binds the Commission from disclosing any information where the public interest so requires.

10. This Order is issued under Section 0.331 of the Commission's Rules, 47 CFR 0.331, and is effective on its release date.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

**Appendix A—Parties**

AirTouch Communications
American Mobile Telecommunications Association, Inc.
Bakersfield Cellular Telephone Co.
Bay Area Cellular Telephone Company
California Public Utilities Commission, People of the State of California
Cellular Agents Trade Association
Cellular Carriers Association of California
Cellular Resellers Association, Inc.
Cellular Telecommunications Industry Association
County of Los Angeles
E.F. Johnson Co.
GTE Service Corporation
Los Angeles Cellular Telephone Company
McCaw Cellular Communications, Inc.
Mobile Telecommunications Technologies Corp.
National Cellular Resellers Association
Nextel Communications, Inc.
Paging Network, Inc.
Personal Communications Industry Association
Utility Consumers' Action Network & Towards Utility Rate Normalization
US West Cellular of California

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–24683 Filed 10–5–94; 8:45 am]

BILLING CODE 6712–01–M

**[Report No. 2032]**

## Petition for Reconsideration and Actions in Rulemaking Proceedings

October 3, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition October 21, 1994. See Section 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: Amendment of Part 97 of the Rules Governing the Amateur Radio Services Concerning Reduction of Morse Code Speed Requirements for Amateur Extra and General License Classes with Attendant Reduction in Classes of Licensing from Five to Three (RM–8391). Number of Petition Filed: 1.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–24678 Filed 10–5–94; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL MARITIME COMMISSION

## Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2805
Name: Jeuro Container Transport (USA) Inc. dba Jeuro-Pak
Address: 3399 Arden Rd., Hayward, CA 94545
Date Revoked: July 8, 1994
Reason: Surrendered license voluntarily.

License Number: 3708
Name: G & H International Corp.
Address: 1867 N.W. 97th Ave., Ste. 103, Miami, FL 33172
Date Revoked: August 25, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2729

Name: Paula E. LaPointe dba LaPointeco
Address: 240 Lafayette Circle, Lafayette, CA 94549
Date Revoked: September 2, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3117
Name: A O I Forwarding, Inc.
Address: 469 North Oak Street, Inglewood, CA 90302
Date Revoked: September 6, 1994
Reason: Surrendered license voluntarily.

**Bryant L. VanBrakle,**

*Director, Bureau of Tariffs, Certification and Licensing.*

[FR Doc. 94-24741 Filed 10-5-94; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, November 3, 1994. The meeting, which will be open to public observation, will take place in the Board Room of the Eccles Building. The meeting is expected to begin at 9 a.m. and to continue until 4 p.m., with a lunch break from 1 until 2 p.m. The Eccles Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

*Community Reinvestment Act Reform.* Discussion led by the Bank Regulation Committee of issues related to the September 1994 interagency proposal to amend regulations implementing the Community Reinvestment Act.

*Fair Lending Matters.* Discussion led by the Community Affairs and Housing Committee on fair lending matters, including:

(1) Whether further guidance from the Inter-agency Task Force on Fair Lending would be helpful to lenders, and on what issues;

(2) Agreements entered into by government agencies with industry groups and lending institutions, and the implications for other lenders; and

(3) whether special initiatives of some lenders (such as affordable mortgage products, second-review programs, and use of mystery shoppers) are having the desired effect.

*Waiver of Consumers' Right of Rescission for Certain Loans.* Discussion led by the Consumer Credit Committee on the merits of making it easier for consumers to waive their right of rescission in connection with refinancings and other transactions that do not involve added debt.

*Mandatory Arbitration Clauses.* Briefing by two Council members on creditors' use of arbitration clauses in consumer contracts that require consumers and creditors, in the event of a dispute, to abide by the decision of an arbiter.

*Governor's Report.* Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

*Members Forum.* Presentation of individual Council members' views on the economic conditions present within their industries or local economies (including whether there is a strong focus on lending in the inner cities).

*Committee Reports.* Reports from Council committees on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Monday, October 31, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24736 Filed 10-5-94; 8:45am]

BILLING CODE 6210-01-F

### First Commerce 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 October 28, 1994.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. First Commerce Corporation*, New Orleans, Louisiana; to merge with City Bancorp, Inc., and thereby indirectly acquire City Bank and Trust Company, New Iberia, Louisiana.

*2. First Commerce Corporation*, New Orleans, Louisiana; to merge with First Bancshares, Inc., Slidell, Louisiana, and thereby indirectly acquire First Bank, Slidell, Louisiana.

*3. Merit Holding Corporation*, Tucker, Georgia; to acquire 100 percent of the voting shares of Charter Bank and Trust Company, Marietta, Georgia.

**B. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. GreatBanc, Inc.*, Aurora, Illinois; to acquire 100 percent of the voting shares of GreatBank, Algonquin, Illinois.

*2. Raddatz Family Limited Partnership*, Chicago, Illinois; to become a bank holding company by acquiring 48.44 percent of the voting shares of East Side Financial, Inc., Chicago, Illinois, and thereby indirectly acquire East Side Savings, Bank, Chicago, Illinois. **Comments for this application must be received not later than October 19, 1994.**

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Flint Creek Holding Company*, Philipsburg, Montana; to become a bank

holding company by acquiring at least 80 percent of the voting shares of Flint Creek Valley Bank, Philipsburg, Montana.

Board of Governors of the Federal Reserve System, September 29, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24732 Filed 10-5-94; 8:45 am]

BILLING CODE 6210-01-F

## Firstar Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1994.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Firstar Corporation*, through its subsidiary, Firstar Corporation of Illinois, both of Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of First Colonial Bankshares Corporation, Chicago, Illinois, and thereby indirectly acquire All American Bank of Chicago, Chicago, Illinois; Colonial Bank, Chicago, Illinois; Community Bank & Trust Company of Edgewater, Chicago, Illinois; Michigan Avenue National Bank of Chicago, Chicago, Illinois; First Colonial Bank of McHenry County, Crystal Lake, Illinois; First Colonial Bank of Downers Grove, Downers Grove, Illinois; Fox Lake State Bank, Fox Lake, Illinois; First Colonial Bank of DuPage County, Naperville, Illinois; First Colonial Bank Northwest, Niles, Illinois; The Northlake Bank, Northlake, Illinois; Avenue Bank of Oak Park, Oak Park, Illinois; First Colonial Bank Rosemont, Rosemont, Illinois; First Colonial Bank of Lake County, Vernon Hills, Illinois; First Colonial Bank-Highwood, Highwood, Illinois; York State Bank, Elmhurst, Illinois; First Colonial Bank-Mundelein, Mundelein, Illinois; and First Colonial Bank Southwest, Burbank, Illinois.

In connection with this application, Applicant has applied to acquire BankersTech, Inc., Chicagok Illinois, and thereby engage in contract out back office services including data processing services to other banks, pursuant to § 225.25(b)(7). In addition, Applicants also has applied to acquire First Colonial Trust Company, Oak Park, Illinois, and thereby engage in providing corporate and personal trust services such as escrow exchange agent services, employee benefits, trustee services and investment management services, pursuant to § 225.25(b)(3) of the Board's Regulation Y. Applicant also has applied to acquire Mid-States Financial Corp., Schaumburg, Illinois, and thereby engage in providing limited equipment finance leasing, primarily of machine tools, small computers and telephone systems, pursuant to § 225.25(b)(5) of the Board's Regulation Y. Applicant also has applied to acquire First Colonial Mortgage Corporation, Elmhurst, Illinois, and thereby engage in providing residential mortgage financing secured by one-to-four family residential properties, including home equity loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24733 Filed 10-5-94; 8:45 am]

BILLING CODE 6210-01-F

## Foxdale Bancorp, Inc. 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 October 31, 1994.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Foxdale Bancorp, Inc.*, South Elgin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Foxdale Bank, South Elgin, Illinois, a *de novo* bank.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Frandsen Financial Corporation*, Forest Lake, Minnesota; to acquire 100 percent of the voting shares of Sturgeon Lake State Bank, Sturgeon Lake, Minnesota.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Battle Creek State Company*, Battle Creek, Nebraska; to become a bank holding company by acquiring 80.7 percent of the voting shares of Battle Creek State Bank, Battle Creek, Nebraska.

*2. Decatur Investment, Inc.*, Oberlin, Kansas; to acquire 100 percent of the voting shares of Selden Investment, Inc., Selden, Kansas, and thereby indirectly acquire Selden State Bank, Selden, Kansas.

**D. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Chalybeate Springs, L.C.*, Hughes Springs, Texas; to become a bank holding company by acquiring 1 percent of the voting shares of First National Bank, Hughes Springs, Texas.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24734 Filed 10-5-94; 8:45 am]

BILLING CODE 6210-01-F

## Jerome S. Goodman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 that notice or to the offices of the Board of Governors. Comments must be received not later than October 26, 1994.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Jerome S. Goodman*, to acquire up to 9.89 percent, Carl A. Lingle, to acquire up to 23.85 percent, and Hal Jonathan Shaffer, to acquire up to 61.67 percent of the voting shares of First Bank of Philadelphia, Philadelphia, Pennsylvania.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Jennifer Rollins Thompson*, Patricia Rollins Duke, and Rebecca Rollins Creel, all of Hamilton, Alabama; each to retain ownership of 24.51 percent as co-trustee of B.W. Rollins Family Trust, Hamilton, Alabama, and to acquire an additional .50 percent, for a total of 25 percent each of the voting shares of Marion County Bancshares, Inc., Hamilton, Alabama, and thereby indirectly acquire First National Bank, Hamilton, Alabama.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Robert Lynn Hall*, Godfrey, Illinois; to acquire an additional 57.65 percent, for a total of 77.31 of the voting shares of M & L Holding Company, Alton, Illinois and thereby indirectly acquire Greene County National Bank in Carrollton, Carrollton, Illinois. M&L also proposes to acquire First Community Bank of Taney County, Branson, Missouri.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94–24746 Filed 10–5–94; 8:45 am]

BILLING CODE 6210–01–F

## GP Financial Corp.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 1994.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

*1. GP Financial Corp.*, Flushing, New York; to engage *de novo* through its subsidiary, Green Point Community Development Corporation, in community development activities, which will promote affordable housing or other facilities for low- and moderate-income individuals, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94–24745 Filed 10–5–94; 8:45 am]

BILLING CODE 6210–01–F

## Manteno Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 on the question whether consummation of the

proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 25, 1994.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Manteno Bancshares, Inc.*, Manteno, Illinois; to engage *de novo* through its wholly-owned subsidiary, Manteno Bancshares Community Development Corporation, Manteno, Illinois, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 29, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94–24729 Filed 10–5–94; 8:45 am]

BILLING CODE 6210–01–F

## M & L Holding Company, 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 October 31, 1994.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. M & L Holding Company*, Alton, Illinois; to acquire at least 98 percent of the voting shares of First Community Bank of Taney County, Branson, Missouri.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Heights Delaware, L.L.C.*, Dover, Delaware; to become a bank holding company by acquiring 99 percent of the voting shares of State Bank, LBA, Harker Heights, Texas.

*2. Heights Texas, L.C.*, Harker Heights, Texas; to become a bank holding company by acquiring 1 percent of the voting shares of Heights Delaware, L.L.C., Dover, Delaware, and thereby indirectly acquire Heights State Bank, LBA, Harker Heights, Texas.

*3. Texas State Bancshares, Inc.*, Harker Heights, Texas to become a bank holding company by acquiring 99 percent of the voting shares of Heights Delaware, L.L.C., Dover, Delaware, and thereby indirectly acquire Heights State Bank, LBA, Harker Heights, Texas.

*4. Heritage Bancorp, Inc.*, Hutto, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Hutto State Bank, Hutto, Texas.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94–24744 Filed 10–5–94; 8:45 am]

BILLING CODE 6210–01–F

## Nationsbank Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1994.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

**Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Nationsbank Corporation*, Charlotte, North Carolina; CBH, Inc., Wilmington, Delaware, Charter Bancshares, Inc., Houston, Texas, and Finger Interests Number One, Ltd., Houston, Texas, to acquire 100 percent of the voting shares of West Loop Savings & Loan Association, Houston, Texas. After the aquisition of West Loop, Applicants will convert West

Lopp to a state chartered savings bank operating under the name of West Loop Savings, SSB.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24743 Filed 10-5-94; 8:45 am]

BILLING CODE 6210-01-F

## NBD Bancorp, Inc.,; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1994.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. NBD Bancorp, Inc.*, Detroit, Michigan; and NBD Illinois, Inc., Paurk Ridge, Illinois, to acquire Amerifed Financial Corp., Joilet, Illinois, and thereby indirectly acquire 100 percent of the voting shares of AmeriFed Bank, F.S.B., Joliet, Illinois, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9).

Board of Governors of the Federal Reserve System, September 29, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24731 Filed 10-5-94; 8:45 am]

BILLING CODE 6210-01-F

## Old Kent Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1994.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Old Kent Financial Corporation*, Grand Rapids, Michigan; to engage investing in low income housing projects by making equity investments, not to exceed $25 million, in limited partnerships, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24735 Filed 10-5-94; 8:45 am]

BILLING CODE 6210-01-F

## Laszlo Posevitz; 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 October 25, 1994.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Laszlo Posevitz*, Dayton, Ohio; to acquire 3,571,429 shares of Series B Convertible Preferred Stock of Florida Bancorporation, Palm Harbor, Florida, and thereby indirectly acquire Florida Bank of Commerce, Palm Harbor, Florida, which represents 55.55 percent of the outstanding preferred stock. Conversion of the preferred stock to common stock will increase notificant's total ownership from 10.87 percent to 24.27 percent.

Board of Governors of the Federal Reserve System, September 29, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24730 Filed 10-5-94; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* Vision Research Review Committee.

*Date:* October 11, 1994.

*Time:* 8:00 a.m. until adjournment at approximately 5:00 p.m.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000.

*Contact Person:* Lois DeNinno, Committee Management Officer, EPS 350, 6120 Executive Blvd. MSC 7164, Bethesda, MD 20892–7164.

*Purpose/Agenda:* To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c) (4) and 552b(c) (6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published later than fifteen days prior to the meeting due to difficulty of coordinating the members' schedules.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health, HHS)

Date: September 28, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–24846 Filed 10–5–94; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

*Date:* October 17, 1994.

*Time:* 12:00 p.m. to 5:00 p.m.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland.

*Contact Person:* Theresa Lo, Ph.D., Scientific Review Administrator, 5333 Westbard Avenue, Westwood Bldg., Room 406, Bethesda, Maryland 20892, (301) 594–9979.

*Purpose/Agenda:* To review and evaluate research grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health, HHS)

Dated: September 28, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–24847 Filed 10–5–94; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–035–00–4333–02; G4–00308]**

### Emergency Closure and Restriction on Public Lands in the South Fork of the Walla Walla River Area of Critical Environmental Concern (ACEC)

September 26, 1994.

**AGENCY:** Vale District, Baker Resource Area, Oregon, Bureau of Land Management.

**ACTION:** Notice of Closure and Restriction on Public Lands for the protection of resource values identified in South Fork of the Walla Walla River Area Plan Amendment, February 1992.

**SUMMARY:** Pursuant to the regulations contained in 43 CFR 8364, the Bureau of Land Management is limiting motorized vehicle travel of 1,500 GVW or less to the South Fork of the Walla Walla River trail system, closing the remainder of the ACEC to motorized use, closing the ACEC to overnight camping, and prohibiting the discharge of firearms within the road corridor between the cattleguard and the trail head gate. These closure and restriction orders will be in effect on approximately 1,955 acres of public land within the South Fork of the Walla Walla River corridor. These limitations are located within the South Fork of the Walla Walla River ACEC in Umatilla County, Oregon in the western foothills of the Blue Mountains, Township 4N., Range 37E., Willamette Meridian. A map of the area described above may be viewed in the Baker Resource Area office. The limitations are necessary to prevent further deterioration of the area's resource values and provide for public safety. Personnel that are exempt from the area limitations include any Federal, State, or local officer, or member of any organized rescue or fire-fighting force in the performance of an official duty, or any person authorized by the Bureau of Land Management.

**DATES:** These closures and restrictions are in effect immediately and shall remain in effect until rescinded by the authorized officer.

**PENALTIES:** Violators are subject to fines not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

**FOR FURTHER INFORMATION CONTACT:** Gloria Brown, Baker Resource Area Manager, Post Office Box 987, Baker City, Oregon 97814 or telephone (503) 523–1256.

Dated: September 28, 1994.

**Gloria Brown,**

*Area Manager.*

[FR Doc. 94–24753 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–33–P

**[NV–943–4210–06; CC–015943]**

### Realty Action: Opening Order of Reconveyed Land, Nevada

September 27, 1994.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice opens approximately 40 acres of reconveyed land to appropriation under the public land laws and the general mining laws.

**EFFECTIVE DATE:** October 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Carmen Donelson, Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520–0006, (702) 785–6530.

**SUPPLEMENTARY INFORMATION:** The lands described below were reconveyed to the United States on April 1, 1921. The parcel was never opened to entry and has had a defacto withdrawal in effect since the time of reconveyance:

**Mount Diablo Meridian, Nevada**

T. 39 N., R. 51 E.,
Sec. 33, SW¼SE¼.

The area described contains 40.00 acres, more or less.

At 10:00 a.m. on the date of publication of this notice in the **Federal Register** the land will be open to appropriation under the public land laws and mining laws, subject to valid existing rights and any other segregations of record. Appropriation of any of the land described in this order

under the public land laws and general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no right against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in the disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

**Robert G. Steele,**

*Deputy State Director, Operations.*

[FR Doc. 94–24824 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–HC–M

---

**[AZ–020–04–4210–05; AZA–24229, AZA–24548]**

## Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Mohave County, Arizona

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Kingman Elementary School District #4 and Mohave Union High School District #30 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Kingman Elementary School District proposes to use the lands for the expansion of their existing school and related facilities. Mohave Union High School District proposes to use the lands for a high school and related facilities.

**Gila and Salt River Base and Meridian, Arizona**

Township 21 North, Range 18 West,
Kingman Elementary School District #4–AZA–24229
Sec. 8, lot 4.
Consisting of 9.38 acres.
Mohave Union High School—AZA–24548
Sec. 8, lot 5, SW¼NW¼.
Consisting of 78.03 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The leases/patents, when issued, to both School Districts will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by Right-of-Way No. AZA–17931 for Chino Drive.

In addition the lease/patent, when issued, to Kingman Elementary School District #4 will be subject to the following terms, conditions and reservations:

1. Those rights for communication site purposes granted to the Mohave County Board of Supervisors by Right-of-Way No. AZA–24653.

2. Those rights for a buried telephone cable granted to Citizens Utilities Rural Company by Right-of-Way No. AZA–25317.

In addition the lease/patent, when issued, to Mohave Union High School District #30 will be subject to the following terms, conditions, and reservations:

1. Those rights for water pipeline purposes granted to Duval Corporation by Right-of-Way No. AZAR–032609.

2. Those rights for electric distribution purposes granted to Citizens Utilities Company by Rights-of-Way No. AZAR–033291 and AZA–21363.

3. Those rights for road purposes granted to Arizona Department of Transportation by Right-of-Way No. AZAR–034112 for Highway 68.

4. Those rights for buried fiber optic cable purposes granted to Electric Lightwave, Inc., by Right-of-Way No. AZA–27844 and Temporary use Permit No. AZA–27844–01.

For detailed information concerning these actions, contact bill Wadsworth at the office of the Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona, 86401, (602) 757–3161.

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 lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

*Classification Comments:* Interested parties may submit comments involving the suitability of the lands for schools and related facilities. Comments on the classifications are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the applications and plans 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 lands for schools and related facilities.

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: September 29, 1994.

**David J. Miller,**

*Associate District Manager.*

[FR Doc. 94–24754 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–32–M

---

**[CA–942–5700–10]**

## Filing of Plats of Survey; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

**EFFECTIVE DATES:** Filing was effective at 10:00 a.m. on the date of submission to the Bureau of Land Management (BLM), California State Office, Public Room.

**FOR FURTHER INFORMATION CONTACT:** Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–978–4775.

**SUPPLEMENTARY INFORMATION:** The Plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

**Humboldt Meridian, California**

T. 10 N., R. 3 E.—Dependent resurvey and subdivision of section, (Group 1117) accepted August 10, 1994, to meet certain administrative needs of the Bureau of Indian Affairs, Northern California Agency.

T. 11 N., R. 3 E.—Dependent resurvey and subdivision of sections, (Group 1117) accepted August 10, 1994, to meet certain administrative needs of the Bureau of Indian Affairs, Northern California Agency.

T. 11 N., R. 3 E.—Dependent resurvey and metes-and-bounds survey of Tract 37, (Group 1149) accepted August 30, 1994, to meet certain administrative needs of the Bureau of Indian Affairs, Northern California Agency.

**Mount Diablo Meridian, California**

T. 11 N., R. 19 E.—Dependent resurvey and subdivision of sections 24, 25, 26, and 35, (Group 1079) accepted August 2, 1994, to meet certain administrative needs of the Bureau of Indian Affairs, Phoenix Area Office.

T. 11 N., R. 20 E.—Dependent resurvey and subdivision of sections 20 and 29, (Group 1079) accepted August 2, 1994, to meet certain administrative needs of the Bureau of Indian Affairs, Phoenix Area Office.

T. 30 N., R. 11 E.—Dependent resurvey and subdivision of section, (Group 1134) accepted August 3, 1994, to meet certain administrative needs of the BLM, Susanville District, Eagle Lake Resource Area.

T. 14 N., R. 10 E.—Supplemental plat of the N½ of section 34, accepted August 3, 1994, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 34 N., R. 1 E.—Dependent resurvey (Group 1049) accepted August 5, 1994, to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest.

T. 34 N., R. 2 E.—Dependent resurvey, and subdivision of sections 18, 28, 32, 33 and 34, (Group 1049) accepted August 5, 1994, to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest.

T. 19 S., R. 3 E.—Retracement, and metes-and-bounds survey of Tracts 37 and 38, (Group 889) accepted August 4, 1994, to meet certain administrative needs of the U.S. Forest Service, Los Padres National Forest.

T. 11 N., R. 9 W.—Corrective dependent resurvey, (Group 1061) accepted August 4, 1994, to meet certain administrative needs of the BLM, Ukiah District, Clearlake Resource Area.

T. 16 N., R. 1 W.—Dependent resurvey, (Group 1139) accepted August 10, 1994, to meet certain administrative needs of the Bureau of Indian Affairs, Central California Agency.

T. 29 S., R. 39 E.—Dependent resurvey, subdivision of section, metes-and-bounds survey, and retracement, (Group 1044) accepted August 19, 1994, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

T. 37 N., R. 11 E.,—Dependent resurvey and survey, (Group 1090) accepted August 24, 1994, to meet certain administrative needs of the BLM, Susanville District, Alturas Resource Area, and the U.S. Forest Service, Modoc National Forest.

T. 13 N., R. 11 W.,—Dependent resurvey, and subdivision of section 13, (Group 1083) accepted September 9, 1994, to meet certain administrative needs of the BLM, Ukiah District, Clearlake Resource Area.

**San Bernardino Meridian, California**

T. 13 S., R. 9 E.,—Supplemental plat of section 19, accepted July 15, 1994, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area.

T. 13 S., R. 9 E.,—Supplemental plat of the NE¼ of section 30, accepted July 15, 1994, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area.

T. 13 S., R. 9 E.,—Supplemental plat of the SW¼ of section 33, accepted July 15, 1994, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area.

T. 14 S., R. 9 E.,—Supplemental plat of the NE¼ of section 4, accepted July 15, 1994, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area.

T. 11 N., R. 12 E.,—Dependent resurvey, subdivision of section 25, and metes-and-bounds survey, (Group 1161) accepted August 29, 1994, to meet certain administrative needs of the BLM, California Desert District, Needles Resource Area. All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: September 27, 1994.

**Clifford A. Robinson,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 94–24755 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–40–M

## Fish and Wildlife Service

### Receipt of Application(s) for Permit

The following applicant has applied for an amendment to the 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.)

**PRT–676811**

*Applicant:* Regional Director, U.S. Fish and Wildlife Service, Region 2.

The applicant requests an amendment to his current permit to include take activities for the Texas (*Ayenia limitaris*) and the South Texas ambrosia (*Ambrosia cheiranthifolia*) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents. These species became Federally protected as endangered under the Endangered Species Act effective September 23, 1994.

Addresses: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (see Addresses above.)

**John G. Rogers, Jr.,**

*Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 94–24789 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–55–M

### Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Proposed Barton Creek Development, Austin, Travis County, TX

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

**ACTION:** Notice.

**SUMMARY:** F.M. Properties Operating Co., Inc. (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number PRT–782833. The requested permit, which is for a period not to exceed 30 years, would authorize the incidental take of the endangered golden-cheeked warbler *(Dendroica chrysoparia)*. The proposed take would occur as a result of the construction of and operation of a 4,684-

acre commercial and residential development on a 9,000-acre tract in Austin, Travis County, Texas.

The Service has prepared an Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take permit application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6)

**DATES:** Written comments on the application and draft EA/HCP should be received on or before November 7, 1994.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S.Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joe Johnston, Ecological Services Field Office, U.S. Fish and Wildlife Service, 611 East Sixth Street, Suite 407, Austin, Texas 78701 (512/482–5436). Documents will be available for public inspection, by written request and by appointment only, during normal business hours (8:00 to 4:00) at the Southwest Regional Office, Division of Endangered Species/Permits, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, or the Ecological Services Field Office (9:00 to 4:30), U.S. Fish and Wildlife Service, 611 East Sixth Street, Suite 407, Austin, Texas 78701. Written data or comments concerning the application and EA/HCP should be submitted to the Acting Field Supervisor, Ecological Services Field Office, Austin, Texas (see **ADDRESSES** above). Please refer to permit number PRT–782833 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Johnston at the above Austin Ecological Services Field Office address.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species, like the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Applicant plans to build a Residential-Resort and Commercial development located just west of Capital of Texas Highway 360, south of FM 2244, and north of Highway 290, Austin, Travis County, Texas. The development will occupy approximately 4,684 acres. These activities will permanently eliminate about 1,036 acres of the 3,830 acres of occupied and/or suitable warbler habitat. The Applicant proposes to mitigate the incidental take via acquisition and donation of 3,923 acres of land, provision of operating and maintenance funds for these preserve lands, minimize impacts to warbler habitat, avoidance of direct impacts to warblers, preservation of undeveloped areas, and environmental monitoring.

The Applicant considered four alternatives but rejected three of them because they were not economically viable.

**John G. Rogers, Jr.,**

*Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 94–24790 Filed 10–5–94; 8:45 am]

BILLING CODE 4310–55–M

## INTERSTATE COMMERCE COMMISSION

**[Section 5a Application No. 45 (Amendment No. 14)]**

### Niagara Frontier Tariff Bureau, Inc.—Agreement

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision and opportunity for comment.

**SUMMARY:** Niagara Frontier Tariff Bureau, Inc. (Niagara), has filed a petition seeking approval of a minor amendment to its collective ratemaking agreement, which was previously approved under 49 U.S.C. 10706(b). The amendment would modify Niagara's bylaws to allow Niagara to: (a) reduce the membership of the Board of Directors from 12 to 8 directors; (b) reduce the number of directors elected at each annual meeting from 6 to 4; and (c) make conforming amendments to the nomination and voting process section of the bylaws in light of the proposed reduction in the number of directors.

Copies of Niagara's No. 45 approved agreement and the amendment are available for public inspection and copying at the Commission's Public Docket Room (Room 1227) in Washington, DC, and from Niagara's representative: Warren D. Gawley, P.O. Box 548, Buffalo, NY 14225.

**DATES:** Comments from interested persons are due by November 7, 1994. Replies are due November 22, 1994. If no timely filed adverse comments are received, Niagara's amendment will automatically become effective at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a final decision.

**ADDRESSES:** An original and 10 copies of comments referring to Section 5a Application No. 45 (Amendment No. 14) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of the comments must also be served on Niagara's representative.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

**Authority:** 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: September 21, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–24770 Filed 10–5–94; 8:45 am]

BILLING CODE 7035–01–P

### Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6246.

Comments on the following assessment are due 15 days after the date of availability:

AB–290 (SUB-NO. 146X), NORFOLK AND WESTERN RAILWAY COMPANY—ABANDONMENT—BETWEEN WHITBY AND WILLABET, WEST VIRGINIA. EA available 9/30/94.

AB–55 (SUB-NO. 489X), CSX TRANSPORTATION, INC.—

ABANDONMENT EXEMPTION—IN BEN HILL AND IRWIN COUNTIES, GEORGIA. EA available 9/30/94.

Comments on the following assessment are due 30 days after the date of availability:

AB–55 (SUB-NO. 492X), CSX TRANSPORTATION, INC.—ABANDONMENT—IN ATLANTA, FULTON COUNTY, GEORGIA. EA available 9/26/94.

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–24768 Filed 10–5–94; 8:45 am]

BILLING CODE 7035–01–P

### Release of Waybill Data

The Commission has received a request from Karen R. Smilowitz, a senior at Princeton University, for permission to use certain data from the Commission's 1986 through 1993 I.C.C. Waybill Samples. A copy of the request (WB459—9/23/94) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–24786 Filed 10–5–94; 8:45 am]

BILLING CODE 7035–01–P

**[Finance Docket No. 32387]**

### Blue Mountain Railroad, Inc.—Lease and Operation Exemption—Line of Burlington Northern Railroad Company

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345 the lease and operation by Blue Mountain Railroad, Inc., of Burlington Northern Railroad Company's 6-mile line of railroad between Walla Walla and Walair, WA, subject to standard labor protective conditions.

**DATES:** This exemption will be effective on November 5, 1994. Petitions for stay must be filed by October 21, 1994. Petitions to reopen must be filed by October 31, 1994.

**ADDRESSES:** Send pleadings, referring to Finance Docket No. 32387 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423; and (2) Karl Morell, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Ave., N.W., Washington, D.C. 20004.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at: (202) 927–5721.]

Decided: September 23, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–24769 Filed 10–5–94; 8:45 am]

BILLING CODE 7035–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (94–079)]**

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

**DATES:** October 18, 1994, 9 a.m. to noon; and October 19, 1994, 9 a.m. to 3 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Program Review Center, Ninth Floor, Room 9H40, 300 E Street, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne L. Accola, Code IB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0682.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Synopsis of recent events and progress report on strategic implementation planning
—NASA implementation plan for national space transportation policy
—Office of Space Access and Technology
—National Laboratory Review Task Force report
—Shuttle-Mir Rendezvous and Docking Missions Task Force report
—Space Station update
—Orbital debris
—Committee reports
—Review of report on recommendations of the Advisory Committee on the Future of the U.S. Space Program

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 30, 1994.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 94–24679 Filed 10–5–94; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Biochemistry and Molecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting. Advisory panel for Biochemistry and Molecular Structure and Function in the Division of Molecular and Cellular Biosciences. (Panel A)

*Name:* Advisory Panel for Biochemistry and Molecular Structure and Function.

*Date and Time:* Thursday and Friday, October 27–28, 1994, 8:30 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 340, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Dr. Marcia Steinberg or Dr. Jack Cohen, Program Directors, Molecular Biochemistry, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Purpose of Meeting:* To provide advice and recommendations concerning research proposals submitted to the Molecular Biochemistry Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

*Agenda:* To review and evaluate molecular biochemistry proposals as part of the selection process for awards.

*Reason for closing:* The proposals being reviewed include information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24704 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Cell Biology.

*Date and Time:* October 24–25, 1994, 8:30 am to 5:00 pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Conference Room 390, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Dr. Barbara Zain, Program Director, Dr. Larry Griffing and Dr. David Capco, Program Directors, for Cell Biology, Division of Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Room 655-South, Arlington, VA 22230 703/306–1442.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Cell Biology Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: Closed Session, Monday, October 24 and Tuesday, October 25, 1994, 8:30 am to 5:00 pm. To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24705 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name and Committee Code:* Special Emphasis Panel in Chemistry (#1191).

*Date and Time:* October 27–28, 1994.

*Place:* Room 1060, NSF, 4201 Wilson Boulevard, Arlington, Virginia.

*Type of Meeting:* Closed.

*Contact Person:* Drs. Karolyn Eisenstein and George M. Rubottom, Program Directors, Office of Special Projects, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1850/1851.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals for Sites for Research Experiences for Undergraduates in Chemistry as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

[FR Doc. 94–24701 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## DOE/NSF Nuclear Science Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting.

*Name:* DOE/NSF Nuclear Science Advisory Committee (#1176).

*Date and Time:* October 26, 1994 from 2:00 p.m. to 7:00 p.m.

*Place:* Fort Magruder Inn and Conference Center, Petersburg Hall, P.O. Box KE, Williamsburg, VA 23187.

*Type of Meeting:* Open.

*Contact Person:* John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: (703) 306–1890.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of meeting:* To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

*Agenda:* Discussion of Budgets and Status of DOE and NSF Nuclear Physics Programs (*) Presentation and Discussion of a Charge to NSAC to Develop a New Long Range Plan for Nuclear Science (*) Discussion of Additional Capital Equipment for the RHIC Facility(*) Public Comments (*) Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24703 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Genetics (Panel-A):

*Name:* Advisory Panel for Genetics & Nucleic Acids.

*Date and Time:* Thursday, October 27, thru Friday, October 28, 1994, at 8:30 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 370, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Philip Harriman, Program Director for Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1441.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24706 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Genetics (Panel B):

*Name:* Advisory Panel for Genetics & Nucleic Acids.

*Date and Time:* Oct. 27–28, 1994 from 8:30 am to 5:00 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, Va 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. DeLill Nasser, Program Director for Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, telephone: (703) 306–1439.

*Purpose of Meeting:* To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Eukaryotic Genetics Program in the Division of Molecular &

Cellular Biosciences at NSF as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24707 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Genetics & Nucleic Acids.

*Date and Time:* Oct. 24–25, 1994 from 8:30 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA. 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr Charles Liarakos, Program Director for Biochemical Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1439/(703) 306–1441.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Office.*

[FR Doc. 94–24708 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis in Mathematical Sciences (#1204).

*Date and Time:* October 24–25, 1994, 9:00 a.m. until 5:30 p.m.

*Location:* Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Person of Contact:* Dr. John V. Ryff, Program Director, National Science Foundation, Division of Mathematical Sciences, Rm 1025, (703) 306–1879.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate Research Experiences for Undergraduates proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c), 4 and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24702 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name:* Advisory Panel for Neuroscience (1158).

*Date and Time:* October 24–25, 1994; 9:00 a.m. to 5:00 p.m.

*Place:* National Science Foundation, Room 370, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Felix Strumwasser, Program Director, Neuronal and Glial Mechanisms, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

*Purpose of Meeting:* To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda:* Open Session: October 25; 3:30 p.m. to 5:00 p.m., to discuss goals and assessment procedures. Closed Session: October 24; 9:00 a.m. to 5:00 p.m., and October 25, 9:00 a.m. to 3:30 p.m. To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24711 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Neuroscience; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Advisory Panel for Neuroscience (1158).

*Date and Time:* October 17–19, 1994; 9:00 a.m.–5:00 p.m.

*Place:* National Science Foundation, room 370, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. L. R. Stanford, Program Director, Developmental Neuroscience, Division of Integrative Biology and Neuroscience, suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1423.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda: Open Session:* October 18; 11:00 a.m. to 12:00 noon, to discuss research trends and opportunities assessment procedures. *Closed Session:* October 17 and 19, 9:00 a.m.–5:00 p.m.; October 18, 9:00 a.m. to 11:00 a.m. and 12:00 noon to 5:00 p.m. To review and evaluated Developmental Neuroscience proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b)(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24712 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Advisory Panel For Physiology and Behavior.

*Date and Time:* October 24 and 25, 1994, 9:00 a.m.–5:00 p.m.

*Place:* Room 380, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Part—Open.

*Contact Person:* Dr. Elvira Doman and Dr. Eldon Braun, Program Directors, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, Room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1421.

*Minutes:* May be obtained from the contact persons listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* Open Session: Monday, October 24, 12:00 p.m.; Seminar by Klaus W. Beyenbach, Cornell University; Tuesday, October 25, 2:00 p.m.: Discussion with Mary Clutter, Assistant Director, Directorate for Biological Sciences. Closed Session: Monday, October 24, 9:00 a.m.–12:00 p.m., 2:00 p.m.–5:00 p.m.; Tuesday, October 25, 9:00 a.m.–2:00 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24710 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Panel for Physiology and Behavior; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Panel for Physiology and Behavior (#1160).

*Date and Time:* October 27 and 28, 1994, 8:30 am to 5:00 pm.

*Place:* Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Machi F. Dilworth, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1422.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Integrative Plant Biology Proposals as part of the selection process for awards. Open Session: October 27, 1994, noon to 1:00 p.m.—To discuss research trends and opportunities in Integrative Plant Biology.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 30, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24709 Filed 10–5–94; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–336]**

## Northeast Nuclear Energy Company, The Connecticut Light and Power Company; The Western Massachusetts Electric Company, Millstone Nuclear Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company, (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

### Environmental Assessment

*Identification of the Proposed Action*

The proposed action would provide a schedular exemption from the requirements of 10 CFR part 50, appendix J. Sections III.D.2.(a) and III.D.3 on behalf of Millstone Nuclear Power Station, Unit 2. On September 23, 1994, NNECO determined that the 24-month testing requirement had been exceeded for a number of Type B and C components by up to approximately four months. The exemption would provide temporary relief from the 2-year schedular requirement associated with Type B and C periodic Containment local leakage rate tests (LLRTs). The proposed exemption would extend the 2-year requirement through the end of the 12 refueling outage.

The proposed action is in accordance with the licensee's application for exemption dated September 26, 1994.

*The Need for the Proposed Action*

The proposed action would permit Millstone Unit 2 to proceed with the current schedule for the twelfth refueling outage which is when the plant begins a shut down currently scheduled for October 1, 1994. The proposed exemption would allow the licensee to take advantage of the preparations that have been made for the upcoming refueling outage, including initiatives which would reduce personnel radiation exposure, allow dynamic testing of motor-operated valves, permit testing of main steam safety valves, and allow the performance of work on the service water system to reduce shutdown risks.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed exemption will have no significant impact on the quality of the human environment. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that their are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not enhance the protection of the environment and would result in unjustified cost to the licensee.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit No. 2.

*Agencies and Persons Consulted*

The NRC staff consulted with the Connecticut State Official regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of no Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 26, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 474 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 30th day of September 1994.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24759 Filed 10–5–94; 8:45 am]

BILLING CODE 7590–01–M

---

## Advisory Committee on Nuclear Waste; Notice of meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 68th meeting on October 18 and 19, 1994, at the Hotel San Remo, 115 East Tropicana Avenue, Las Vegas, Nevada.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

*Tuesday, October 18, 1994—8:30 a.m. until 6:00 p.m.*

*Wednesday, October 19, 1994—8:30 a.m. until 6:00 p.m.*

During this meeting the Committee plans to consider the following:

A. *Systems Prioritization Approach*—Hear a report on a new approach adopted by the WIPP program to demonstrate compliance with the EPA Standards, which is redirecting performance assessment and data collection activities to provide greater confidence while minimizing associated costs.

B. *Selection of High-Level Waste Research Topics*—Selection of high-level waste (HLW) research topics for further review by the ACNW in the Committee's examination of NRC's high-level waste research program.

C. *Accelerated Pneumatic Testing Program*—Review details of the Department of Energy's accelerated program to collect baseline pneumatic data during Exploratory Studies Facility construction.

D. *Implementation of the Proposed Program Approach (PPA)*—Overview of saturated and unsaturated zone studies with emphasis on impacts from PPA.

E. *Yucca Mountain Project*—Comments by Interested Parties—Hear comments from and hold discussions with state, tribal, county, and local government officials. Representatives from other stakeholders in the proposed HLW repository effort may also present comments.

F. *Preparation of ACNW Reports*—Prepare ACNW reports on issues considered during this and previous meetings.

G. *Committee Activities/Future Agenda*—Discuss topics proposed for consideration by the full Committee and working groups. Discuss organizational and personnel matters related to ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

H. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301/415–7360), between 7:30 a.m. and 4:15 p.m. EST.

Dated: September 30, 1994.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 94–24762 Filed 10–5–94; 8:45 am]

BILLING CODE 7590–01–M

---

[Docket No. 50–277]

## Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company, (Peach Bottom Atomic Power Station, Unit 2); Exemption

I

Philadephia Electric Company, et al. (PECo, the licensees), is the holder of Facility Operating License No. DPR–44, which authorizes operation of the Peach Bottom Atomic Power Station (PBAPS), Unit 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The PBAPS, Unit 2, facility consists of a boiling water reactor located in York County, Pennsylvania.

II

In its letter dated May 13, 1994, the licensee requested an exemption from the Commission's regulations. The subject exemption is from a requirement in Appendix J to 10 CFR part 50 that a set of three Type A tests (Containment Integrated Leak Rate Tests (CILRTs)) be performed, at approximately equal intervals, during each 10-year service period. The exemption applies to the second 10-year service period; subsequent service periods are not changed.

The type A test is defined in 10 CFR Part 50, Appendix J, Section II.F, as "tests intended to measure the primary reactor containment overall integrated leakage rate (1) After the containment has been completed and is ready for

operation, and (2) at periodic intervals thereafter." The 10-year service period begins with the inservice date. The request for a one-time exemption would allow an extension of the second 10-year Type A service period and would allow the performance of the three Type A tests in the second 10-year service period at intervals that are not approximately equal. It does not affect the third 10-year service period.

Current TS and 10 CFR Part 50, Appendix J, would require performing a Type A test during Unit 2's refueling outage 10 scheduled for September 1994 in order to comply with the requirement to perform three Type A tests within the current 10-year service period. Furthermore, 10 CFR Part 50, Appendix J, would also require a Type A test to be performed during the next refueling outage (Unit 2 refueling outage 11 scheduled for September 1996) in order to coincide with the end of the current 10-year plant inservice inspection (ISI) interval. The current 10-year ISI period ends in November 1997 and current ISI inspections are scheduled for September 1996. Therefore, to fully comply with Appendix J, the licensee would have to perform CILRTs during the tenth and eleventh refueling outages for Unit 2.

The licensee stated that the first and second CILRTs of the set of three tests for the second 10-year service period for PBAPS were conducted in February 1989 and April 1991. Thus, the first CILRT testing interval of the second 10-year service period was approximately 44 months, and the second CILRT testing interval was approximately 27 months. The time interval between CILRTs should be about 40 months based on performing three such tests at approximately equal intervals during each 10-year service period. The third of the second set of three CILRTs will be scheduled for Refueling Outage 11, projected to start in September 1996, pending approval of the exemption request. Issuance of this exemption would allow the extension of the second 10-year service period such that the next CILRT would be performed during Refueling Outage 11, approximately 66 months after the April 1991 CILRT.

The licensee performed a review of the history of the PBAPS Unit 2 CILRT results to evaluate the risk of activity-based and time-based degradation. This review identified only one activity-based component failure detected during past CILRTs. The measured mass point and total time leakage rates measured for the June 1985 CILRT stabilized at approximately 0.70% wt/day, which failed to meet the TS and 10 CFR Part 50, Appendix J criterion of less than 0.375% wt/day (0.75 La). Following the completion of repairs, the CILRT was repeated with an as-left leakage of 0.0156% wt/day. After this failure, the licensee modified the plant so that a similar failure, in the future, would be detected by a local leak rate test (LLRT).

The Type B and C test (i.e., LLRT) program provides assurance that containment integrity has been maintained. LLRTs demonstrate operability of components and penetrations by measuring penetration and valve leakage. Additionally, there have been no modifications made to the plant, since the last Type A test, that could adversely affect the test results.

The licensee further notes that the performance of consecutive Type A tests in refueling outages 2R010 and 2R011 to meet the requirements of the TS and Appendix J, would result in additional radiation exposure to personnel. Performing the Type A test during two consecutive refueling outages in order to comply with the TS and 10 CFR Part 50, Appendix J, would result in an unnecessary increased in personnel radiation exposure and increased cost by increasing the length of one of the affected refueling outages. Omitting the test will result in additional dose savings by eliminating contamination and by reducing exposure from venting and draining and from setups and restorations of instrumentation required to perform the test. These factors and the costs associated with an additional test for a 24-month difference in interval are not offset by the benefits of the additional test.

For the reasons set forth above, the NRC staff concludes that this deviation from the 10-year service period ending August 1994 is not significant in terms of complying with the safety or scheduling requirements of Section III.D.1.(a) of Appendix J. Accordingly, the staff finds that the additional test would not provide substantially different information and that the intent of Appendix J is met. Therefore, the subject exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(ii), in that the fourth Type A test is not necessary to achieve the underlying purpose of the rule.

On this basis, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that extending the service period will not present an undue risk to the public health and safety; since the licensee has justified the leaktight integrity of the containment based on previous leakage test results, the staff concludes that a one-time extension of the second 10-year service period and a one-time implementation of an extended test interval will not have a significant safety impact.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. . . ."

The underlying purpose of the requirement to perform Type A containment leak rate tests is to provide for periodic verification of the leak-tight integrity of the primary reactor containment. The licensee has demonstrated that the leak tight integrity of the primary containment can be assured the latest test results and by controlling the maintenance activities which affect a primary containment penetration. The Type B and C testing will provide additional assurance of the overall integrity of the primary containment.

On this basis, the NRC staff finds that the licensee has demonstrated that special circumstances are present as required by 10 CFR 50.12(a)(2)(ii). Since the licensee has justified the leaktight integrity of the containment based on previous leakage test results, the staff concludes that a one-time extension of the second 10-year service period will not have a significant safety impact. The staff also finds that extending the interval between tests will not present an undue risk to the public health and safety.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR Part 50, Appendix J, Section III.D.1.(a) is not necessary in order to achieve the underlying purpose of this regulation; and hereby grants the following exemption with respect to the requirements of 10 CFR Part 50, Appendix J, Section III.D.1(a).

For the Peach Bottom Atomic Power Station, Unit 2, the second 10-year Type A service period is extended such that the third periodic Type A test may be performed during the Unit 2 Refueling Outage 11 currently scheduled for September 1996 and such that the three Type A tests in the second 10-year service period are performed at intervals that are not approximately equal.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (59 FR 50018).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of September 1994.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24760 Filed 10–5–94; 8:45 am]

BILLING CODE 7590–01–M

---

**[Docket No. 030–32190; License No. 49–27356–01, EA 94–131]**

## Western Industrial X-Ray Inspection Company, Inc., Evanston, Wyoming; Order to Transfer Material (Effective Immediately) and Order Revoking License

I

Western Industrial X-Ray Inspection Company, Inc. (Licensee or WIX) is the holder of Byproduct Material License No. 49–27356–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the Licensee to possess sealed sources of iridium-192 in various radiography devices for use in performing industrial radiography activities. The license originally issued on August 12, 1991, and due to expire on August 31 1996, was suspended by NRC Order (EA 93–238) on June 16 1994.

II

On June 16, 1994, the NRC issued an Order Suspending License (Immediately Effective) (Suspension Order) and Demand for Information to WIX. The Suspension Order was based on inspections and investigations that had identified numerous violations of NRC's radiation safety requirements, including some violations which were found to have recurred after being found in previous inspections and several which were determined to have been committed deliberately by WIX employees and by the President and Radiation Safety Officer (RSO) for WIX, Larry D. Wicks. Apparent violations were described in inspection reports 030–32190/93–01 and 030–32190/94–01 issued on May 12, 1994. The violations were also described in the June 16, 1994 Suspension Order. The Suspension Order required WIX to suspend its use of NRC-regulated material and to place it in safe storage pending further order. The Demand for Information required WIX to describe why, in light of the violations and managerial failures discussed in the Suspension Order, NRC License No. 49–27356–01 should not be revoked and also why an order should not be issued to Mr. Wicks prohibiting him from performing NRC-licensed activities.

On June 17 and June 28, 1994, letters were submitted to the NRC on behalf of WIX by its attorney, John C. Phillips. These letters provided WIX's response to the violations and requested relaxation or rescission of the Suspension Order. In response to the violations, WIX admitted some of the violations, denied some of the violations, and denied that Larry D. Wicks had ever deliberately caused the Licensee to be in violation of NRC requirements or at any time provided materially false information to the NRC. In addition, the June 28, 1994 letter included a Corrective Measure Plan that described various actions taken by WIX to preclude a recurrence of the violations that led to the Suspension Order. Actions described in the responses include obtaining more alarm ratemeters, establishing a system for their system for their issuance and ensuring the current of their calibrations, designation of an Assistant RSO, and creation of additional records, along with statements assuring future compliance. The responses amount to assertions of being in compliance, that most of the violations were inconsequential and the public health and safety had not been jeopardized, and that future conduct will prevent violations. These responses were submitted as a basis for relaxing or rescinding the Suspension Order and did not provide an adequate or specific response to the Demand for Information which asked why the license should not be revoked. The NRC reviewed the information in these letters to determine whether WIX had provided sufficient justification for the NRC to relax or rescind the Suspension Order. On July 19, 1994, the NRC denied WIX's requests in writing, stating, "Given the nature of the violations in this case, the NRC's concerns about the integrity of certain WIX personnel, and the licensee's failure to address adequately the fundamental problems identified in the Order, e.g., our significant concerns regarding the capability or willingness of Mr. Wicks and other WIX personnel to ensure compliance with NRC requirements, I find the mere promise in your submittals of future compliance with NRC requirements insufficient assurance at this time that WIX employees will conduct licensed activities in accordance with NRC requirements."

In its second report, OI concluded that four WIX employees, including the President, committed four deliberate violations. These violations have safety significance, such as failure to evaluate a potential overexposure, preparation of false reports concerning a potential overexposure, and failure to supervise radiography operations. The NRC remains concerned about the deliberate violations caused by WIX's President and RSO, especially as they pertain to a possible overexposure incident, and his other failures to properly direct the conduct of licensed activities in a safe manner. It is this failure to conduct licensed activities in a safe manner, coupled with questions as to the integrity of several employees, that cause the NRC to be concerned about public health and safety. In its response, WIX did not sufficiently demonstrate that the NRC could rely upon it to ensure that the public health and safety would be protected if radioactive materials were to be used in the future under License No. 49–27356–01.

III

The acts and omissions of WIX's President and RSO violated NRC requirements over an extended period of time. These violations jeopardized the public health and safety and, on that basis alone, represent a very significant regulatory concern. These violations demonstrate that the Licensee and its President are not willing or able to comply with the Commission's requirements to protect the public health and safety. As a result, I am also issuing an Order (EA 94–140) this date to the President and RSO of WIX prohibiting him from engaging in NRC-licensed activities (except as necessary to store and tranfer material).

WIX's license has remained suspended since June 16, 1994. Several radiography exposure devices containing sealed radiation sources have remained in the Licensee's possession although the Licensee does not have authorization to use the material. Given the seriousness of the violations that occurred, and the NRC's order removing WIX's President and RSO, who is responsible for this material, I find that

the public health, safety, and interest require the Licensee to transfer all NRC-regulated material in its possession and that License No. 49–27356–01 be revoked. Furthermore, in view of the nature of the violations and the deliberate misconduct described in both the June 16, 1994 Suspension Order (EA 93–238) and the Order Prohibiting Involvement in NRC-licensed activities (EA 94–140) issued this date to Mr. Wicks, the Commission does not have reasonable assurance that the material will be safety stored and transferred during the time that it might take to litigate this Order and the removal Order (EA 94–140). Therefore, pursuant to 10 CFR 2.202, I find that the significance of the violations and deliberate misconduct described in the June 16, 1994 Suspension Order (EA 93–238) and the Order (EA 94–140) to Mr. Wicks of this date, are such that the public health, safety, and interest require that the Order to Transfer Material part of this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 34:

A. It is hereby ordered, effective immediately, that:

1. The licensee shall transfer all NRC-licensed material acquired or possessed under the authority of License No. 49–27356–01 within 20 days of the date of this Order, either by returning the material to the manufacturer or transferring it to another person authorized to possess that material;

2. Any sources that have not been leak tested within six months prior to the transfer shall be leak tested by a person authorized to do so, prior to transfer of the source;

3. The Licensee shall notify Ms. Linda Kasner, NRC, Region IV, (817) 860–8213, by telephone at least two working days prior to the date(s) of transfer of radioactive material so that the NRC, may, if it elects, observe the transfer of the material; and

4. The licensee shall, within 5 days after transfer of the material, certify in writing to the Regional Administrator, NRC Region IV, that all material has been properly transferred and provide the Regional Administrator copies of records of transfer required by 10 CFR 30.51.

5. The issuance of this Order does not otherwise alter the continued effectiveness of the Suspension Order.

B. It is further ordered that: Following confirmation of the transfer of all NRC-licensed material currently possessed, as discussed above, License No. 49–27356–01 is revoked.

The Director, Office of Enforcement, may, in writing, at any time prior to final agency action sustaining the revocation of License No. 49–27356–01, relax or rescind this order on demonstration by the Licensee, in writing, of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order.

The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matter of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of Section IV.A of this Order on the ground that portion of the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of the order to transfer material set forth in section IV.A of this order.

Dated at Rockville, Maryland this 27th day of September 1994.

For the Nuclear Regulatory Commission.

[FR Doc. 94–24758 Filed 10–5–94; 8:45 am]
BILLING CODE 7590–01–M

---

[IA 94–024]

## Larry D. Wicks; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Larry D. Wicks is the President and Radiation Safety Office for Western Industrial X-Ray Inspection Company, Inc. (WIX), Evanston, Wyoming. WIX holds License No. 49–27356–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the licensee to possess sealed sources of iridium-192 in various radiography devices for use in performing industrial radiography in accordance with the conditions of the license. The license was suspended by NRC Order on June 16, 1994, and remains suspended while a hearing requested by the licensee is pending.

II

The suspension of License No. 49–27356–01 was based on the results of NRC staff inspections and Office of Investigations (OI) investigations of WIX conducted in April 1993 and in January and March 1994. These inspections and investigations identified numerous violations of NRC's radiation safety requirements, including some violations that were found to have recurred after being identified in previous inspections and some which were found to have been committed deliberately by Mr. Wicks and other employees of WIX. These violations were described in inspection reports 030–232190/93–01 and 030–32190/94–01 issued on May 12, 1993, and were the subject of an enforcement conference held April 1, 1994 in Arlington, Texas, during which Mr. Wicks was given the opportunity to provide additional information concerning each violation. In

Investigation Report 4–93–017R, issued August 2, 1993, OI found three deliberate violations and in Report 4–93–049R, issued July 8, 1994, OI found four deliberate violations.

Based on its review of all available information, the NRC concludes that Mr. Wicks violated the provisions of 10 CFR 30.10 which prohibits individuals from deliberately causing a licensee to violate NRC requirements and from deliberately providing materially incomplete or inaccurate information to the NRC or to a licensee of the NRC. Specifically, as discussed below in more detail, the NRC concludes that: (1) Mr. Wicks deliberately failed to send an employee's thermoluminescent dosimeter (TLD) in for immediate processing after he learned of a radiography incident that occurred on July 31, 1993, a violation of 10 CFR 34.33(d); (2) Mr. Wicks deliberately failed to perform an evaluation of the same employee's radiation exposure after becoming aware of the incident, a violation of 10 CFR 20.201; (3) Mr. Wicks deliberately provided inaccurate information to NRC investigators about the July 31, 1993, incident and his follow-up to the incident, a violation of 10 CFR 30.10; and (4) During March, April, and July of 1993 and January 1994, Mr.Wicks deliberately failed to ensure that calibrated alarm ratemeters were provided and used by WIX radiography personnel, a violation of 10 CFR 34.33(f)(4).

The first three violations above are directly related to the July 31, 1993, radiography incident. That incident, which was reported to Mr. Wicks on the date it occurred, by the two WIX employees who were involved in it, involved a radiation source in a radiographic exposure device not being properly returned to its shielded position before the device was moved by one of the employees. This resulted in the self-reading pocket dosimeter of one of the employees, a radiographer's assistant, going off-scale, indicating that the radiographer's assistant received a radiation exposure beyond the range of the pocket dosimeter.[1] When the pocket dosimeter of someone engaged in radiography is discharged beyond its normal range, NRC regulations in 10 CFR Parts 34 and 20, respectively, require: (1) That the licensee send the individual's TLD in for immediate processing to determine the individual's radiation exposure; and (2) that the licensee perform evaluations as necessary, whether or not a TLD reading is available, to determine the individual's radiation exposure and to ensure compliance with NRC exposure limits. In this case, the NRC concludes that Mr. Wicks deliberately did neither and that he has not been truthful in providing information about this incident to NRC personnel and others.

When the NRC began its investigation of this incident in January 1994, Mr. Wicks had no record of the radiographer's assistant's exposure for the day or month in question. Mr. Wicks stated during the investigation and at the enforcement conference that after learning of the incident he sent all TLDs worn by company personnel during the month of July 1993 in one package to Landauer, Inc., the company that processes TLDs for WIX, and that he included a note requesting immediate processing of the TLD worn by the radiographer's assistant. However, a representative of Landauer, Inc., stated to NRC personnel that while it had received TLDs from WIX for other employees for the month of July 1993, it had no record of receiving a TLD for the radiographer's assistant for that month and no record of receiving a request from Mr. Wicks for expedited processing of any TLDs sent in for that month. In fact, exposure records for the month of July 1993 and quarterly records for the months of July–September 1993 which were mailed by Landauer to WIX and retained by WIX contain no information regarding the radiographer's assistant's exposure for the month of July 1993 (her exposure records for all other months are available).[2]

Mr. Wicks told NRC investigators that he had never provided an exposure estimate to the rediographer's assistant because he had none to give her, i.e., he did not have a report from Landuer. However, this is inconsistent with statements by: (1) The radiographer's assistant—that she persisted in trying to obtain from Mr. Wicks the exposure for the month of July and that Mr. Wicks eventually—about three weeks after the incident—told her she had received 350 millirem, (2) the radiographer involved in the incident that Mr. Wicks had informed him that "everything was OK" and that the radiographer's assistant had received 600 millirem for the quarter, and (3) the assistant's husband, also a WIX employee, that Mr. Wicks had called his wife two to three weeks after the incident and had given her a number "which was lower and we were happy."

Mr. Wicks contended during the enforcement conference that he had been misled by the employees involved in the incident into believing that the incident was not serious. While both employees admit to providing Mr. Wicks false accounts of the incident in an attempt to cover up their own mistakes, the radiographer's assistant and her husband both told NRC investigators that Mr. Wicks was informed when the reports were turned in on July 31, 1993, that the reports were false and that Mr. Wicks was told that the radiographer involved in the incident had been asleep in the truck instead of supervising the radiographers assistant (as required by NRC regulations). Mr. Wicks denied having been told that the reports were false.

Mr. Wicks also told NRC personnel during the enforcement conference that he did not realize that Landauer had not provided him a July 1993 exposure record for the radiographer's assistant and had not called Landauer until the NRC began its investigation in January 1994. The only explanation Mr. Wicks has offered for not pursuing the question of the radiographer's assistant's July 1993 exposure is that he was very busy. However, the following events raise significant questions about Mr. Wicks' credibility:

1. In August 1993, Mr. Wicks received Landauer's report for the month of July 1993 which, as indicated earlier, contained no monthly exposure record for the radiographer's assistant. Despite, according to Mr. Wicks, having requested immediate processing of the assistant's badge from Landauer, Mr. Wicks told the NRC investigator that he didn't read the monthly report.

2. Mr. Wicks stated at the enforcement conference that he placed the assistant on limited duty as soon as he was informed of the incident pending the receipt of a report from Landauer and that she was limited to working in the darkroom and "completely away from any shooting area" from July 31, 1993, until she left WIX toward the end of September 1993.[3] Mr. Wicks stated that having an employee in a restricted status for nearly two months did not remind him of the fact that he had never received a response to his request for immediate processing of her July 1993 TLD.

3. On October 1, 1993, Mr. Wicks provided a summary of the radiographer's assistant's radiation

[1] Later reenactments of the incident resulted in an estimate that the radiographer's assistant received 6 rems, and exposure in excess of the NRC occupational quarterly limit of 3 rems in effect at the time of the incident.

[2] Mr. Wicks claims that he was unaware of this fact until the NRC questioned him in January 1994.

[3] The NRC notes that the radiographer's assistant disputes Mr. Wicks' account, stating that she was permitted to resume work involving exposure to radiation about three weeks after the incident when Mr. Wicks called her and told her that her exposure was 350 millirems.

exposure history, including the period in question (July 1993), to her new employer, and NRC licensee. In doing so, Mr. Wicks relied not on Landauer records, even though records were available for all months but July and September 1993, but by adding up daily dosimeter records, which were blank for July 31, 1993. Despite making these calculations for the radiographer's assistant, Mr. Wicks stated at the enforcement conference that he was not reminded of the fact that he had never received a response to his request for immediate processing of her July 1993 TLD.

4. Later in October 1993, Mr. Wicks responded to a request from the NRC for the radiation exposure reports of terminated employees, as required by 10 CFR 20.408(b) In responding to this request, Mr. Wicks did not provide a report for the radiographer's assistant despite having provided one for her husband, whose termination date occurred five days after hers. Mr. Wicks had not provided the NRC a termination report for the radiographer's assistant when the NRC began its investigation in January 1994.

Moreover, Mr. Wicks is an experienced radiographer and has been trained on the significance of overexposures. Considering that this appears to be the first time that his firm had the potential for an overexposure warranting immediate processing of the assistant's badge and assuming that the badge was sent as he states, them it is not credible that he would not have followed up on it. The NRC also does not consider credible Mr. Wicks' statement that he sent the TLD in for processing. According to Landauer, the incidence of TLDs being lost in delivery is very small. In this case, the loss of the radiographer's assistant's TLD in the mail is not an issue because Mr. Wicks has indicated on a number of occasions that he packaged all WIX TLDs together for shipment to Landauer and Landauer received the package. Landauer representatives have informed the NRC staff that all TLDs are electronically scanned upon receipt, and the Landauer employs the use of a data base to verify that TLDs which are scanned after processing match those which are scanned upon receipt. The process is designed to alert Landauer to situations in which a TLD is lost during processing. Landauer's automated reporting system includes controls to flag and TLD number which was canned upon receipt and was not scanned again after processing. Lost TLDs are noted on dosimetry reports provided to Landauer customers.

Based on its review of the evidence gathered during its investigation, as well as the information obtained during the enforcement conference, the NRC concludes that Mr. Wicks did not send the radiographer's assistant's TLD in for processing; that Mr. Wicks deliberately failed to conduct an evaluation of this individual's radiation exposure from the incident; and that Mr. Wicks deliberately provided false information regarding the incident to the NRC and false information regarding the individual's radiation exposure history to another licensee of the NRC.

In addition, with regard to the NRC's requirement that all radiography personnel be equipped with alarm ratemeters that have been calibrated at periods not to exceed one year, the NRC's investigations found that Mr. Wicks repeatedly failed to ensure that this requirement was met. This violation was first discovered and discussed with Mr. Wicks following an inspection and investigation in April 1993. When the NRC conducted its investigation beginning in January 1994, this same violation was found to have occurred in July 1993, two months after it was first discussed with Mr. Wicks, and again in January 1994 when Mr. Wicks could not produce current calibration records for alarm ratemeters worn by either of two radiography personnel on January 18, 1994. When questioned by NRC investigators, Mr. Wicks provided conflicting statements as to whether he had even supplied ratemeters to his radiographers but he said he understood it was his responsibility to ensure that alarm ratemeters were calibrated. Given the repetitive nature of this violation and Mr. Wicks' knowledge of this requirement, the NRC concludes that Mr. Wicks deliberately caused licensee to violate this requirement.

III

Based on the above, the NRC staff concludes that Larry D. Wicks, President and Radiation Safety Office for WIX, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 34.33(d), 34.33(f)(4), and 20.201. It further appears that Mr. Wicks has deliberately provided to NRC personnel and to another licensee of the NRC information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Wicks' actions in causing the Licensee to be in deliberate violation of radiation safety requirements and his misrepresentations to the NRC have raised serious doubts as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. NRC confidence in Mr. Wicks' conducting NRC-licensed activities safely and in compliance with NRC requirements is further eroded by the fact that he was the President of the company and the Radiation Safety Officer when he engaged in deliberate misconduct. In both of these positions, particularly in his role as the Radiation Safety Officer, Mr. Wicks is relied upon by the NRC to ensure that all radiation safety requirements are met. Conduct of this nature cannot and will not be tolerated by the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Wicks were permitted at this time to engage in NRC-licensed activities. Therefore, the public health, safety and interest require that Larry D. Wicks be prohibited from engaging in NRC-licensed activities (including any supervising, training, or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five (5) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Larry Dale Wicks is prohibited for five years from the date of this Order from engaging in NRC-licensed activities, except as provided in item 3, below. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including but not limited to, those activities of Agreement State licensees conducted pursuant to the authority by 10 CFR 150.20.

2. The first time Mr. Wicks is employed in NRC-licensed activities following the five-year prohibition, he shall notify the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and the Regional Administrator, NRC Region IV, at least five days prior to the performance of licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that Mr. Wicks is committed to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

3. Mr. Wicks is permitted to conduct licensed activities only as necessary to maintain licensed material in the possession of Western Industrial X-Ray Inspection Company in safe storage and transfer the material to an authorized recipient.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Wicks of good cause.

V

In accordance with 10 CFR 2.202, Mr. Wicks must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Wicks or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Wicks if the answer or hearing request is by a person other than Mr. Wicks. If a person other than Mr. Wicks requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Wicks or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Wicks, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 27th day of September 1994.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr.,**

*Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.*

[FR Doc. 94–24761 Filed 10–5–94; 8:45 am]

BILLING CODE 7590–01–M

## PHYSICIAN PAYMENT REVIEW COMMISSION

### Commission Meeting

**AGENCY:** Physician Payment Review Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold its next public meeting on Thursday, October 27, 1994, and Friday, October 28, 1994 at the Embassy Suites Downtown Hotel, 1250 22nd Street NW, Washington, DC, in the Consulate Room. The meetings are tentatively scheduled to begin at 9:00 a.m. each day. Among the topics to be discussed are integration of medical practice within and across providers, selection of essential community providers by health plans, relationships between health plans and providers, practice guidelines, AAPCC payment patterns, issues in extending the Federal Employees Health Benefits Program (FEHBP) to a broader population, and preliminary results from a survey on arrangements between managed care plans and physicians, and plans' quality assurance systems. Several other topics may be added to the final agenda, which will be available on October 21, 1994.

**ADDRESSES:** Please note that the Commission has a new address: 2120 L Street, N.W./Suite 200/ Washington, D.C. 20037. The telephone number is the same: 202/653–7220.

**FOR FURTHER INFORMATION CONTACT:** Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant, at 202/653–7220.

**SUPPLEMENTARY INFORMATION:** Agendas for the meeting will be available on Friday, October 21, 1994 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7200.

**Paul B. Ginsburg,**

*Executive Director.*

[FR Doc. 94–24804 Filed 10–5–94; 8:45 am]

BILLING CODE 6820–SE–M

### Commission Public Hearing

**AGENCY:** Physician Payment Review Commission.

**ACTION:** Topics for Commission Public Hearing.

**SUMMARY:** The Commission will hold a public hearing on Monday, November 21, 1994, at the Washington Marriott, 1221 22nd Street NW., Washington, DC in the Dupont Room. Groups may request to testify on the following topics from the Commission's work plan:

**Health System Issues**

*The Emerging Market for Health Services*

Work on those topics will include documenting changes in the way that health care is organized, financed, and delivered; drawing out the implications of these changes; identifying policy options to facilitate desirable changes and to address problems; and assessing the likely effects of those options.

- Relationships between purchasers (employers; alliances) and health plans
- Relationships between health plans and providers:

—Section and retention of providers by health plans
—Mechanisms through which plans pay physicians

- Relationships among providers:

—Integration of medical practice within and across providers
—Network development in rural areas
—Antitrust issues for provider-directed plans

- Implications for consumers
- Implications for academic medical centers

- Role of state regulatory policies
- Efforts to ensure quality:

—State quality assurance requirements
—Managed care plans' internal quality assurance systems

- Disclosure of health plan information:

—Quality (report cards; how plans and consumers use quality information)
—Financial arrangements between plans and physicians

- Implications for Medicare and Medicaid:

—Potential for access problems
—Potential for adoption of private sector innovations

*Structure of Insurance Markets and Potential Reforms*

- Interrelationships between insurance rules, community rating, and risk adjustment; principles underlying insurance reform in the absence of universal coverage
- Issues in opening FEHBP to a broader population
- Monitoring state-level reforms

*Technology Assessment and Coverage Decisions*

- Consideration of costs in technology assessment and coverage decisions

*Outcomes Research and Practice Guidelines*

- Update on development and use of practice guidelines
- Analysis of issues related to research design for outcomes and effectiveness studies

*Workforce*

- Follow up on graduate medical education reform proposals

*Improving Access for the Poor*

- Successful models for delivering care to urban undeserved populations
- Development of options for addressing nonfinancial barriers to care

*Expenditures in Medicare and the Private Sector*

- Analysis of trends
- Changes in practice patterns
- Causes for slowdown in spending growth

**Medicare**

*Medicare Cuts*

- Analysis of options
- Implications for access
- Comments on the President's budget

*Medicare Fee Schedule*

- Five year review of relative work values
- Impact of Medicare reforms on physicians and beneficiaries (preview of work on access and financial liability presented in 1995 annual report)
- Effects of changes in Medicare relative values, GPCIs, conversion factor updates, and other fee schedule changes on the pattern of payment

Volume Performance Standards

- Preparation of report on trends in Medicare expenditures and recommendations on setting Volume Performance Standards and updating the Medicare Fee Schedule conversion factors

*Beneficiary Access*

- Preparation of annual report on access drawing on analyses of Medicare claims data, the Current Beneficiary Survey, the National Ambulatory Medical Care Survey, and Commission surveys on beneficiary complaints.
- Preparation on annual report on beneficiary financial liability

*Resource-based Practice Expense*

- Analysis of upcoming results from HCFA microcosting study

*Making Medicare User Friendly*

- Identification of key beneficiary concerns and update of HCFA efforts to reduce complexity and to facilitate review and processing of claims

*Medicare Risk Contracting*

- Options for improving the AAPCC and alternative payment arrangements

*Medicare and Other Payers*

- Use of Medicare relative value scale by Medicaid, private insurers, and organized health plans

**Medicaid**

Policy Issues Surrounding Section 1115 Waivers

Please contact Annette Hennessey or Lauren LeRoy at 202–653–7220 no later than Friday, October 7, 1994 if your group wishes to testify at the hearing. Groups will be notified by Tuesday, October 11 whether or not they were chosen to present testimony. If an organization is not selected to testify, it may submit written testimony for the hearing record.

Two hundred (200) copies of your organization's testimony or written statement (including a one-page summary of the most important points in the testimony) must be submitted to the Commission's office no later than 5 p.m. on Tuesday, November 8, 1994. Groups submitting testimony later than 5 p.m. on November 8, 1994, will not be allowed to testify at the hearing; testimony or written statements received after the deadline will not be included in the hearing record.

**ADDRESSES:** Please note that the Commission has a new address: 2120 L Street, NW., Suite 200, Washington, DC 20037. The telephone number is the same: 202/653–7220.

**FOR FURTHER INFORMATION CONTRACT:** Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant, at 202/653–7220.

**SUPPLEMENTARY INFORMATION:** Agendas for the hearing will be available on Friday, November 4, 1994 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7220.

**Paul B. Ginsburg,**

*Exectuvie Director.*

[FR Doc. 94–24803 Filed 10–5–94; 8:45 am]

BILLING CODE 6820–SE–M

## RESOLUTION TRUST CORPORATION

### Coastal Barrier Improvement Act; Property Availability; Fox Meadow, Nassau County, NY

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the property known as Fox Meadow, located in Nassau County, New York, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

**DATES:** Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until January 4, 1995.

**ADDRESSES:** Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. William McGrillies, Resolution Trust Corporation, P.O. Box 1500, Valley Forge, PA 19482–1500, (610) 631–3767; Fax (610) 650–0603.

**SUPPLEMENTARY INFORMATION:** The Fox Meadow property is located off Northern Boulevard (Route 25A), also known as the North Hempstead Turnpike, in the Village of Muttontown, New York. The site consists of approximately 155-acres and contains several outbuildings, an overgrown golf course, and a mansion built in 1914 that is eligible for listing on the National Register of Historic Places. The property was recently a golf club, also known as the Fox Hill Golf and Country Club, and has recreational value. The Fox Meadow property is adjacent to the Muttontown Preserve which is managed by Nassau

County Recreation and Parks for conservation and recreational purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before January 4, 1995 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

**Notice of Serious Interest**

RE: [insert name of property]
Federal Register Publication Date:

[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Untied States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase of other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

**List of Subjects**

Environmental protection.

Dated: October 3, 1994.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Secretary.*

[FR Doc. 94–24742 Filed 10–5–94; 8:45 am]

BILLING CODE 6714–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–34763; File No. SR–Amex–94–35]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments to Rule 179 Regarding Automatic Cancellation of Open Orders in Expiring Equity Securities

September 30, 1994.

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 September 6, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 Amex is proposing to amend Rule 179 to expand the categories of expiring equity securities as to which open orders are automatically cancelled prior to commencing "next day" and "cash" trading. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Amex Rule 179 provides time frames during which orders in expiring rights and warrants must be for "next day" delivery or for "cash" settlement, rather than for "regular way" five-day delivery. The rule was amended last year to provide for the automatic cancellation of open "regular way" and "next day" orders in expiring rights and warrants prior to commencing "next day" and "cash" trading in those securities.[1] The normal ticker notice provided by the Exchange with respect to expiring rights and warrants provides ample notice to members and member organizations regarding such cancellations, thereby given them the opportunity to replace their cancelled orders if they wish to do so. Substituted "next day" and "cash" orders are treated as new orders and are not entitled to retain the priority on the specialist's book of the cancelled "regular way" order. This amendment has resulted in a significant reduction in "DKs" [2] and has facilitated accurate clearance and settlement in these securities.

The Exchange is now proposing that Rule 179 be further amended to expand the categories of expiring securities as to which open orders are automatically cancelled prior to commencing "next day" and "cash" trading to include *any* expiring equity security.[3] The amendment would be applicable, for example, to preferred stock,[4] Contingent Value Rights, Stock Index Return Securities, Equity Linked Securities ("ELKS"), Yield Enhanced Equity Linked Debt Securities ("YEELDS") and other similar securities. These securities

[1] *See* Securities Exchange Act Release No. 32320 (May 17, 1993), 58 FR 30078 (May 25, 1993) (approving File No. SR–Amex–92–31).

[2] A "DK" is an uncompared securities transaction. For further discussion of Amex procedures regarding resolution of DKs, *see* Amex Rule 731.

[3] The Amex has clarified that the proposed rule change would apply to expiring securities that are not options and that are subject to the trading rules for equity securities, as opposed to debt securities. Telephone conversation between Stuart Diamond, Director, Rulings Department, Amex, and Linda Tarr, Special Counsel, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 27, 1994.

[4] The Amex proposal would provide for automatic cancellation of open orders in redeemable preferred stock. Telephone conversation between Stuart Diamond, Director, Rulings Department, Amex, and Linda Tarr, Special Counsel, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 27, 1994.

would generally change to "next day" delivery and "cash" in accordance with the time frames applicable to rights. Thus, during the five business days preceding the final day for trading in such security, every order therein entered on a specialist's book must be for "next day" delivery, and, on final day for trading in such security, every order therein entered on the specialist's book must be for "cash." However, when appropriate, the Exchange may establish different time frames for particular types of expiring equity securities.

The extension of the automatic cancellation provisions of the rule to these securities can be expected to provide comparable benefits, *i.e.*, a reduction in "DKs" and clearance and settlement errors.

2. Statutory Basis

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, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the 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 Amex. All submissions should refer to File No. SR–Amex–94–35 and should be submitted by October 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24792 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 34–34761; File No. SR–BSE–94–07]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Reporting of Certain Financial and Other Information by Broker-Dealers

September 30, 1994.

On May 2, 1994, the Boston Stock Exchange, Inc. ("BSE" 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 rules change adopt new section 2(n) to chapter XXII of the Rules of the Board of Governors of the Exchange. On May 12, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On August 16, 1994, the Exchange submitted Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34556 (August 19, 1994), 59 FR 44201 (August 26, 1994). No comments were received on the proposal.

Among other matters, the rule being adopted requires each broker-dealer for which the Exchange is the designated examining authority ("DEA") to provide to the Exchange on a quarterly basis (or more often as deemed appropriate by the Exchange):

(a) A report of all assets and liabilities attributable to the broker-dealer or held by another entity for the account of the broker-dealer;

(b) A description of any outstanding litigation or contracts that may have a material financial impact on the broker-dealer; and

(c) A pro-forma consolidated capital computation of assets and liabilities of any subsidiary or affiliate for which the broker-dealer guarantees, endorses or assumes directly or indirectly the obligations or liabilities.

In addition, the rule requires each such broker-dealer immediately to notify the Exchange of any financial matters that may have a material impact on the firm's capital and or its equity requirements.

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 including the requirements of section 6(b) of the Act.[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, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission believes that this rule will protect investors and the public interest by providing the BSE with an early warning of potential financial difficulties at member firms for which it is the DEA and by otherwise enhancing the BSE's ability to monitor the continued financial well being of such firms. Moreover, the proposed rule will help the BSE to ensure its members' compliance with the requirements of the

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] *See* letter from Karen Aluise, Assistant Vice President, BSE, to Sandy Sciole, Special Counsel, SEC, dated May 5, 1994. Amendment No. 1 corrected a technical mistake in the text of the rule submitted with the original rule filing.

[4] *See* letter from Karen Aluise, Assistant Vice President, BSE, to Amy Bilbija, SEC, dated August 10, 1994. Amendment No. 2 contained a revised Exhibit 2, which reformulated the proposed rule change.

[5] 15 U.S.C. 78f(b) (1988).

Commission's net capital rule, Rule 15c3–1 under the Act.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [7] that the proposed rule change (SR–BSE–94–07) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24793 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 34–34759; File No. SR–CBOE–94–04]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing Criteria for Certain Hybrid Securities.

September 30, 1994.

### I. Introduction

On February 25, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to establish specific listing criteria for certain hybrid securities. Notice of the proposal appeared in the **Federal Register** on April 7, 1994.[3] No comment letters were received on the proposed rule change. The CBOE filed Amendment No. 1 to the proposed rule change on September 28, 1994,[4] and Amendment No. 2 on September 29, 1994.[5] This order approves the CBOE proposal, as amended.

[6] 17 CFR 240.15c3–1 (1993).

[7] 15 U.S.C. 78s(b) (2) (1988).

[8] 17 CFR 200.30–3(a) (12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] *See* Securities Exchange Act Release No. 33843 (March 31, 1994), 59 FR 16666 (April 7, 1994).

[4] In Amendment No. 1, the CBOE amends, in several respects, the proposed listing criteria for contingent value rights, equity-linked notes, and paired securities, as described herein, to conform the proposed rule language to the listing criteria for such products previously approved by the Commission for the New York Stock Exchange, Inc. ("NYSE") and/or the American Stock Exchange, Inc. ("Amex"). *See* Letter from Michael Meyer, Schiff Hardin & Waite, to Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated September 27, 1994 ("Amendment No. 1").

[5] In Amendment No. 2, the CBOE proposes to require that the Exchange distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in contingent value rights. *See Letter from Michael Meyer, Schiff Hardin & Waite, to Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated September 29, 1994 ("Amendment No. 2").*

### II. Description of the Proposal

Pursuant to CBOE Rule 31.5.F, the Exchange may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, warrants, or unit investment trusts. The CBOE is now proposing to: (1) Amend Rule 31.5.F to decrease the minimum aggregate market value of such securities to $4 million;[6] (2) add Rule 31.5.H to provide listing standards for contingent value rights ("CVRs"); (3) add Rule 31.5.I to provide listing standards for equity-linked term notes ("ELNs"); and (4) add Rule 31.5.J to provide listing standards for paired securities.

*A. Contingent Value Rights*

CVRs are unsecured obligations providing for a possible cash payment at maturity based on the value of an equity security issued by an affiliate of the issuer of the CVRs ("related security"). The holder of a CVR would be entitled to a cash payment at maturity if the market price of the related security is lower than a predetermined target price. If the market price of the related security equals or exceeds the target price, the holder of the CVR would not be entitled to receive such a cash payment.

Under proposed Rule 31.5.H, a CVR would be eligible for listing by the CBOE if: (1) The issuer satisfies the net worth and earnings requirements set forth in Exchange Rule 31.5.A; [7] (2) the issuer has assets in excess of $100 million; (3) there is a minimum public distribution of one million CVRs; (4) there are at least 400 public holders of the CVRs; (5) the aggregate market value of the CVRs is at least $4 million; and (6) the CVRs have an original term to maturity of at least one year.[8]

Because CVRs are linked to another security, the Exchange has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of CVRs.[9] First, pursuant to CBOE Rule 30.50(c), the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading CVRs. Second, consistent with CBOE Rule 30.50(c), the Exchange will further require that a member or member firm specifically approve a customer's account for trading CVRs prior to, or promptly after, the completion of the transaction. Third, prior to the commencement of trading of CVRs, the Exchange will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in CVRs.

[6] *See* Amendment No. 1, *supra* note 4.

[7] specifically, an issuer must have: (1) Total assets (including the value of patents, copyrights, and trademarks but excluding the value of goodwill) less total liabilities of at least $4 million; and (2) pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years and net income of at least $400,000.

[8] *See* Amendment No. 1, *supra* note 4.

[9] *Id.*

*B. Equity-Linked Term Notes*

The Exchange is also proposing to add Rule 31.5.I to its rules to establish specific listing criteria for ELNs.[10] ELNs are intermediate-term, hybrid instruments whose value will be linked to the performance of a highly-capitalized, actively traded common stock, non-convertible preferred stock, or sponsored American Depositary Receipt ("ADR").[11]

An issuer of ELNs may provide for periodic interest payments to holders, whether based on a fixed or floating rate.[12] Furthermore, a particular issuance of ELNs may also be subject to a "cap" on the maximum principal amount to be repaid to holders upon

[10] The CBOE notes that the Commission has previously approved the listing of ELNs by the NYSE and the Amex. The CBOE states that with two exceptions, as discussed herein, the CBOE's proposed standards are virtually identical to the NYSE's and Amex's listing standards for ELNs. *See* Securities Exchange Act Release Nos. 32343 (May 20, 1993). 58 FR 30833 (May 27, 1933) (order originally approving the listing of ELNs by the Amex); 33328 (December 13, 1993), 58 FR 66041 (December 17, 1993) (order approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994) (order originally approving the listing of ELNs by the NYSE); 33841 (March 31, 1994), 59 FR 16671 (April 7, 1994) (order approving revised market capitalization and trading volume requirements for the listing of ELNs by the NYSE); 34545 (August 18, 1994), 59 FR 43877 (August 25, 1994) (order approving the listing of ELNs by the NYSE linked to securities issued by non-U.S. companies) ("Exchange Act Release No. 34545"); and 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (order approving the listing of ELNs by the Amex linked to securities issued by non-U.S. companies) ("Exchange Act Release No. 34549") (collectively, "Equity-Linked Note Approval Orders").

[11] *See* Amendment No. 1, *supra* note 4.

[12] The Exchange has agreed to notify the Commission if an issuer of ELNs intends to provide for periodic interest payments to holders based on a floating interest rate. *Id.* The Commission, at that time, may require the CBOE to submit a rule filing pursuant to section 19(b) of the Act prior to permitting the Exchange to list an ELN with such terms.

maturity of the ELNs, and, additionally, may feature a "floor" on the minimum principal amount to be repaid to holders upon maturity of the ELNs. The Exchange believes that the listing flexibility available to an issuer of ELNs will permit the creation of securities which will offer investors the opportunity to more precisely focus on a specific investment strategy.

ELNs will conform to the listing guidelines under CBOE Rule 31.5.F, which provide that: (1) Issuers must satisfy certain asset/equity requirements;[13] and (2) issues must have (a) a minimum public distribution of one million trading units; (b) a minimum of 400 unit holders; and (c) an aggregate market value of at least $4 million.[14] Several additional criteria will also apply to the listing of ELNs. First, the issuer must have a minimum tangible net worth of $150 million. Second, the original issue price of a series of ELNs, when combined with all of the issuer's other ELNs listed on a national securities exchange or otherwise publicly traded in the United States, may not be greater than 25% of the issuer's net worth at the time of issuance. Third, ELNs will have an original term to maturity of not less than two years and not more than seven years, except ELNs linked to a security issued by a non-U.S. company[15] (including a sponsored ADR) must have an original term to maturity of not more than three years. Additionally, ELNs will be treated as equity instruments for, among other purposes, margin requirements.[16]

Although the Exchange does not believe that ELNs will have any discernible impact on the trading market for the underlying linked stock, it nevertheless proposes that each equity security (including sponsored ADRs) on which the value of the ELN is based must either have: (1) A market capitalization of at least $3 billion and U.S. trading volume of at least 2.5 million shares during the one-year period preceding the listing of the ELN, (2) a market capitalization of at least $1.5 billion and U.S. trading volume of at least 20 million shares during the one-year period preceding the listing of the ELN, or (3) a market capitalization of at least $500 million and U.S. trading volume of at least 80 million shares during the one-year period preceding the listing of the ELN. Moreover, the proposed rule change would provide the Exchange with flexibility, subject to the concurrence of the staff of the Commission, to list an ELN linked to a security that does not meet the specific market capitalization and volume criteria.[17] In addition to the market capitalization and trading volume requirements, the underlying security to which an ELN is linked must be: (1) Issued by a company which is subject to reporting requirements under the Act; (2) listed on a national securities exchange or traded through Nasdaq; and (3) subject to last sale reporting pursuant to Rule 11As3–1 of the Act.[18] Finally, without the concurrence of the staff of the Commission, an issue of ELNs linked to a security issued by a U.S. company may not be linked to more than 5% of the total outstanding shares of that security.[19]

With regard to ELNs linked to securities issued by non-U.S. companies (including sponsored ADRs) subject to reporting requirements under the Act, the following additional requirements apply: (1) The term of such ELNs shall be limited to between two and three years; (2) either (i) the Exchange must have in place a comprehensive market information sharing agreement[20] with the primary exchange on which the underlying security is primarily traded (in the case of ADRs, with the primary exchange where the security underlying the ADR is primarily traded), or (ii) at least 50% of the market for the underlying security and all related securities[21] for the six months prior to issuance must occur in the U.S. market (as defined below);[22] (3) if linked to an ADR, the ADR must be sponsored;[23] (4) there must be a minimum of 2,000 holders of the linked security; (5) the ELNs issuance may not exceed (i) 2% of the total shares of the underlying security outstanding provided at least 30% of the worldwide trading volume for the security and all related securities for the six months prior to listing occurred in the U.S. market, (ii) 3% of the total shares of the underlying security outstanding provided at least 50% of the worldwide trading volume for the security and all related securities for the six months prior to listing occurred in the U.S. market, or (iii) 5% of the total shares of the underlying security outstanding provided at least 70% of the worldwide trading volume for the security and all related securities for the six months prior to listing occurred in the U.S. market; and (6) no ELN may be listed if the U.S. market for the underlying security and all related securities accounted for less than 30% of the worldwide trading volume for the security and related securities during the prior six months, regardless of whether the relevant comprehensive market information sharing agreement is in place.[24] With the concurrence of the staff of the Commission, the Exchange may determine to list an ELN linked to a security (including a sponsored ADR) issued by a non-U.S. company subject to reporting requirements under the Act that exceeds the above percentages.[25]

The proposal defines the U.S. market[26] as the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group

[13] Specifically, issuers must have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which does not satisfy the earnings criteria set forth in CBOE 31.5.A (*see supra* note 6), the Exchange generally will require the issuer to have: (i) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

[14] *See* Amendment No. 1, *supra* note 4.

[15] The Exchange defines a non-U.S. company as any company which was formed or incorporated outside of the U.S. *Id.*

[16] *Id.*

[17] Depending on the proposed facts, the Commission may require the Exchange to submit a rule filing to the Commission pursuant to section 19(b) of the Act to address the regulatory issues raised by any proposed offering of ELNs that does not satisfy the market capitalization and/or trading volume requirements set forth above. In this connection, the Commission notes that any proposal to list an ELN linked to a security with a market capitalization of less than $500 million would raised significant regulatory concerns for which a section 19(b) rule filing would be required.

[18] *See* Amendment No. 1, *supra* note 4.

[19] As with the market capitalization and trading volume requirements, the Commission notes that based on the proposed facts, the Exchange may be required to submit a rule filing to the Commission pursuant to section 19(b) of the Act to address regulatory issues raised by any Exchange proposal to list an ELN related to more than the allowable percentages of outstanding shares of the underlying security.

[20] *See* Amendment No. 1, *supra* note 4. A comprehensive market information sharing agreement would provide for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded. *See, e.g.* Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994) (order approving File No. SR–CBOE–93–38) ("ADR Approval Order").

[21] Such related securities include all classes of common stock issued by the foreign issuer and ADRs that overlie any of these classes of common stock. *See* Amendment No. 1, *supra* note 4; and ADR Approval Order, *supra* note 20.

[22] The trading volume for any linked security trading on an exchange that is not part of the U.S. market will be included in the determination of world-wide trading volume, but not in the determination of U.S. market trading volume. The Exchange represents that it shall use its best efforts to discover all markets (foreign and U.S.) on which the underlying security and all related securities trade. *Id.*

[23] *See* Amendment No. 1, *supra* note 4.

[24] Additionally, without a comprehensive market information sharing agreement, an ELN may not be listed linked to a security issued by a non-U.S. company (including a sponsored ADR) if the U.S. market for the security and all related securities for the prior six months was less than 50% of the worldwide market for such securities. *Id.*

[25] *See supra* note 18.

[26] *See* Amendment No. 1, *supra* note 4; and ADR Approval Order, *supra* note 20.

("ISG")[27] and whose markets are linked together by the Intermarket Trading System ("ITS").[28]

As with CVRs, because ELNs are linked to another security, the Exchange has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of ELNs.[29] First, pursuant to CBOE Rule 30.50(c), the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading ELNs. Second, consistent with CBOE Rule 30.50(c), the Exchange will further require that a member or member firm specifically approve a customer's account for trading ELNs prior to, or promptly after, the completion of the transaction. Third, prior to the commencement of trading of ELNs, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.[30]

*C. Paired Securities*

The Exchange is also proposing to add Rule 31.5.J to its rules to set forth specific listing criteria for "paired securities." Under proposed Rule 31.5.J, the term "paired securities" would be defined as securities which may be transferred and traded only in combination with one another as a single economic unit and for which the securities are printed back-to-back on the same certificate.[31] Under the proposed rule, the issuers of the paired securities would be required to satisfy, on an aggregate basis, the size and earnings criteria set forth in Exchange Rule 31.5.A.[32] In the event the pairing agreement between the issuers of the paired securities is terminated, the issuer which initially met the original listing criteria need only satisfy the Exchange's continued listing guidelines in order to remain listed on the Exchange. The other security, however, which at the time of listing did not qualify for listing under CBOE Rule 31.5.A must, at the time of termination, meet both the net worth, earnings, and distribution requirements of Rule 31.5.A in order to remain listed on the Exchange.[33] The Exchange has represented that it will only list an issue of paired securities as a competitive response to the listing of an issue of paired securities by another securities exchange and where the securities are being paired for purposes other than for bypassing the Exchange's equity listing standards.[34]

## III. Commission Findings and Conclusions

For the reasons discussed below, 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).[35]

*A. Contingent Value Rights*

The Commission believes that the CBOE's proposal to establish listing criteria for CVRs addresses the special concerns raised by these investment products. As with the equity-linked debt securities approved for listing by the NYSE and the Amex,[36] CVRs are not leveraged instruments. Their price, however, will still be derived and based upon the related security. The Commission believes, however, that the CBOE proposal adequately minimizes the Commission's regulatory concerns that arise because the final rate of return of a CVR is derivatively priced, based on the performance of the related security. The proposed quantitative listing standards should ensure that only substantial companies capable of meeting their financial obligations issue CVRs. This is important in light of the contingent financial obligations created by these instruments, and should serve to protect investors and the public interest by ensuring that the companies listing CVRs on the Exchange have sufficient financial means to meet their settlement obligations. Additionally, the proposed suitability, disclosure, and compliance requirements noted above, adequately address the potential public customer concerns that could arise from the hybrid nature of CVRs. In this regard, before any listing occurs, the CBOE would be required to distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in CVRs.

Finally, the Commission notes that the criteria proposed by the Exchange for the listing of CVRs are virtually the same as those previously approved by the Commission for the listing and trading of CVRs by the NYSE and the Amex.[37]

*B. Equity-Linked Term Notes*

The Commission believes that the availability of ELNs will permit investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income. Accordingly, for these reasons, as well

---

[27] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG, (and accordingly, of the U.S. market) are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the Cincinnati Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990.

[28] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiple trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price.

[29] *See* Amendment No. 1, *supra* note 4.

[30] The Commission notes that the ELNs are subject to the equity margin rules of the Exchange. *Id.*

[31] *See* Amendment No. 1, *supra* note 4.

[32] *See supra* note 7.

[33] *See* Amendment No. 1, *supra* note 4; and *supra* note 7.

[34] *See* Amendment No. 1, *supra* note 4.

[35] 15 U.S.C. 78f(b)(5) (1988). Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging, or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[36] *See* Equity-Linked Note Approval Orders, *supra* note 10.

[37] *See* Securities Exchange Act Release Nos. 28072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (order approving the listing of CVRS by the NYSE); and 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving the listing of CVRs by the Amex).

as the reasons stated in the Equity-Linked Note Approval Orders,[38] the Commission finds that the CBOE's proposed standards for the listing and trading of ELNs are consistent with the Act and that the listing and trading of ELNs is in the public interest.

As with the CVRs discussed above, ELNs are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of an ELNs is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering the proposals by the Amex and the NYSE to list and trade equity-linked notes, the Commission had several specific concerns with this type of product because the final rate of return of an ELN is derivatively priced, based on the performance of the underlying security. These concerns included: (1) Investor protection concerns; (2) dependence on the credit of the issuer of the instrument; (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions; and (4) the impact on the market for the underlying linked security.[39] The Commission concluded, however, that the proposals adequately addressed each of these issues such that the Commission's regulatory concerns were adequately minimized.[40] Similarly, in this proposal, the CBOE has proposed safeguards, as described above, which the Commission finds to be equivalent to those approved for the trading of ELNs by the Amex and the NYSE. In particular, by imposing the listing standards, suitability, disclosure, and compliance requirements noted above, the CBOE has adequately addressed the potential public customer concerns that could arise from the hybrid nature of ELNs.

Except in two respects, the Commission finds that Amendment No. 1 confirms the proposal to rule changes already approved by the Commission for the listing and trading of ELNs by the Amex and the NYSE.[41] The two new items included in this proposal are: (1) An additional market capitalization and trading volume requirement that allows the listing of ELNs linked to an underlying security with a minimum market capitalization of $500 million and a trading volume in the year prior to listing of at least 80 million shares; and (2) allowing flexibility for the CBOE, with the concurrence of the staff of the Commission, to determine on a case-by-case basis to list ELNs that either do not satisfy the market capitalization and trading volume requirements discussed above, and/or that exceed the percentage limits regarding the outstanding shares of the linked security. The Commission believes that neither of these proposals raises any significant regulatory issues that were not addressed in the Equity-Linked Note Approval Orders.[42] The Commission finds that the proposal to add the third tier of eligible linked securities will expand the number of securities that can be linked to these equity-linked products while maintaining the requirement that the linked security be an actively traded common stock issued by a highly capitalized issuer. While the proposal introduces a third alternative for ELN eligibility that reduces the minimum market capitalization requirement of the linked security, the stock of such an issuer could only be linked to an issue of ELNs if its trading volume for the prior one-year period is at least 80 million shares, which is four times higher than the current minimum trading volume for these products as currently allowed on the Amex and the NYSE. Moreover, in recently approving proposals by the NYSE and the Amex to list and trade ELNs linked to securities (including sponsored ADRs) issued by non-U.S. companies subject to reporting requirements under the Act, the NYSE and the Amex represented to the Commission that no problems had been reported to either exchange regarding the listing and trading of these products.[43] The Commission believes that together, the new capitalization and trading volume requirements will continue to ensure that ELNs are only issued on highly liquid securities of broadly capitalized companies and that these requirements will reduce the likelihood of any adverse market impact on the securities underlying ELNs.

Additionally, allowing the CBOE, with the concurrence of the staff of the Commission, to approve, on a case-by-case basis, an issue of ELNs that does not satisfy one of the existing requirements regarding market capitalization and trading volume,[44] or that exceeds the maximum allowable percentage of shares of the underlying security,[45] merely adds flexibility to the proposed rule change. The Commission believes that this portion of the proposal does not raise any regulatory concerns, particularly given the requirement of obtaining the concurrence of the staff of the Commission prior to listing.[46]

*C. Paired Securities*

The Commission believes that the CBOE's proposed listing standards for paired securities do not raise any substantial regulatory concerns. First, the proposed rule is identical to a rule previously adopted by the Amex.[47] Second, the Exchange will only list an issue of paired securities in response to competitive pressures resulting from the listing of an issue of paired securities by another securities exchange and where the securities to be listed by the CBOE are being paired for purposes other than for bypassing the Exchange's equity listing standards.[48] These standards should serve to protect investors by preventing an issuer from listing a security on the CBOE that does not satisfy the Exchange's listing criteria, terminating the pairing agreement, and then trading the securities as separate securities. The certificate requirement serves to further protect investors and minimize confusion by ensuring that investors are on notice when they receive such a certificate that the security is a paired security and cannot be traded separately from the security to which it is paired. Moreover, requiring that in the event of the termination of the pairing agreement that the security that did not originally meet the CBOE's listing criteria must satisfy those criteria at the time of the termination or else be delisted, minimizes the potential that the paired security vehicle will be used as a means of listing a security that otherwise could not be listed on the Exchange.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order to allow the CBOE to begin listing hybrid securities satisfying the listing standards discussed above without delay. With

[38] *See* Equity-Linked Note Approval Orders, *supra* note 10.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *See* Exchange Act Release Nos. 34545 and 34549, *supra* note 10.

[44] *See supra* note 16.

[45] *See supra* note 18.

[46] If the CBOE proposed an ELN that raised unique or significant regulatory concerns, the staff of the Commission would require the CBOE to submit a rule filing to the Commission pursuant to section 19(b) of the Act.

[47] *See* Section 117 of the Amex Company Guide.

[48] *See* Amendment No. 1, *supra* note 4. The Commission would be concerned about companies being paired simply to allow one or both companies to meet the listing standards. The Commission believes that paired securities should only be allowed to be listed where there is a special relationship or reason, other than listing requirements, that makes pairing necessary.

respect to CVRs, the Commission finds that Amendment Nos. 1 and 2 more closely conforms the Exchange's proposal to proposals previously approved by the Commission with respect to the listing and trading of CVRs by the Amex and the NYSE. For that reason and for the reasons stated above, the Commission believes that the proposal to list and trade CVRs does not raise any significant regulatory issues that were not addressed when the NYSE and the Amex proposals were approved.

With regard to ELNs, as discussed above, except for two aspects the proposal merely provides the CBOE with the ability to list equity-linked debt securities on the same basis as the NYSE and the Amex. Moreover, the Commission notes that the proposals by the NYSE and the Amex to list and trade equity-linked debt securities were published by the Commission for the full comment period without any comments being received by the Commission. With respect to the two aspects of the ELN proposal which expand on the standards previously approved for the NYSE and the Amex, for the reasons discussed above, the Commission believes that no significant regulatory issues are raised that were not adequately addressed in the Equity-Linked Note Approval Orders.[49]

Finally, Amendment No. 1 to the proposal also lowers the minimum size for an issue of securities listed pursuant to CBOE Rule 31.5.F from $20 million to $4 million. The Commission notes that this amendment merely conforms the CBOE's rules to those of the NYSE which provide that an issue of a hybrid security must have a minimum market value at issuance of at least $4 million.[50]

Accordingly, the Commission believes it is consistent with sections 6(b)(5),[51] and 19(b)(2),[52] of the Act to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. 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 NYSE. All submissions should refer to File No. SR–CBOE–94–04 and should be submitted by October 27, 1994.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[53] that the proposed rule change (File No. SR–CBOE–94–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[54]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24794 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 34–34758; File No. SR–NASD–94–49]**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Listing Standards for Selected Equity-Linked Debt Securities ("SEEDS").

September 30, 1994.

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 August 31, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The NASD filed Amendment No. 1 to the proposed rule change on September 2, 1994, and Amendment No. 2 on September 9, 1994.[1] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to Schedule D of the NASD By-Laws to provide listing standards for the designation of Selected Equity-Linked Debt Securities ("SEEDS")[2] as Nasdaq National Market securities. The NASD also proposes to amend the Policy of the NASD Board of Governors issued under Article III, section 2, of the NASD Rules of Fair Practice to highlight members' obligations to deal fairly with their customers when making recommendations or accepting orders concerning SEEDS. The text of the proposed rule change is available at the Office of the Secretary, NASD, 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 NASD 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 NASD 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*

Under section 2(e) of Part III of Schedule D to the NASD By-Laws, the NASD may designate as Nasdaq National Market securities financial instruments which can not be readily categorized under traditional listing guidelines for, among other instruments, common and preferred stock, bonds, debentures, and warrants.[3] The NASD is

---

[49] *See* Equity-Linked Note Approval Orders, *supra* note 10.

[50] *See* section 703.19 of the NYSE Listed Company Manual.

[51] 15 U.S.C. 78f(b)(5) (1988).

[52] 15 U.S.C. 78s(b)(2) (1988).

[53] 15 U.S.C. 78s(b)(2) (1988).

[54] 17 CFR 200.30–3(a)(12) (1993).

[1] In Amendment Nos. 1 and 2, the NASD proposed to make certain clarifying amendments to the proposed rule language, as more fully discussed herein, to more closely conform the listing standards for SEEDS to the listing standards for equity-linked debt in place on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). Amendment No. 1 also eliminates the minimum holder requirement for securities that are listed pursuant to Article III, Section 2 of the NASD Rules of Fair Practice but which are traded in thousand dollar denominations. *See* Letter from Robert Aber, Vice President and General Counsel, NASD, to Brad Ritter, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated September 2, 1994 ("Amendment No. 1"); and Letter from Robert Aber, Vice President and General Counsel, NASD, to Brad Ritter, Attorney, OMS, Division, Commission, dated September 9, 1994 ("Amendment No. 2").

[2] "SEEDS" and "Selected Equity-Linked Debt Securities" are service marks of the NASD.

[3] *See* Securities Exchange Act Release No. 32968 (September 29, 1993), 58 FR 52124 (October 6, 1993).

now proposing to amend Section 2 of Part III of Schedule D to the NASD By-Laws to provide listing standards for SEEDS, a specific type of hybrid security. As with the more general hybrid product listing standards, all SEEDS will be designated as Nasdaq National Market securities.[4] In addition, SEEDS will be treated as equity instruments for, among other purposes, margin requirements.

SEEDS are intermediate-term, hybrid securities, the value of which is based, at least in part, on the value of another issuer's common stock, non-convertible preferred stock, or certain sponsored American Depositary Receipts ("ADRs"). SEEDS may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. SEEDS may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity, and they may feature a "floor" on the minimum principal amount paid to holders upon maturity. A specific issue of SEEDS, for example, may provide holders with a fixed semi-annual interest payment, while capping the maximum amount to be repaid upon maturity at 135% of the issuance price, with no minimum floor guarantee on the principal to be repaid at maturity. Another issue of SEEDS might offer lower semi-annual payments based upon a floating interest rate[5] with a minimum floor for the repayment of principal of 75% of the issuance price. According to the NASD the flexibility available to an issuer of SEEDS permits the creation of securities which offer issuers and investors the opportunity to more precisely focus on a specific investment strategy.

The NASD generally believes that the level of risk involved in the purchase or sale of a SEEDS is similar to the risk involved in the purchase or sale of traditional common stock. Nevertheless, the unique nature and characteristics of SEEDS raises several concerns: (1) Investor protection concerns; (2) dependence on the creditworthiness of the issuer of a SEEDS to meet its obligations under the instruments; (3) systemic concerns regarding the position exposure of issues with partially hedged or dynamically hedged positions; and (4) the impact on the market for the underlying linked security. The NASD believes its proposal adequately addresses these concerns.

Specifically, there are four components to the NASD's proposed listing standards for SEEDS: (1) Standards applicable to issuers of SEEDS; (2) standards applicable to the SEEDS offerings themselves; (3) standards applicable to the underlying linked security; and (4) limitations on the size of a particular SEEDS offering.

### Issuer Listing Standards

The proposal provides that an issuer of a SEEDS must be a entity that is listed on Nasdaq or the NYSE, or an affiliate of a company listed on Nasdaq or the NYSE.[6] Each issuer of a SEEDS must also have a minimum net worth of $150 million. In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded through Nasdaq or on a national securities exchange, may not be greater that 25% of the issuer's net worth at the time of issuance.

### Standard Applicable to SEEDS Offerings

In order to ensure adequate liquidity in the markets for SEEDS each issuance of a SEEDS must have: (1) A minimum public distribution of one million SEEDS; (2) a minimum of 400 holders of the SEEDS; (3) a minimum market value of $4 million; and (4) a term of two to seven years (although a SEEDS on a sponsored ADR can not have a term longer than three years).

### Standards Applicable to the Underlying Linked Security

In order to help ensure that SEEDS will not have a disruptive effect on the markets for the securities underlying the SEEDS, the NASD proposes that the securities underlying SEEDS must have sufficiently large market capitalizations and high trading volumes. Specifically, a security underlying a SEEDS must have: (1) A market capitalization of at least $3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS; or (2) a market capitalization of at least $1.5 billion and a trading volume in the United States of at least 20 million shares in the one-year period preceding the listing of the SEEDS; or (3) a market capitalization of at least $500 million and a trading volume in the United States of at least 80 million shares in the one-year period preceding the listing of the SEEDS. In addition, if an issuer proposes to issue SEEDS on a security that does not meet the market capitalization and trading volume standards set forth above, the NASD, with the concurrence of the staff of the Commission, may evaluate the trading volume, public float, and market capitalization of that security, as well as other relevant factors, and determine on a case-by-case basis that it is appropriate to list SEEDS overlying that security.[7]

The NASD believes that the $500 million market capitalization/80 million share trading volume standard and the flexibility, with the concurrence of the Commission, to list issues of SEEDS that do not satisfy the market capitalization and trading volume requirements, are the only significant modifications to the SEEDS listing standards from those currently in place for the listing of ELDS at the NYSE and for the listing of ELNs at the Amex.[8] The additional tier for trading volume and market capitalization is warranted, the NASD believes, because trading volume is a better barometer for market liquidity than market capitalization. Accordingly, the NASD believes imposing a higher

---

[4] The NASD notes that the Commission already has approved comparable listing standards for Equity-Linked Debt Securities ("ELDS") listed and traded on the New York Stock Exchange ("NYSE") and Equity-Linked Term Notes ("ELNs") listed and traded on the American Stock Exchange ("Amex"). The NASD states that with two exceptions, as discussed herein, the NASD's proposed standards are virtually identical to the NYSE's and Amex's listing standards for ELDS and ELNs, respectively. *See* Securities Exchange Act Release Nos. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (order originally approving the listing of ELNs); 33328 (December 13, 1993), 58 FR 66041 (December 17, 1993) (order approving revised market capitalization and trading volume requirements for the listing of ELNs); 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994) (order originally approving the listing of ELDS); 33841 (March 31, 1994), 59 FR 16671 (April 7, 1994) (order approving revised market capitalization and trading volume requirements for the listing of ELDS); 34545 (August 18, 1994), 59 FR 43877 (August 25, 1994) (order approving the listing of ELDS linked to securities issued by non-U.S. companies) ("Exchange Act Release No. 34545"); and 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (order approving the listing of ELNs linked to securities issued by non-U.S. companies) ("Exchange Act Release No. 34549") (collectively, "Equity-Linked Note Approval Orders").

[5] The NASD will notify the Commission if an issue of SEEDS provides for periodic interest payments to holders based on a floating rate. The Commission, at that time, may require the NASD to submit a rule filing pursuant to section 19(b) of the Act prior to permitting Nasdaq to list SEEDS with such terms.

[6] For the numerical listing criteria for securities eligible to be listed as Nasdaq National Market securities, *see* Section 2 of Part III of Schedule D to the NASD By-Laws. For the numerical listing criteria for securities eligible to be listed on the NYSE *see* sections 102.01–102.03 and 103.01–103.05 of the NYSE's Listed Company Manual.

[7] *See* Amendment No. 1, *supra* note 1. Depending on the proposed facts, the Commission may require the NASD to submit a rule filing to the Commission pursuant to section 19(b) of the Act to address the regulatory issues raised by any proposed offering of SEEDS that does not satisfy the market capitalization and/or trading volume requirements discussed above. In this connection, the Commission notes that any proposal to list a SEEDS linked to a security with a market capitalization of less than $500 million would raise significant regulatory concerns for which a section 19(b) rule filing would be required.

[8] *See* Equity-Linked Note Approval Orders, *supra* note 4.

trading volume standard and a lower market capitalization standard will not jeopardize the integrity of the market for the linked security. Moreover, the NASD notes that the minimum market capitalization requirement will still be $500 million, assuring that the linked security is issued by a sufficiently large company capable of underlying SEEDS without any disruption to the market for its common stock. The NASD also believes that the flexibility to list issues of SEEDS not satisfying the objective criteria is appropriate for those cases where the NASD, with the concurrence of the staff of the Commission, determines, based on factors including, among others, public float and affiliations between the issuer of the SEEDS and the issuer of the linked security, in addition to market capitalization and trading volume, that the listing of the SEEDS does not raise any material market manipulation or investor protection concerns.

In addition to the market capitalization and trading volume requirements, the issuer of the linked security must be a reporting company under the Act. The underlying linked security also must be traded through Nasdaq or on a national securities exchange and be subject to last sale reporting pursuant to Rule 11Aa3–1 under the Act. In addition, consistent with the Amex and NYSE proposals recently approved by the Commission,[9] the NASD proposes to permit SEEDS on certain non-U.S. companies[10] subject to reporting requirements under the Act whose securities are traded in the United States either as ordinary shares or sponsored ADRs, provided there are at least 2,000 holders of the underlying linked security.[11]

[9] *See* Exchange Act Release Nos. 34545 and 34549, *supra* note 4.

[10] The NASD defines a non-U.S. company as any company formed or incorporated outside of the U.S.

[11] Specifically, a SEEDS could be listed on a non-U.S. company that is subject to reporting requirements in the U.S. when ordinary shares or sponsored ADRs representing that company are traded in the United States if: (1) The NASD has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded); or (2) the combined trading volume of the underlying security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined worldwide trading volume in the underlying security, other related securities, and other classes of common stock related to the underlying security over the six-month period preceding the date of designation. *See* Exchange Act Release Nos. 34545 and 34549, *supra* note 4; and Amendment No. 1, *supra* note 1.

Limitations of the Size of Particular SEEDS Offerings

Without the approval of the Commission, the issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. Without the approval of the Commission, the issuance of SEEDS relating to any security (including sponsored ADRs) that is traded in the United States and is issued by a non-U.S. company subject to U.S. reporting requirements may not exceed: (A) Two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in the underlying security occurs in the U.S. market during the six-month period preceding the date of designation; (B) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in the underlying security occurs in the U.S. market during the six-month period preceding the date of designation; or (C) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in the underlying security occurs in the U.S. market during the six-month period preceding the date of designation.[12] If an issuer proposes to issue SEEDS that relate to more than the allowable percentages of the underlying security specified above, however, then the NASD, with the concurrence of the staff of the Commission, will evaluate, on a case-by-case basis, the maximum percentage of SEEDS that may be issued.[13]

Finally, because SEEDS are linked to price movements in another security, the NASD proposes three safeguards that are designed to satisfy the investor protection concerns raised by the trading of SEEDS. First, for each SEEDS, the NASD will distribute a circular to the membership providing guidance concerning member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS. Second, the NASD reiterates that, pursuant to the NASD's customer suitability rule found at Section 2, Article III of the NASD Rules of Fair Practice, members will have a duty of due diligence to learn the essential facts relating to every customer trading SEEDS prior to their first SEEDS transaction. In addition, consistent with Section 2, Article III, of the NASD Rules of Fair Practice, the NASD will require that a member specifically approve a customers's account for trading SEEDS prior to, or promptly after, the completion of its first SEEDS transaction. In this connection the NASD has also proposed to amend the Policy of the NASD Board of Governors issued under Article III, section 2 of the NASD Rules of Fair Practice to highlight members' obligations to deal fairly with their customers when making recommendations or accepting orders concerning SEEDS.

Therefore, the NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, the NASD believes the proposal strikes an appropriate balance between the NASD's need to adapt and respond to innovations in the securities markets and the NASD's concomitant need to ensure the protection of investors and the maintenance of fair and orderly markets. The NASD believes the proposed numerical, quantitative listing standards should ensure that only substantial companies capable of meeting their contingent obligations created by SEEDS are able to list such products on Nasdaq. Similarly, by providing for the distribution of circulars to the membership concerning member firm compliance responsibilities and requirements, the NASD believes the proposal addresses any potential sales practice concerns that may arise in connection with SEEDS. The NASD also believes that the trading of SEEDS will provide investors with important investment and hedging benefits that will serve to satisfy better their investment and portfolio management needs. Moreover, the

[12] In no event may a SEEDS be linked to a security issued by a non-U.S. company (including a sponsored ADR) subject to reporting requirements under the Act where less than 30 percent of the worldwide trading volume in the underlying security and all related securities occurs in the U.S. market. *See* Amendment No. 2, *supra* note 1. As with the market capitalization and trading volume requirements, the Commission notes that based on the proposed facts, the NASD may be required to submit a rule filing to the Commission pursuant to section 19(b) of the Act to address regulatory issues raised by any NASD proposal to list a SEEDS related to more than the allowable percentages of outstanding shares of the underlying security.

[13] *See* Amendment No. 1, *supra* note 1.

NASD believes that SEEDS represent innovative financing techniques that provide issuers with increased flexibility to raise capital at potentially lower costs, in return for assuming some market volatility risk. Finally, the NASD believes that listing SEEDS on Nasdaq will also facilitate members and investors desiring to trade SEEDS in a dealer environment.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD 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 either 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 NASD has requested that the proposed rule changes 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 15A(b)(6) of the Act.[14] Specifically, the Commission believes that providing for the listing and trading of SEEDS will offer a new and innovative means of participating in the securities markets. In particular, the Commission believes that the availability of SEEDS will permit investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.[15] Accordingly, for these reasons, as well as the reasons stated in the Commission's Equity-Linked Note Approval Orders,[16] the Commission finds that the NASD standards for the listing and trading of SEEDS are consistent with the Act and that the listing and trading of SEEDS is in the public interest.

As with ELNs and ELDS, SEEDS are not leveraged instruments. Their price, however, will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a SEEDS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering the Amex's and the NYSE's respective proposals to list and trade ELNs and ELDS, the Commission had several specific concerns with this type of product because the final rate of return of an ELN is derivatively priced, based on the performance of the underlying security. The concerns included: (1) Investor protection concerns, (2) dependence on the credit of the issuer of the instrument, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked security.[17] The Commission concluded, however, that the Amex and the NYSE proposals adequately addressed each of these issues such that the Commission's regulatory concerns were adequately minimized.[18] Similarly, in this proposal, the NASD has proposed safeguards, as described above, which the Commission finds to be equivalent to those approved for the trading of ELNs and ELDS. In particular, by imposing the listing standards, suitability, disclosure, and compliance requirements noted above, the NASD has adequately addressed the potential public customer concerns that could arise from the hybrid nature of SEEDS. Further, the Commission believes that the listing standards and issuance restrictions should help to reduce the likelihood of any adverse market impact on the securities underlying SEEDS.

Except in two respects, the Commission finds that the proposal and Amendment Nos. 1 and 2 to the proposal are substantially identical to rule changes already approved by the Commission with respect to the listing and trading of ELNs on the Amex and ELDS on the NYSE.[19] The two new items included in this proposal are: (1) The new requirement that allows the listing of SEEDS linked to an underlying security with a minimum market capitalization of $500 million and a trading volume in the year prior to listing of at least 80 million shares; and (2) allowing flexibility for the NASD, with the concurrence of the staff of the Commission, to determine on a case-by-case basis to list SEEDS that do not satisfy one of the three objective listing tiers with respect to market capitalization and trading volume. The Commission believes that neither of these proposals raises any significant regulatory issues that were not addressed in the Equity-Linked Note Approval Orders. The Commission finds that the proposal to add an additional market capitalization and trading volume requirement for eligible linked securities will expand the number of securities that can be linked to these equity-linked products while maintaining the requirement that the linked security be an actively traded common stock issued by a highly capitalized issuer. While the proposal introduces a third alternative for ELN eligibility that reduces the minimum market capitalization requirement for the linked security, the stock of such an issuer (or sponsored ADR related thereto) could only be linked to a SEEDS issue if its trading volume for the prior one-year period is at least 80 million shares, which is four times higher than the current minimum trading volume for these products as currently allowed on the Amex and the NYSE. Moreover, in recently approving proposals by the NYSE and the Amex to list and trade ELDS and ELNs, respectively, linked to securities (including sponsored ADRs) issued by non-U.S. companies subject to reporting requirements under the Act, the NYSE and the Amex represented to the Commission that no problems had been reported to either exchange regarding the listing and trading of these products.[20] Furthermore, the Commission believes that together, the new capitalization and trading volume requirements will continue to ensure that SEEDS are only issued on highly liquid securities of broadly capitalized companies and that these requirements should help to reduce the likelihood of any adverse market impact on the securities underlying SEEDS.

Additionally, allowing the NASD, with the concurrence of the staff of the Commission, to approve, on a case-by-case basis, an issue of SEEDS that does not satisfy one of the existing requirements regarding market capitalization and trading volume,[21] or that exceeds the maximum allowable

[14] 15 U.S.C. 78o(b)(6) (1982).

[15] Pursuant to section 15A(b) of the Act the Commission must predicate approval of trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging, or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] *See* Equity-Linked Note Approval Orders, *supra* note 4. The discussions articulated in the Equity-Linked Note Approval Orders are incorporated herein.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* Exchange Act Release Nos. 34545 and 34549, *supra* note 4.

[21] *See supra* note 7.

percentage of shares of the underlying security,[22] merely adds flexibility to the proposed rule change. The Commission believes that this portion of the proposal does not raise any regulatory concerns, particularly given the requirement of obtaining the concurrence of the staff of the Commission prior to listing.[23]

Finally, the NASD represents that a number of issuers, including Nasdaq listed companies, have expressed an interest in listing SEEDS on Nasdaq. In light of the Commission's approval of the listing of ELNs on the Amex and ELDS on the NYSE, accelerating approval of this proposal will ensure that the NASD is allowed to compete on an equal basis with the Amex and NYSE with regard to these equity-linked products.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order to allow the NASD to begin listing SEEDS without delay. As discussed above, except for two aspects the proposal merely provides the NASD with the ability to list equity-linked debt securities on the same basis as the NYSE and the Amex. Moreover, the Commission notes that the proposals by the NYSE and the Amex to list and trade equity-linked debt securities were published by the Commission for the full comment period without any comments being received by the Commission. With respect to the two aspects of the SEEDS proposal which expand on the standards previously approved for the NYSE and the Amex, for the reasons discussed above, the Commission believes that no significant regulatory issues are raised that were not adequately address in the Equity-Linked Note Approval Orders.[24]

Finally, Amendment No. 1 to the proposal also eliminates the minimum holder requirement for securities which are listed pursuant to Article III, Section 2 of the NASD Rules of Fair Practice but which trade in thousand dollar denominations. The Commission notes that this amendment merely conforms the NASD's rules to those of the NYSE which do not contain a minimum holder requirement for hybrid debt securities.[25] Accordingly, the Commission believes that this amendment does not raise any significant regulatory issues.

For the above reasons, the Commission believes it is consistent with section 15A(b)(6)[26] and 19(b)(2)[27] of the Act to approve the proposed rule change and Amendment Nos. 1 and 2 to the proposal 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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–94–49 and should be submitted by October 27, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NASD–94–49), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24795 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

[22] *See supra* note 12.

[23] If the NASD proposed a SEEDS that raised unique or significant regulatory concerns, the staff of the Commission would require the NASD to submit a rule filing to the Commission pursuant to section 19(b) of the Act.

[24] *See* Equity-Linked Note Approval Orders, *supra* note 4.

[25] *See* section 703.19 of the NYSE Listed Company Manual.

[26] 15 U.S.C. 78o–3(b)(6) (1988).

[27] 15 U.S.C. 78s(b)(2) (1988).

[28] 15 U.S.C. 78s(b)(2) (1982).

[29] 17 CFR 200.30–3(a)(12) (1993).

**[Release No. 34–34766; File No. SR–NASD–94–52]**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through December 31, 1994

September 30, 1994.

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 September 23, 1994, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a primary national securities exchange (collectively referred to as "OTC Equities").[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] With the Commission's January 1994 approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR–NASD–93–24).

under interim approval that expires on October 3, 1994.[3]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through December 31, 1994. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filings with the Commission, the NASD 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 NASD 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 this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending August 31, 1994, the Service reflected the market making positions of 402 NASD member firms displaying quotations/indications of interest in approximately 5,107 OTC Equities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the start-up of the Service in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly section 17B of the Act.[4] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b) (6) and (11), and section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through December 31, 1994, is fully consistent with the foregoing provisions of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the rule change will not result in 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*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through October 3, 1994. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,107 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From the regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Part XII of Schedule D to the NASD By-Laws.

**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

[3] Securities Exchange Act Release No. 34613 (August 30, 1994), 59 FR 46278.

[4] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System ("QEQS") status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application with the Commission for permanent designation of the Service as an automated quotations system for penny stocks pursuant to section 17B(b).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

**V. Commission's Findings and Order Granting Accelerated Approval**

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilities price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional exchanges and quoted in the OTCBB by NASD members.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through December 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24796 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No 34–34745; File No. SR–NSCC–94–18]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Limiting the Use of Letters of Credit to Collateralize Clearing Fund Contributions

September 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 14, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–94–18) as described below. 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 September 30, 1995.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change increases the minimum cash clearing fund contribution for those members who use letters of credit as clearing fund collateral and sets a limit on the amount of a member's required clearing fund contribution that may be collateralized with letters of credit.[2]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC 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. NSCC 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*

NSCC is seeking approval of a proposed rule change that modified the amount of a member's required clearing fund deposit that may be collateralized by letters of credit. Specifically, the proposed rule change increases the minimum cash contribution for any member who uses letters of credit from $50,000 to the greater of $50,000 or 10% of that member's required clearing fund deposit up to a maximum of $1,000,000. In addition, the rule change provided that only 70% of a member's required clearing fund deposit may be collateralized with letters of credit. The rule change also adds headings to the clearing fund formula section for purposes of clarity and includes other nonsubstantive drafting changes. The effect of the proposed rule change is to increase the liquidity of the clearing fund and to limit NSCC's exposure to unusual risks resulting from the reliance on letters of credit.

Since obtaining temporary approval of the original filing in 1989, NSCC has filed clearing fund composition reports with the Commission. NSCC states that between December 31, 1989, and December 31, 1993, as a result of the new requirements, it has observed the following changes in the composition of the clearing fund:

1. cash deposits have increased by approximately 225%;
2. the value of securities deposited has increased by approximately 205%;[3] and
3. letter of credit deposits have declined by approximately 40%.[4]

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The proposed rule change was originally filed on October 27, 1989, and was approved temporarily through December 31, 1990. Securities Exchange Act Release no. 27664 (January 31, 1990), 55 FR 4297 [File No. SR–NSCC–89–16]. Subsequently, the Commission granted a number of extensions to the temporary approval to allow the Commission and NSCC sufficient time to review and assess the use of letters of credit as clearing fund collateral. Most recently temporary approval was granted until September 30, 1994. Securities Exchange Act Release No. 34304 (July 1, 1994), 59 FR 35542 [File No. SR–NSCC–94–10].

[3] Securities eligible for deposit as clearing fund collateral include U.S. or municipal bonds in the first or second rating of any nationally known statistical service. NSCC Rule 4, § 1.

[4] In October of 1989 when the Commission initially granted temporary approval of NSCC's proposal, letters of credit accounted for 76% of the total dollar value of required clearing fund deposits. By May 28, 1993, letters of credit accounted for less than 30%. During the period from June 1, 1992, to May 28, 1993, letters of credit accounted for an average of 30.49% of the total dollar value of required clearing fund deposits, and for no month during that period did the portion of letters of credit used for required clearing fund deposits rise above 34%. Letter from Karen L. Saperstein, Vice President/Director of Legal & Associate General

Continued

NSCC states that the proposal is consistent with its requirements under Section 17A of the Act because it enhances NSCC's ability to safeguard securities and funds in its custody or under its control.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No new written comments have been solicited or received.[5] NSCC will notify the Commission of any written comments it receives.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Section 17A(b)(3)(F) of the Act requires that a clearing agency's rules be designed, among other things, to ensure the safeguarding of securities and funds in its possession or control or for which it is responsible and to protect investors and the public interest.[6] NSCC's proposal to limit the use of letters of credit to collateralize clearing fund obligations should make NSCC's clearing fund more liquid. A liquid clearing fund is necessary to ensure the safety and soundness of a clearing agency. NSCC's proposal is therefore consistent with the requirements under the Act with regard to NSCC's obligation to safeguard securities and funds and to protect the interests of investors and of the public.

Although letters of credit are a useful means of funding clearing agency guarantee deposits, their unrestricted use may present risks to clearing agencies. Because letters of credit reflect the issuer's promise to pay funds upon presentation of stipulated documents by the holder, a clearing agency holding letters of credit will be exposed to risk should the issuer refuse to honor its promise to pay. Furthermore, because under the Uniform Commercial Code the issuer may defer honoring a payment request until the close of business on the third banking day following receipt of the required documents, the clearing agency either may have to await payment or may have to seek alternative short-term financing. This waiting period could reduce a clearing agency's liquidity and thereby could hinder its ability to meet its payment obligations on a timely basis.[7]

As indicated above, since the proposal first received temporary approval, NSCC has experienced over a 200% increase in both cash and securities deposited as clearing fund collateral. Because cash and securities are generally more liquid than letters of credit, the enhanced level of such deposits helps to ensure the liquidity of the clearing fund in the event of a major member insolvency, catastrophic loss, or major settlement loss. By reducing the risk associated with the use of letters of credit, the proposal is consistent with NSCC's responsibilities under the Act to safeguard securities or funds in its custody or control and to protect investors and the public in general.

NSCC 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 accelerated approval of the proposal will keep effective NSCC's rules that restrict member's usage of letters of credit as clearing fund deposits and thereby help reduce the exposure of NSCC's clearing fund to the potential liquidity risks associated with using letters of credit to collateralize member's clearing fund obligations. Moreover, since it was first introduced in 1989, NSCC's proposal has been open for public comment and has elicited only one opposing comment. Thus the Commission does not foresee that approval of the proposal will elicit further opposition.

**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 any person, other than those that may be withheld from the public in accordance with 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 NSCC. All submissions should refer to File No. SR–NSCC–94–18 and should be submitted by October 27, 1994.

**V. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule filing is consistent with the Act and in particular with Section 17A of the Act.

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NSCC–94–18) be, and hereby is approved through September 30, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24797 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 34–34760; File No. SR–PSE–94–13]**

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Fine Schedule for the Rule on Dissemination of Quotations in Local Issues

September 30, 1994.

On May 24, 1994, the Pacific Stock Exchange, Inc. ("PSE" 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 fine schedule relating to the dissemination of quotations in local issues and to amend its Minor Rule Plan ("MRP").[3]

---

Counsel, NSCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (June 10, 1993).

[5] Since the initial filing of the proposed rule change NSCC has received one letter of comment. In the letter Wedbush Morgan Securities, Inc. opposed NSCC's proposal because they believed it would increase the cost of posting collateral. Letter from Edward W. Wedbush, President, Wedbush Morgan Securities, Inc., to David F. Hoyt, Assistant Secretary, NSCC (November 9, 1989).

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] While the Division of Market Regulation ("Division") believes that NSCC's reducing from 100% to 70% the percentage of a clearing member's required clearing fund contribution that can be collateralized with letters of credit, the Division is still concerned that 70% may be too high a percentage. Consequently the Division and NSCC are continuing their reviewing of the 70% concentration limit and its effect on NSCC's clearing fund.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Rule 19d–1(c)(2) under the Act, 17 CFR 240.19d–1(c)(2), authorizes national securities

The proposed rule change was published for comment in Securities Exchange Act Release No. 34320 (July 6, 1994), 59 FR 35545 (July 12, 1994). No comments were received on the proposal.

Pursuant to Equity Floor Procedure Advice ("EFPA") 2–B, specialists are required to disseminate a quote prior to one-half hour after the PSE opening. If a specialist fails to satisfy this requirement, he currently is subject to a fine of $25 for each violation beginning with the sixth violation.[4] The rule change will raise the fine for each violation to $100 beginning with the third violation.

In addition, the rule change will add violations of EFPA 2–B to Exchange Rule 10.13 and the Exchange's MRP.[5] PSE Rule 10.13(a) authorizes certain PSE Committees to impose a fine not to exceed $5,000 on any member, member organization, or person association with a member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. Rule 10.13 includes a list of rule violations that are eligible for the expedited disciplinary procedure under the MRP and that may be the subject of fines, in accordance with the Recommended Fine Schedule.

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).[6] 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, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, and with the Section 6(b)(6) requirement that the rules of an exchange provide that its members are appropriately disciplined for violations of the exchange's rules and the Act.

Specifically, the Commission believes that an exchange's ability to effectively enforce compliance by its members and member organization with Commission and Exchange rules is central to its self-regulatory functions. The inclusion of a rule in an exchange's minor rule violation plan, therefore, should not be interpreted to mean that it is not an important rule. On the contrary, the Commission recognizes that the inclusion of minor violations of particular rules under a minor rule violation plan may make the exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of these rules, thereby furthering its mandates to protect investors and the public interest.

The Commission believes that adding EFPA 2–B to PSE Rule 10.13 and the Exchange's MRP is consistent with Sections 6(b)(5) and 6(b)(6) in that the purpose of Rule 10.13 is to provide for a response to a rule violation when a meaningful sanction is needed, but when initiation of a disciplinary proceeding under PSE Rule 10.3[7] is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 10.13 provides for an appropriate response to minor violations of certain Exchange rules, while preserving the due process rights of the party accused through specified, required procedures.

Furthermore, the Commission finds that violations of EFPA 2–B are objective and technical in nature, and are easily verifiable, thereby lending themselves to the use of expedited proceedings. Noncompliance with the requirement to disseminate quotations in local issue prior to one-half hour after the opening time for trading on the PSE may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings. If the Exchange determines that a violation of one of these rules is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with PSE Rule 10.3. The Commission expects the PSE to bring full disciplinary proceedings in appropriate cases (*e.g.*, in cases where the violation is egregious or where there is a history or pattern of repeat violations).

In addition, the Commission finds that the increase in the fine from $25 per violation starting with the sixth violation, to $100 per violation starting with the third violation should result in appropriate discipline of members, in a manner that is proportionate to the nature of such violations. The Commission believes that calculating the fines on a rotating quarterly basis is an equitable approach that accounts for the possibility that a substantial period of time may elapse between violations.

*It Is Therefore Ordered*, pursuant to Section 19(b)()2 of the Act,[8] that the proposed rule change (SR–PSE–94–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24798 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–20594; 812–9180]**

## Great Hall Value Ten Trust, Series 1, et al.; Notice of Application

September 30, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Great Hall Value Ten Trust, Series 1 (the "Rollover Trust") and Insight Investment Management, Inc.

**RELEVANT ACT SECTIONS:** Order requested under sections 11(a) and 11(c).

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain offers of exchange of units of a terminating Rollover Trust series for units of subsequently offered Rollover Trust series.

**FILING DATE:** The application was filed on August 19, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

---

exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. The Exchange's MRP initially was approved by the Commission in 1985. See Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985).

[4] The number of violations is calculated on a rotating quarterly basis.

[5] This change was included in Exhibit A to the rule filing. See also letter from Kenneth J. Marcus, Director of Equity Surveillance/Compliance, PSE, to Katherine Simmons, SEC, dated September 29, 1994.

[6] 15 U.S.C. 78f(b) (1988).

[7] PSE Rule 10.3 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

**ADDRESSES:** Secretary: SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: 60 South 6th Street, Minneapolis, MN 55402–4422.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Rollover Trust will consist of a series of unit investment trusts (the 'Series") registered under the Act. The units representing undivided interests in each Series will be registered under the Securities Act of 1933. The Rollover Trust is sponsored by Insight Investment Management ("Insight"). Applicants also request relief for subsequent series of the Rollover Trust sponsored by Insight or a sponsor controlled by or under common control with Insight.

2. Each Series will pursue an investment objective which is consistent with a specified investment philosophy. For example, the first Series will consist of a portfolio of commons stocks of the ten companies in the Dow Jones Industrial Average having the highest dividend yield as of the opening day of business on the day prior to the initial date of deposit for such Series.

Insight intends to maintain a secondary market for the units of each Series, although it is not obligated to do so.

3. Each Series will terminate on a date (the "Mandatory Termination Date") which is a specified term (*e.g.*, one, three or five years) after the Series' initial date of deposit. Commencing on the Mandatory Termination Date, the common stocks held in the portfolio ("Equity Securities") will be sold in connection with termination of the Series. Insight will determine the manner, timing and execution of the sale of the Equity Securities. A specified number of days prior to the Mandatory Termination Date of the Trust, the trustee will provide notice thereof to all unit holders.

4. Absent an election discussed below, unit holders will receive a cash distribution evidencing their *pro rata* share of the proceeds from the liquidation of the Equity Securities in the Series. Unit holders who own at least a specified number of units (*e.g.*, 2,500 units), however, may elect to receive a distribution of Equity Securities in connection with the termination of the Trust.

5. Unit holders may elect alternatively to have all of their units redeemed in kind on a predetermined date prior to the Mandatory Termination Date, and to have the distributed Equity Securities sold by the trustee, and the proceeds of such sale reinvested in the units of a new Series (the "Reinvestment Trust Series") at a reduced sales charge. The option of unit holders to make such election is referred to as the "Rollover Option," and unit holders making such election are referred to as "Rollover Unit Holders". The portfolio of the Reinvestment Trust Series will contain a specified number of common stocks selected by Insight pursuant to the same investment philosophy which was followed in selecting the common stocks in the terminating Series. The number of common stocks in the Reinvestment Trust Series and the approximate duration of the Reinvestment Trust Series will be the same as those of the terminating Trust Series.

6. The applicable sales charge upon the initial investment in the Rollover Trust will be 2.95% of the public offering price, while the reduced sales charge applicable to Rollover Unit Holders will be no more than 2.0% of the public offering price.

**Applicant's Legal Analysis**

1. Section 11(a) requires SEC approval of an offer to exchange securities between open-end investment companies if the exchange occurs on any basis other than the relative net asset values of the securities to be exchanged. Section 11(c) makes section 11(a) applicable to any type of exchange offer of securities of registered unit investment trusts for the securities of any other investment company, irrespective of the basis of exchange.

2. Applicants represent that Rollover Unit Holders will not be induced or encouraged to participate in the Rollover Option through an active advertising or sales campaign. Insight recognizes its responsibility to its customers against generating excessive commissions through churning and claims that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Rollover Option. Applicants further believe that the Rollover Option is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicant's Conditions**

If the requested order is granted, applicants agree to the following conditions:

1. Whenever the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that:

a. No such notice need to be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of a rollover; and

b. No notice need to be given if, under extraordinary circumstances, either

i. There is a suspension of the redemption of units of the Rollover Trust under section 22(e) of the Act and the rules and regulations thereunder, or

ii. A Reinvestment Trust Series temporarily delays or ceases the sale of its units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. The sales charge collected at the time of any rollover shall not exceed 2.0% of the public offering price of the unit being acquired on each rollover.

3. The prospectus of each Reinvestment Trust Series and any sales literature or advertising that mentions that existence of the Rollover Option will disclose that the Rollover Option is subject to modification, termination or suspension.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24799 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–20593; 812–9220]**

## Norwest Bank Minnesota, N.A., et al.; Notice of Application

September 30, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Norwest Bank Minnesota, N.A. ("Bank"); Norwest Funds; Forum Financial Services, Inc.; Core Trust (Delaware) ("Core Trust"); and Schroder Capital Management International, Inc. ("Schroder").

**RELEVANT ACT SECTIONS:** Section 45(a).

**SUMMARY OF APPLICATION:** Applicants request an order under section 45(a) that would declare that public disclosure of information submitted in support of another application and relating to anticipated annual cost savings is neither necessary nor appropriate in the public interest or for the protection of investors. In the other application (File No. 812–9218), applicants request an order that would permit certain series of Norwest Funds to invest portions of their assets in certain series of Core Trust.

**FILING DATE:** The application was filed on September 8, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Forum Financial Group, Two Portland Square, Portland, Maine 04101, Attention; Max Berueffy; Norwest Bank Minnesota, N.A., Norwest Center, 6th and Marquette, Minneapolis, Minnesota 55479–1026, Attention: Bruce Moland; and Wilmer, Cutler & Pickering, 2245 M Street NW., Washington, D.C. 20037, Attention: Jeremy N. Rubenstein.

**FOR FURTHER INFORMATION CONTACT:** James M. Curtis, Senior Counsel, at (202) 942–0563 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Norwest Funds is an open-end investment company for which the Bank acts as investment adviser. Five portfolios of the Norwest Funds, the "Blended Style Norwest Funds," intend to invest specified portions of their assets according to a variety of different investment strategies or styles.

2. Core Trust is an open-end investment company that includes a portfolio that intends to invest in securities issued by small companies ("Small Company Portfolio"), a portfolio that intends to invest in securities of foreign issuers ("International Portfolio"), and a portfolio that will be designed to replicate the performance of the Standard & Poor's 500 Composite Index ("Index Portfolio"). The Bank is the investment adviser to the Small Company and S&P 500 Index Portfolios, and Schroder is the investment adviser to the International Portfolio.

3. Applicants have filed another application requesting an order under sections 6(c) and 17(b) of the Act that would exempt applicants from sections 12(d)(1), 17(a)(1), and 17(a)(2), and under section 17(d) and rule 17d–1 thereunder permitting certain joint transactions. The order would permit the Blended Style Norwest Funds to invest portions of their assets in the Small Company, International, and Index Portfolios of Core Trust.

4. In support of the other application, applicants have submitted information relating to the estimated cost savings that applicants anticipate will be achieved if the Blended Style Norwest Funds invest a portion of their assets in Core Trust. In particular, applicants anticipate that the proposed arrangement will result in significant savings to the Blended Style Norwest Funds in custodial fees and fund accounting.

### Applicants' Legal Analysis

1. Section 45(a) provides that the information contained in any application filed with the SEC under the Act shall be made available to the public, unless and except insofar as the SEC finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

2. Applicants request an order under section 45(a) for the exhibits they submitted in support of the other application relating to international custody charges and other likely cost savings. These exhibits contain confidential business information that has been supplied to support applicants' contention that granting the relief they requested would likely result in cost savings, rather than increase expense, for the Blended Style Norwest Funds. It is possible for an interested investor fully to understand and evaluate this argument without knowing the precise amount of the cost savings that applicants believe the Blended Style Norwest Fund may realize. Therefore, applicants believe that public disclosure of the information is not necessary in the public interest or for the protection of investors.

3. On the other hand, such public disclosure could result in harm to the shareholders of the Blended Style Norwest Funds. Applicants have negotiated, or expect to negotiate, preferential treatment from the service providers to Core Trust as a result of the larger Core Trust portfolios that will be created by the pooled investment of the Blended Style Norwest Funds. Disclosure of how the negotiated fees have been computed and the specific amounts that would have been charged under other circumstances could weaken the applicants' negotiating position towards the service providers and could cause the service providers to refuse to give the applicants preferential rates. Applicants submit, therefore, that public disclosure of the information is not appropriate in the public interest or for the protection of investors.

4. The Freedom of Information Act (5 U.S.C. § 552) generally provides that all information provided to or generated by the government should be made available to the general public, with certain exceptions set forth in the statute. One of those exceptions is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Applicants believe that the information that is the subject of this application falls within the exception described, and it thus is eligible for protection under the Freedom of Information Act.[1]

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary*

[FR Doc. 94–24800 Filed 10–5–94; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2728]**

### Georgia; Declaration of Disaster Loan Area (Amendment #5)

The above-numbered Declaration is hereby amended, in accordance with a notice from the Federal Emergency Management Agency dated September 21, 1994, to extend the deadline for filing applications for physical damages

[1] Applicants recognize that any order granting the confidential treatment requested will be issued under section 45(a) only, and that any such order will not be dispositive of any Freedom of Information Act request filed by a third party.

resulting from Tropical Storm Alberto beginning on July 3, 1994 and continuing through July 25, 1994. The deadline is hereby extended thirty days to November 3, 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 4, 1994 and for economic injury the deadline is April 7, 1995.

The economic injury number for Georgia is 829300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 3, 1994.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 94–24815 Filed 10–5–94; 8:45 am]

BILLING CODE 8025–01–M

## Small Business Investment Company Computation of Alternative Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 limits maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate for computation of maximum cost of money pursuant to 13 CFR 107.302 is 8.20 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act of 1958, as amended, to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: September 28, 1994.

**Robert D. Stillman,**

*Associate Administrator for Investment.*

[FR Doc. 94–24739 Filed 10–5–94; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

[Public Notice 2088]

## International Telecommunications Advisory Committee; Telecommunications Standardization Sector (ITAC–T) Group and Study Group A; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector (ITAC–T) Study Group A will meet November 9, 1994, in room 5533, 9:30 a.m. to 3:00 p.m., and the Telecommunications Standardization Sector (ITAC–T) Group, December 8, 1994, in room 5533 from 9:30 a.m. to 3:00 p.m. at the Department of State, 2201 "C" Street NW., Washington, DC 20520.

The agenda for Study Group A will include a debrief of the September-October ITU–T Study Group 1 meeting; continue preparations for the Geneva, November 29-December 9, ITU–T Study Group 2 meeting; continue preparations for the Geneva, December 12–15, 1994, ITU–T Study Group 3 meeting; and discuss other issues concerning ITAC–T Study Group A.

The agenda for the December Telecommunications Standardization Sector (ITAC–T—Group meeting (formerly the CCITT USNC) will include (1) a debrief of the Kyoto Plenipotentiary Conference of September 19-October 14, as it may affect the work of the ITU's Telecommunications Standardization Sector, with particular interest on priorities, and strategic policy and planning issues; (2) discussions covering any contributions for the January 23–27, 1995, Geneva meeting of the Telecommunications Standardization Advisory Committee (TSAG); and (3) a debrief of the Ottawa CITEL (InterAmerican Telecommunications Commission) meetings, and discussions relating to the CITEL's Permanent Consultative Committee I (PCC–I) which will be meeting in Honduras in February 1995.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Standardization Sector Group (formerly USNC) or Study Group A, and wish to attend please call 202–647–0201, no later than 5 days before the meeting. Enter from the C Street Main Lobby. A picture ID will be required for admittance.

Dated: September 22, 1994.

**Earl S. Barbely,**

*Chairman, U.S. ITAC for ITU-Telecommunication Standardization Sector.*

[FR Doc. 94–24752 Filed 10–5–94; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 2087]

## Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Wednesday, November 9, 1994, in room 4315 at U.S. Coast Guard Headquarters 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to discuss the results of the 40th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which met September 5–9, 1994, at the IMO Headquarters in London, and to prepare for the 41st NAV session which is tentatively scheduled for September 4–8, 1995.

Items of principal interest on the agenda are:

—Routing of ships and related matters
—International Code of Signals
—Navigational aids and related matters
—Vessel Traffic Services (VTS) and ship reporting
—Revision of SOLAS chapter V
—Human element and bridge operations
—Review of World Meteorological Organization (WMO) handbooks on navigation in areas affected by sea-ice
—IMO standard marine communication phrases
—Removal of wrecks and towage of offshore installations, structures, and platforms
—Review of the Code for the Safe Carriage of Irradiated Nuclear Fuel (INF Code)
—Operational aspects of Wing in Ground (WIG)—craft
—Safety of passenger submersible craft
—Transponder systems

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSR–3), Room 1416, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: September 23, 1994.

**Charles A. Mast,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 94–24751 Filed 10–5–94; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Fitness Determination of Capitol Air, Inc.

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Commuter Air Carrier Fitness Determination—Order 94–9–48, Order to Show Cause.

**SUMMARY:** The Department of Transportation is proposing to find Capitol Air, Inc., fit, willing, and able to provide commuter air service under 49 U.S.C. 41738 (*see* former 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, X–56, Department of Transportation, 400 Seventh Street, S.W., Room 6401, Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than October 17, 1994.

**FOR FURTHER INFORMATION CONTACT:** Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2340.

Dated: September 29, 1994.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 94–24748 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–62–P

## Coast Guard

**[CGD 94–083]**

### Chemical Transportation Advisory Committee (CTAC) Subcommittee on the Revision of Title 46 Code of Federal Regulations (CFR) Part 151

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes, Title 46 CFR part 151, of CTAC will meet to discuss recommendations for developing a new part 152 in title 46 CFR. The new part 152 will encompass regulations for barges carrying bulk liquefied flammable or compressed gas hazardous materials. The meeting will be open to the public.

**DATES:** The meeting will be held on November 4, 1994, from 9:00 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the offices of the American Bureau of Shipping, 16855 Northchase Drive, Houston, Texas 77060. Personnel attending the meeting should report to the main floor reception area for direction to the meeting room.

**FOR FURTHER INFORMATION CONTACT:** LCDR Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1217.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.*

The carriage of bulk liquefied flammable and compressed gases by barge is currently regulated under 46 CFR parts 38 and 151. During the revision process of 46 CFR part 151, the Subcommittee determined it would be appropriate to develop a new part 152 for regulating bulk liquefied flammable and compressed gases while continuing to regulate the carriage of bulk liquid hazardous material cargoes under part 151. The Subcommittee's liquefied flammable gas working group will present its recommendations for the new part 152 regulations to the full Subcommittee at this meeting.

Dated: September 30, 1994.

**J.C. Card,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 94–24819 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–14–M

**[CGD 94–084]**

### Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Vapor Control Systems

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The barge and facility working groups of the Subcommittee on Marine Vapor Control Systems of CTAC will meet to continue reviewing tank vessels cleaning facility operations and evalaute the technical and safety aspects of potential control technologies which will allow these facilities to meet air quality emissions standards. The meeting will be open to the public.

**DATES:** The meeting will be held on November 2–3, 1994, from 9 a.m. to 5 p.m. each day.

**ADDRESSES:** The meeting will be held at the Wyndham Hotel, 12400 Greenspoint Drive, Houston, Texas 77060. Personnel attending the meeting should proceed to the hotel information desk for direction to the meeting room.

**FOR FURTHER INFORMATION CONTACT:** LCDR Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1217.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given purusant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 twist 1 *et seq.*

The purpose of this meeting is to continue in the identification of potential safety hazards associated with the use of a marine vapor control system at tank vessel cleaning facilities. On the first day, the barge and facility working groups of the Subcommittee on Marine Vapor Control Systems will be conducting separate Hazard and Operability Studies (HAZOPS) to identify potential safety hazards associated with tank barge systems/vessel-to-shore interface issues, and facility vapor control system technologies, respectively. The second day of the meeting will be spent discussing unresolved issues and formulating a work plan for the development of proposed regulatory revisions at the next Subcommittee meeting.

Dated: September 30, 1994.

**J.C. Card,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 94–24820 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–14–M

**[GGD–94–082]**

### National Boating Safety Advisory Council Subcommittee Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Boating Safety Advisory Council's Subcommittee on Inflatable Personal Flotation Devices (PFDs) will meet to discuss the status of development of draft inflatable PFD and component standards related to recreational boating safety. The meeting will be open to the public.

**DATES:** The meeting will be held on October 19, 1994, from 1 p.m. to 5 p.m.

Written material should be submitted not later than October 17, 1994.

**ADDRESSES:** The meeting will be held in room 8438, U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590–0001. Written material should be submitted to Mr. Albert Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1077.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 1 *et seq.* The agenda for the meeting will be to review the status of development of draft inflatable PFD and component standards, including a summary of comments received, and discuss whether essential characteristics and the average boater's needs are being adequately addressed. The need for any of the categories of inflatable PFDs to have carriage or other limitations on their approval, ease of servicing and presence of user friendly indicators of proper servicing, and other relevant issues will also be considered.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director listed above under **ADDRESSES,** no later than the day before the meeting. Written material may be submitted at any time for presentation to the Committee. However, to ensure advance distribution to each Committee member, persons submitting written material are asked to provide 25 copies to the Executive Director no later than October 17, 1994.

Dated: September 29, 1994.

**R.C. Houle,**

*Acting Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 94–24818 Filed 10–5–94; 8:45 am]

**BILLING CODE 4910–14–M**

## Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; VHF Navigation and Communication Frequency Utilization Working Group

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

**ACTION:** Notice of Establishment of a VHF Navigation and Communication Frequency Utilization Working Group.

**SUMMARY:** Notice is given for the establishment of a VHF Navigation and Communication Frequency Utilization Working Group in support of the Aviation Rulemaking Advisory Committee (ARAC) on General Aviation Issues. In addition to informing the public of this activity, this notice provides a point of contact for further information; a brief description of the working group's task and application procedures for working group membership.

**FOR FURTHER INFORMATION CONTACT:** Mr. Louis C. Cusimano, Assistant Executive Director for General Aviation Operations Issues, Flight Standards Service (AFS–800), 800 Independence Avenue S.W., Washington, DC 20591, Telephone: (202) 267–8452; FAX (202) 267–5094.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area that the ARAC deals with is general aviation operations issues. The issues involve the operation of general aviation aircraft and certification of airmen. The VHF Navigation and Communication Frequency Utilization Working Group is being formed to formulate and present recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the Working Group's task is as follows: The VHF Navigation and Communication Frequency Utilization Working Group is charged with formulating and presenting recommendations on the implementation options, which will provide greater immunity from modulation interference while still allowing the United States to comply with the International Standards, Recommended Practices and Procedures for Air Navigation Services, contained in Annex 10 to the Convention of International Civil Aviation. To maximize opportunity for formulation and discussion of possible options, the working group should have a balanced membership from the aviation and broadcast industries. The working group should focus on the issues at hand, including: the economic impact of meeting the International Civil Aviation Organization (ICAO) requirements, alternatives for achieving improved frequency protection, evolutionary implementation considerations, ICAO work on future VHF air/ground (A/G) communication system, the evolving U.S. position for the proposed 1995 ICAO divisional meeting on precision approach and landing systems mix, early implementation of the Global Positioning System and the U.S. Federal Radionavigation Plan.

The VHF Navigation and Communication Frequency Utilization Working Group will be responsible to the ARAC for the following reports:

A. The Working Group should recommend time line(s) for completion of the task, including the rationale, for consideration at the meeting of the ARAC to consider general aviation operations issues held following publication of this notice.

B. The Working Group will give a status report on the task at each meeting of the ARAC held to consider general aviation operations issues.

The VHF Navigation and Communication Frequency Utilization Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will be reviewed with the ARAC Assistant Chair for General Aviation Operations Issues and the Chair of the VHF Navigation and Communication Frequency Utilization Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties of the FAA. Meetings of the ARAC to consider general aviation operations issues will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the VHF Navigation and Communication Frequency Utilization Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issue in Washington, DC, on September 29, 1994.

**Louis C. Cusimano,**

*Assistant Executive Director for General Aviation Operations Issues, Aviation Rulemaking Advisory Committee.*

[FR Doc. 94–24693 Filed 10–5–94; 8:45 am]

**BILLING CODE 4910–13–M**

## General Aviation and Vertical Flight Technology Program Office Meeting on Rotorcraft Local Differential Global Positioning System (GPS) Precision Approach Project

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public to a meeting being conducted by the FAA's General Aviation and Vertical Flight Technology Program Office to address issues necessary to proceed with a rotorcraft local differential global positioning system (GPS) precision approach project. This project's primary focus will be to establish instrument criteria based upon: (1) Aircraft systems for reduced pilot workload, improved cockpit instrumentation, enhanced low-speed aircraft handling characteristics, and especially, (2) precision guidance capabilities of local differential GPS. The FAA, as part of this project, intends to establish a joint government/industry research and development team to fully address pertinent vertical flight issues associated with local differential GPS precision approach capabilities and requirements.

**DATES:** The meeting will be November 30 and December 1, 1994 from 8 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Stouffer Concourse Hotel, 9801 Natural Bridge Road, Saint Louis, Missouri 63134, telephone (314) 429–1100, fax (314) 429–3625.

**FOR FURTHER INFORMATION CONTACT:** Steve Hickok, General Aviation and Vertical Flight Technology Program Office (ARD–30), FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8759.

**SUPPLEMENTARY INFORMATION:** Notice is given of a meeting conducted by the General Aviation and vertical Flight Technology Program Office on the Rotorcraft Local Differential Global Positioning System (GPS) Precision Approach Project to be held on November 30 and December 1, 1994, at the Stouffer Concourse Hotel, 9801 Natural Bridge Road, Saint Louis, Missouri 63134, telephone (314) 419–1100, fax (314) 429–3625. The agenda for the meeting will include:

- Opening Remarks.
- Project Organization.
- Operational Concept and Needs.
- Public Presentations.
- Working Group Formation.
- Recommendations.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by November 18, 1994, to present oral statements at the meeting. The public may present written statements at any time prior to the meeting date by providing 75 copies to the meeting coordinator prior to the November 18, 1994 cutoff date. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact the meeting coordinator at least five days prior to the meeting.

Issued in Washington, D.C. on September 29, 1994.

**Richard A. Weiss,**

*Manager, General Aviation and Vertical Flight Technology Program Office.*

[FR Doc. 94–24692 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–13–M

## Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Killeen Municipal Airport, Killeen, TX

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

**ACTION:** Notice of Intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Killeen Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before November 7, 1994.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Don O. Christian, Director of Aviation, Killeen Municipal Airport, at the following address: Mr. Don O. Christian, Director of Aviation, Killeen Municipal Airport, 1525 Airport Drive, Box A, Killeen, Texas 76543.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Killeen Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 19, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Killeen Municipal Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 9, 1995.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00

*Proposed charge effective date: March 1, 1995*

*Proposed charge expiration date:* March 1, 1997

*Total estimated PFC revenue:* $300,000.00

Brief description of proposed project(s):

Projects to Impose and Use PFC's

- Airport Drainage
- Security Fencing
- Runway Extension Study
- Terminal Building Master Plan
- Signage and Graphics
- Access Road to Fuel Area
- Fog Seal and Paint Runway
- Reconstruct Air Carrier Concrete Ramp
- Reconstruct Taxiway A and Associated Ramp
- Fog Seal Taxiway B
- Canopy and Landscaping
- Distance Remain Signs
- Taxiway G Repair
- Construct Parking Lot
- Upgrade Lighting, Fog Seal, and Paint Terminal Ramp

Proposed class or classes of air carriers to be exempted from collecting PFC's

- FAR Part 135 air charter operators enplaning less than 1% of the total number of passengers enplaned at Killeen Municipal Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at:

Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at Killeen Municipal Airport.

Issued in Fort Worth, Texas on September 20, 1994.

**John M. Dempsey,**

*Manager, Airports Division.*

[FR Doc. 94–24694 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

### Environmental Impact Statement: Russell County, AL

**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 highway project in Russell County, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370. Mr. G. M. Roberts, Alabama Department of Transportation, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242–6311.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve a segment of U.S. Highway 431 in Russell County, Alabama. The purpose of the proposed project is to provide a safe, efficient, cost-effective, multi-lane facility, capable of handling existing and future traffic demands. The EIS will evaluate the upgrading of a portion of existing two-lane U.S. 431 to a modern four-lane facility. The project represents the last segment in the long-term plan to connect the Alabama cities of Eufaula and Phenix City with a four-lane roadway. The proposal begins at the Barbour/Russell County line extends to approximately 4 kilometers (2.5 miles) north of the community of Pittsview. The length of the proposal is approximately 20 kilometers (12.4 miles). Alternatives under consideration include: (1) Alternate route locations, (2) taking no action, and (3) postponing the action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public involvement meeting and a public hearing will be held in the project area. Public notice will be given of the time and the place of the meeting and hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal programs and activities apply to this program).

**Joe D. Wilkerson,**

*Division Administrator, Montgomery, Alabama.*

[FR Doc. 94–24750 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–22–M

### Intelligent Transportation Society of America; Public Meeting

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on October 25, 1994. The session is expected to focus on: (1) Automated Highway System Update; (2) Education & Training Workshop Update; (3) International Activities Update; (4) System Architecture Development Report; (5) National Program Plan Development Report; (6) Other Proposed Workshops; and (7) Report on 5th Annual Meeting Planning. A tour of Intelligent Transportation System facilities in the Detroit area is also planned. ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on intelligent vehicle-highway systems policies and programs. (56 FR 9400, March 6, 1991.)

**DATES:** The Coordinating Council of ITS AMERICA will meet on October 25 from 8 a.m. to 12 p.m. e.t. A tour of ITS facilities in the Detroit area is also planned for the afternoon.

**ADDRESSES:** The Somerset Inn, 2601 West Big Beaver Road, Troy, Michigan 48084, (810) 643–2287.

**FOR FURTHER INFORMATION CONTACT:** Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., suite 800, Washington, DC 20024. Persons desiring further information or to request to speak at this meeting should contact Ms. Dee Hamill at ITS AMERICA by telephone at (202) 484–4548, or by FAX at (202) 484–3483. The DOT contact is Ms. Susan Lauffer, FHWA, HTV–1, Washington, DC 20590, (202) 366–0372. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: September 30, 1994.

**Rodney E. Slater,**

*Federal Highway Administrator.*

[FR Doc. 94–24801 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–22–P

## Federal Transit Administration

### Environmental Impact Statement for the Northeast Corridor Project in Dallas, TX

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

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Federal Transit Administration (FTA) in cooperation with Dallas Area Rapid Transit (DART) intends to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). The EIS will be prepared following completion of a Major Investment Study (MIS) of transportation improvements in the Northeast Corridor of the Dallas metropolitan area. The MIS will conclude with the selection of a Locally Preferred Alternative (LPA) for implementation in the corridor. The EIS will assess the potential impacts of the LPA, No Build and TSM alternatives. DART is working cooperatively with the North Central Texas Council of Governments (NCTCOG), the Texas Department of Transportation (TxDOT),

the US Department of Transportation (US DOT-FTA and FHWA), and the Cities of Dallas, Garland, and Rowlett to identify an affordable and cost-effective alternative for improving mobility in the corridor.

The sequence of events for the planning and development for this project include the following major milestones:

*Scoping Process*—early opportunity for public input to the study scope

*Major Investment Study (MIS)*—evaluation of proposed improvement alternatives, early consideration of environmental factors, concluding with the selection of a Locally Preferred Alternative (LPA)

*LPA Refinement and Environmental Impact Statement (EIS)*—detailed definition of the LPA's physical features, assessment of potential impacts, development of mitigation measures, preparation and circulation of the Draft EIS, public hearings and completion of a Final EIS.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, and local agencies and through public meetings. See the information below for further details.

**DATES:** *Comment Due Date:* Written comments on the scope of the EIS and impacts to be considered should be sent to DART by November 2, 1994. See **ADDRESSES** below. *Scoping Meetings:* Public Scoping Meeting will be held on Monday October 3, 1994 and Wednesday October 5, 1994 starting at 7:00 p.m. in Garland and Dallas. See **ADDRESSES** below.

**ADDRESSES:** Written comments should be sent to Jack Wierzenski, Project Manager, Dallas Area Rapid Transit, 1401 Pacific Avenue; Dallas, Texas 75266–7232. The Scoping meetings will be held at the following locations:

1. October 3, 1994

Garland Center for the Performing Arts, 5th and Austin, Garland, Texas

2. October 5, 1994

Lake Highlands High School (Student Center), 9449 Church Road, Dallas, Texas.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Crist, FTA Region VI; (817) 860–9663.

**SUPPLEMENTARY INFORMATION:**

## I. Scoping

FTA and DART invite interested individuals, organizations, businesses and federal, state and local agencies to participate in defining the alternatives to be evaluated and identifying any significant social, economic, or environmental issues related to the alternatives. Comments on the appropriateness of the alternatives and impact issues are encouraged. Specific suggestions on additional alternatives to be examined and issues to be addressed are welcome and will be considered in the development of the final study scope. Comments may be made orally at the meetings or in writing not later than November 2, 1994.

DART and NCTCOG staff will be present at the scoping meetings to describe the corridor alternatives, answer any questions and receive comments. Additional public meetings will be scheduled throughout the project to review results and provide input. Interested persons will be notified of project progress through ongoing community information distributed to the project mailing list which will include all scoping participants.

Additional information on the EIS process, alternatives, and impact issues to be addressed by the study is contained in a "Scoping Information Document." Copies of the document have been sent to affected Federal, State of Texas, local government agencies, and interested parties currently on record. Others may request the document from DART. See **ADDRESSES** above.

## II. Description of the Study Area and the Purpose and Need for a Corridor Improvement

As part of the regional mobility planning effort, and as of June, 1994, DART initiated the process of updating the 1989 Transit System Plan. The Transit System Plan update effort has been coordinated with the North Central Texas Council of Governments (NCTCOG) Mobility 2010 Plan Update and is DART's strategic plan of services and facilities for meeting mobility goals. Elements of the plan currently being implemented include efficient delivery of bus service; construction of the 20-mile LRT Starter System; commuter rail in the Dallas/Ft. Worth RAILTRAN corridor; and, High Occupancy Vehicle (HOV) lanes. For the Northeast Corridor, DART's Draft System Plan contains recommendations for Intermediate Capacity Light Rail Transit; HOV lanes on I–635; a Travel Demand Management program; and, enhanced bus service.

The Corridor includes portions of three cities in the DART service area : Dallas, Garland and Rowlett. The Corridor's southern boundary is Mockingbird Lane in the vicinity of the LRT station on the North Central line of the Starter System. The Mockingbird Station and the North Central line are currently under construction. The Corridor generally follows the MKT Railroad to the north and east. Skillman Road is considered the northwest study corridor boundary; Mockingbird Lane/Northwest Highway/Garland Road form the southeastern boundary of the study area.

The Corridor is approximately 15 miles in length from Mockingbird Lane to Rowlett Road in Rowlett. The corridor includes popular recreation and leisure spots such as White Rock Lake and Park, Ridgewood Park, and Lake Ray Hubbard. A significant industrial sector is located along I–635/LBJ Freeway where the MKT Railroad right-of-way is crossed by the AT&SF Railroad. Both railroad lines have active freight service.

It is not anticipated that there will be significant new roadway construction to meet the increase in travel demand. The regional mobility plan for the area calls for a combination of modes including roadway improvements and investment in transit improvements such as light rail, commuter rail, HOV lanes, as well as TSM and TDM improvements.

## III. Alternatives

Alternatives proposed for consideration include:

No-Build—The No-Build Alternative consists of the Mobility Plan for 2010 as adopted by NCTCOG with the exception of improvements in the Northeast Corridor.

TSM—The Transportation System Management (TSM) Alternative includes all of the improvements included in the No-Build Alternative plus a number of low-to-moderate-cost travel efficiency and travel demand management (TDM) strategies.

LRT—Light Rail Transit along the MKT Railroad corridor connecting with the LRT Starter System station at Mockingbird Lane and continuing to the Central Garland Transit Center in downtown Garland with a possible extension to a station in downtown Rowlett will be considered. Consideration is also being given to the concept of Intermediate Capacity Light Rail Transit, which is a staged implementation phase of the ultimate double track LRT alternative. The Intermediate Capacity LRT option would consist of a single-track LRT alignment along the MKT with passing sidings at key points.

Commuter Rail—This alternative involves the use of the MKT Railroad right-of-way to provide service to the Garland and Rowlett areas. The commuter rail alternative is generally described in the NCTCOG 2010 Mobility

Plan. This alternative would follow the MKT Railroad right-of-way from the Mockingbird Station to Garland with a possible extension to Rowlett.

**IV. Potential Impacts For Analysis**

The subjects and level of detail addressed in the EIS will be consistent with the requirements of the joint FTA/FHWA environmental regulations (Environmental Procedures for Project Development, 23 CFR 771 and 40 CFR 1500–1508) and other related regulations. The EIS will evaluate the following: local and regional economic concerns; transportation service including future corridor capacity; transit cost; transit ridership and effect on traffic movement community impacts, including land use, displacements, noise, neighborhood compatibility, and aesthetics; cultural resource impacts including impacts on historic and archaeological resources and parklands; natural resource impacts including air quality, wetlands, water resources, and wildlife; and transit financial implications.

The proposed impact assessment and evaluation will take into account both positive and negative impacts, direct and indirect impacts, short term (construction) and long term impacts, and site specific and corridor wide impacts. Evaluation criteria will be consistent with all Federal, State of Texas and local criteria, regulations and policies. Mitigation measures will be identified for any adverse environmental impacts.

Other potential impact issues may be added as a result of scoping and agency coordination efforts.

Issued on: September 30, 1994.

**Scott E. Tuxhorn,**

*Deputy Regional Adminstrator.*

[FR Doc. 94–24691 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

September 27, 1994

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms (BATF)**

*OMB Number:* 1512–0045.

*Form Number:* ATF REC 5310/2 and ATF Form 5310.10.

*Type of Review:* Extension.

*Title:* Letter Applications and Notices Filed by Brewers (ATF REC 5130/2); Brewer's Notice (ATF F 5310.10).

*Description:* The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. ATF Form 5130.10, Brewer's Notice, is similar to a permit to operate. Letterhead applications and notices are necessary to identify specific activities that brewers engage in, to insure the proposed activities will not jeopardize Federal revenues.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 460

*Estimated Burden Hours Per Respondent:* 49 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 4,150 hours.

*OMB Number:* 1512–0510.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Letter Application to Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the purpose of testing and Evaluation.

*Description:* This information collection is required by ATF to provide a means to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.

*Respondents:* Individuals or households, Businesses or other for-profit.

*Estimated Number of Respondents:* 5.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 3 hours.

*Clearance Officer:* Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 94–24782 Filed 10–5–94; 8:45 am]

BILLING CODE: 4810–31–P

### Public Information Collection Requirements Submitted to OMB for Review

September 28, 1994

The Department of Treasury has made revisions and resubmitted 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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0074.

*Form Number:* IRS Form 1040 and Related Schedules A, B, C, C–EZ, D, E, EIC, F, R, & SE.

*Type of Review:* Resubmission.

*Title:* U.S. Individual Income Tax Return.

*Description:* This form is used by individuals to report their income tax and to compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 65,740,664.

Estimated Burden Hours Per Respondent/Recordkeeper:

| Form | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to the IRS |
|---|---|---|---|---|
| 1040 | 3 hours, 8 minutes | 2 hours, 53 minutes | 4 hours, 41 minutes | 0 hours, 53 minutes. |

| Form | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to the IRS |
|---|---|---|---|---|
| Schedule A | 2 hours, 32 minutes | 0 hours, 6 minutes | 1 hours, 10 minutes | 0 hours, 27 minutes. |
| Schedule B | 33 minutes | 8 minutes | 17 minutes | 20 minutes. |
| Schedule C | 6 hours, 26 minutes | 1 hours, 10 minutes | 2 hours, 5 minutes | 0 hours, 35 minutes. |
| Schedule C–EZ | 46 minutes | 4 minutes | 18 minutes | 20 minutes. |
| Schedule D | 0 hours, 51 minutes | 0 hours, 42 minutes | 1 hours, 1 minutes | 0 hours, 41 minutes. |
| Schedule E | 2 hours, 52 minutes | 1 hours, 7 minutes | 1 hours, 16 minutes | 0 hours, 35 minutes. |
| Schedule EIC | 40 minutes | 2 minutes | 4 minutes | 5 minutes. |
| Schedule F: | | | | |
| Cash Method | 4 hours, 2 minutes | 0 hours, 35 minutes | 1 hours, 14 minutes | 0 hours, 20 minutes. |
| Accrual Method | 4 hours, 22 minutes | 0 hours, 25 minutes | 1 hours, 19 minutes | 0 hours, 20 minutes. |
| Schedule R | 20 minutes | 15 minutes | 22 minutes | 35 minutes. |
| Schedule SE: | | | | |
| Short | 20 minutes | 13 minutes | 11 minutes | 14 minutes. |
| Long | 26 minutes | 22 minutes | 34 minutes | 20 minutes. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 1,099,492,131 hours.

*Clearance Officer:* Garrick Sehar (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 94–24783 Filed 10–5–94; 8:45 am]

BILLING CODE 4830–01–P–M

## Public Information Collection Requirements Submitted to OMB for Review

September 30, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*Special Request:* In order to conduct the survey described below in a timely manner, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by October 12, 1994. All public comments must be received by close of business October 8, 1994.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1432.

*Survey Project Number:* IRS PC:V 94–009–G.

*Type of Review:* Revision.

*Title:* Nashville Point of Contact Interviews

*Description:* The Internal Revenue Service is in a major organization-wide change as a result of the reinvention of Government. This change is intended to increase its effectiveness in tax administration through the operation of its three business objections: (1) increase voluntary compliance, (2) reduce taxpayer burden, and (3) improve quality-driven productivity and customer satisfaction. IRS is, therefore, making it a priority to learn what customers expect and to develop ways to meet and/or surpass those expectations. The current focus on quality of service will be continued and enhanced through improved systems to assess the quality of our responses and casework. The customers' perceptions and assessments of our service is gathering data via our "points of contact" with the customer.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 6,720.

*Estimated Burden Hours Per Respondent:* Respondents: 6,720; Time/ interview: 1½ minutes

*Frequency of Response:* Varies.

*Estimated Total Reporting Burden:* 168 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 94–24784 Filed 10–5–94; 8:45 am]

BILLING CODE: 4830–01–P

## Public Information Collection Requirements Submitted to OMB for Review

September 30, 1994

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* New.

*Form Number:* None.

*Type of Review:* New collection.

*Title:* Survey of Truckstop Owners and Operators.

*Description:* Organized crime began operating motor fuel excise tax evasion schemes during the late 1980s. Approximately 100 truckstop owners/ operators in New Jersey, New York, and Pennsylvania will be surveyed to assess the effect of Federal and State law enforcement actions against these schemes and identify pockets of continuing illegal activity.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 100.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* Other (one-time only).

*Estimated Total Reporting Burden:* 50 hours.

*OMB Number:* 1545–0946.

*Form Number:* IRS Form 8554.

*Type of Review:* Revision.

*Title:* Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.

*Description:* This information relates to the approval of continuing professional education programs and the renewal of the enrollment status for those individuals admitted (enrolled) by the Internal Revenue Service.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 30,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 1 hour, 12 minutes.

*Frequency of Response:* Other (one-time only).

*Estimated Total Reporting/Recordkeeping Burden:* 36,000 hours.

*OMB Number:* 1545–1271.

*Regulation ID Number:* INTL–54–91 NPRM (formerly INTL–610–86), and INTL–178–86 NPRM.

*Type of Review:* Extension.

*Title:* Transfers of Stock or Securities by U.S. Persons to Foreign Corporations (INTL–54–91); Foreign Liquidations and Reorganizations (INTL–178–86).

*Description:* A U.S. person must generally file a gain recognition agreement with the Service in order to defer gain or a section 367(a) transfer of stock to a foreign corporation, and must file a notice with the Service if it realizes any income in a section 367(b) exchange. These requirements ensure compliance with the respective sections.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 1 hour.

*OMB Number:* 1545–1276.

*Regulation ID Number:* FI–88–86 Final.

*Type of Review:* Extension.

*Title:* Real Estate Mortgage Investment Conduits.

*Description:* Section 860E(e) imposes an excise tax on the transfer of a residual interest in a REMIC to a disqualified party. The tax must be paid by the transferor or a pass-thru entity of which the disqualified party is an interest holder.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 1,600.

*Estimated Burden Hours Per Respondent:* 20 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 525 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 94–24785 Filed 10–5–94; 8:45 am]

BILLING CODE: 4830–01–P

**[Treasury Order Number 102–10]**

## Delegation of Authority to the Deputy Assistant Secretary (Information Systems); Delegation

September 29, 1994.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and 44 U.S.C. 3506, and pursuant to 5 CFR 1320.8, the Deputy Assistant Secretary (Information Systems) is designated as the Department's senior official to carry out the Department's responsibilities under Chapter 35 of Title 44, United States Code.

In addition, the authority delegated to the Secretary by memorandum of November 14, 1988, from the Secretary of Commerce, there is hereby redelegated to the Deputy Assistant Secretary (Information Systems), the authority to waive, under conditions specified by the Department of Commerce, previously issued and all subsequent Federal Information Processing Standards (FIPS) that are compulsory for Federal agency use in the acquisition and management of computers and related telecommunications systems. This authority may not be redelegated.

This Treasury Order (TO) supersedes the following:

a. TO 102–10, "Delegation of Authority to the Deputy Assistant Secretary for Information Systems to Waive Federal Information Processing Standards," dated March 17, 1989; and

b. TO 102–12, "Delegation of Authority to the Senior Official," dated June 21, 1991.

**Lloyd Bentsen,**

*Secretary of the Treasury.*

[FR Doc. 94–24688 Filed 10–5–94; 8:45 am]

BILLING CODE 4810–25–P

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 193
Thursday, October 6, 1994

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).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 2:00 p.m., Monday, October 24, 1994.

**PLACE:** 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–24892 Filed 10–4–94; 11:36 am]

BILLING CODE 6351–01–M

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 1:30 p.m., Monday, October 24, 1994.

**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, 202–254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–24893 Filed 10–4–94; 11:36 am]

BILLING CODE 6351–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 1:00 p.m., Monday, October 24, 1994.

**PLACE:** 2033 K St. NW., Washington, DC, Lower Lobby Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

—Exemptions for Certain Exchange-Traded Futures and Options Contracts, Section 4(c)
—National Futures Association Briefing
—Quarterly Review/4th Quarter FY 1994

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 94–24894 Filed 10–4–94; 11:36 am]

BILLING CODE 6351–01–M

**NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE**

**STATUS:** Open.

**MEETING:** Meeting of the U.S. National Commission on Libraries and Information Science (NCLIS).

**DATE AND TIME:** October 25, 1994, 2:00 p.m.–5:30 p.m.

**PLACE:** National Judicial College, Law Library Board Room University of Nevada, Reno.

**HEARING:** NCLIS Hearing on the Federal Role for Libraries: Planning for the Reauthorization of the Library Services and Construction Act (LSCA).

**DATE AND TIME:** October 26, 1994, 8:30 a.m.–3:45 p.m.

**PLACE:** Incline Village Center Meeting Room, Incline Village, Nevada. Persons wishing to testify or to submit written statements should contact Kim Miller (202–606–9200). Written statements must be submitted by November 28, 1994.

**MEETING:** NCLIS Meeting.

**DATE AND TIME:** October 27, 1994, 8:00 a.m.–4:00 p.m.

**PLACE:** Incline Village Center Meeting Room, Incline Village, Nevada.

**MATTERS CONSIDERED AT NCLIS MEETING:** October 25, 1994—Administrative matters; discussion of the reauthorization and reorganization of the Office of Educational Research and Improvement (OERI) and OERI Research Institutes; review of results from NCLIS Briefings on Libraries and the Information Superhighway: The Role of State Agencies and Planning the Federal Role, 9/21 and 9/22/94; Presentation of the Hexacon Planning Process.

October 27, 1994—Update on intellectual freedom and censorship issues; review and discussion of results of NCLIS hearing on 26 October 1994 on The Federal Role for Libraries: Planning for the Reauthorization of LSCA; digitization tutorial and Library of Congress; discussion of proposal for NCLIS to co-sponsor a pre-White House Conference on Aging event; Report on White House Conference on Small Business; discussion of activities related to permanent paper.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: September 27, 1994

**Peter R. Young,**

*NCLIS Executive Director.*

[FR Doc. 94–24951 Filed 10–4–94; 3:42 pm]

BILLING CODE 7527–01–M

# Corrections

Federal Register
Vol. 59, No. 193
Thursday, October 6, 1994

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.

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 614

RIN 3052-AB51

### Loan Policies and Operations; General Provisions; Collateral Evaluation Requirements, Actions on Applications, Review of Credit Decisions, and Releasing Information

*Correction*

In rule document 94-22220 beginning on page 46725 in the issue of Monday, September 12, 1994, make the following correction:

**§ 614.4266 [Corrected]**

On page 46733, in the third column, in § 614.4266, the undesignated paragraph below paragraph (d) should be designated as "(e)".

BILLING CODE 1505-01-D

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

### Small Business Size Standards; Environmental Remediation Services

*Correction*

In rule document 94-22677 beginning on page 47236 in the issue of Thursday, September 15, 1994, make the following corrections:

**§ 121.601 [Corrected]**

1. On page 47245, in § 121.601, in footnote 19, in the fourth line, "any" should read "may".

2. On page 47246, in § 121.601, in footnote 23, in the second paragraph, in the fifth line, insert "not" after "are".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 10

[CGD 91–211]

RIN 2115–AD92

### Five–Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents

*Correction*

In rule document 94-23655 beginning on page 49294 in the issue of Tuesday, September 27, 1994, make the following corrections:

**§ 10.203 [Corrected]**

On page 49298, in § 10.203, in the table, in the first column and first entry, "operators or" should read "operators of".

**§ 10. 811 [Corrected]**

On page 49300, in § 10.811, in table 10.811 in the first column, the last entry "1930" should read "1939".

BILLING CODE 1505-01-D

federal register

Thursday
October 6, 1994

Part II

# State Justice Institute

Grant Guideline; Notice

## STATE JUSTICE INSTITUTE

### Grant Guideline

**AGENCY:** State Justice Institute.
**ACTION:** Final grant guideline.

**SUMMARY:** This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1995 State Justice Institute grants, cooperative agreements, and contracts.

**EFFECTIVE DATE:** October 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

**SUPPLEMENTARY INFORMATION:** Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $11½ million is available for award in FY 1995.

#### Changes in the Final Guideline

On August 22, 1994, the Institute published its proposed FY 1995 Grant Guideline in the **Federal Register** for public comment. 59 FR 43160. Comment was specifically requested on whether SJI should continue to require each applicant for a judicial education scholarship to submit a concurrence signed by the chief justice of the applicant's State (see section II.B.2.b.v.). The only comment received on this issue was from a State court administrator who emphasized the administrative importance of the chief justice's concurrence. The concurrence requirement is, accordingly, retained in the Final Guideline. The Guideline also has been amended to better assure that sufficient scholarship funds are available each quarter.

In addition, the Final Guideline solicits applications from courts and other organizations interested in participating as downlink (receiving) sites for the National Town Hall Meeting on Improving Public Confidence in the Courts scheduled for October 1995 (see section II.B.2.a.ii.). The Institute recently awarded a grant to the National Center for State Courts and the American Judicature Society to convene this videoconference. Interested jurisdictions must submit an application to the National Center for State Courts addressing the criteria set forth in section II.B.2.a.ii. no later than February 15, 1995.

In FY 1994, the Institute required each grantee to submit its final product on a diskette in ASCII. The Final FY 1995 Guideline requires grantees to provide only a one-page abstract summarizing the grant product in ASCII. See section VII.C.6.

In response to comments, the audit requirements in the Final Guideline have also been changed to make OMB Circular A–133 applicable to SJI grantees under the same terms and conditions (including applicability thresholds) that would apply to Federal grantees.

In addition, several technical clarifications and corrections have been made in the Final Guideline.

#### Types of Grants Available and Funding Schedules

The SJI grant program is designed to be responsive to the most important needs of the State courts. To meet the full range of the courts' diverse needs, the Institute offers six different types of grants. The types of grants available in FY 1995 and the funding cycles for each program are provided below:

*Project Grants.* These grants are awarded to support education, research, demonstration and technical assistance projects to improve the administration of justice in the State courts. With limited exceptions (see sections II.B.2.b.i. and II.c.), project grants are intended to support innovative projects of national significance. As provided in section V. of the Guideline, project grants may ordinarily not exceed $300,000 a year; however, grants in excess of $200,000 are likely to be awarded only to support projects likely to have a significant national impact. Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant.

As indicated in Section VI.C., the Board may make an "accelerated" project grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information would be provided in an application.

The FY 1995 mailing deadline for project grant concept papers is November 23, 1994. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1995 funding cycle will be substantially similar to the FY 1994 cycle: the Board will meet in early March, 1995 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The first exception to this schedule pertains to proposals to follow up on the National Conference on Mass Tort Litigation to be held in November, 1994. Applicants interested in participating in this special round of funding may submit concept papers proposing projects addressing the findings and recommendations of that conference by March 10, 1995. The papers will be considered by the Board at its meeting in April, 1995. Invited applications will be reviewed at the Board's July, 1995 meeting. See section II.B.2.l.

The second exception is for projects to follow up on the National Conference on Eliminating Race and Ethnic Bias in the Courts to be held March 2–5, 1995. Concept papers for projects to implement the State action plans developed at the conference must be mailed by October 6, 1995. See section II.B.2.i.

*Package Grants.* This grant program permits applicants to submit one concept paper (or application) for a "package" of related grants rather than separate proposals for each related component of the package. Package grants of up to $750,000 per year may be awarded to support projects that address interrelated topics or the core elements of a multifaceted program, or that require the services of all or some of the same key staff persons. Package grants must enhance (not merely maintain) an applicant's services and must otherwise meet the Institute's grant criteria. The Board retains the discretion to support all, none, or selected portions of the proposed package. Package grant concept papers and applications will be considered on the same schedule as project grants. See sections III.J., V.C. and D., VI.A.2.b. and 3.b., VII.A.3., VII.C., and VII.D. for more information about package grants.

*Technical Assistance Grants.* Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. The Guideline allocates up to $600,000 in FY 1995 funds to support technical assistance grants. See section II.C.2.

*Curriculum Adaptation Grants.* A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $350,000 for these grants in FY 1995, the same amount allocated in FY 1994. See section II.B.2.b.i.(b).

Like Technical Assistance grant applications, letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section II.B.2.b.i.(b).

*Scholarships.* The Guideline allocates up to $250,000 of FY 1995 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.v.

The Guideline establishes four deadlines for scholarship requests: November 1, 1994 for training programs beginning between February 1, 1995 and April 30, 1995; February 1, 1995 for programs beginning between May 1, 1995 and July 31, 1995; May 1, 1995 for programs beginning between August 1, 1995 and October 31, 1995; and August 1, 1995 for programs beginning between November 1, 1995 and January 31, 1996.

*Renewal Grants.* There are two types of renewal grants available from SJI: Continuation grants (see sections III.G., V.C. and D., and IX.A.) and On-going support grants (see sections III.H., V.C. and D., and IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of no more than $3 million, a little more than 25% of the total amount available for grants in FY 1995. See section IX. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

*Special Interest Categories*

The Guideline contains 12 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts. Four new categories have been added this year: "Children and Families in Court" (section II.B.2.e.); "Resolution of New Evidentiary Issues" (section II.B.2.g.); "Eliminating Race and Ethnic Bias in the Courts" (section II.B.2.i.); and "Improving the Courts' Response to Gender-Related Crimes of Violence" (section II.B.2.k.).

The Guideline also solicits proposals to conduct two major national conferences: The National Symposium on Reducing Litigation Delay noted above and a National Symposium on Sentencing Issues. See section II.B.2.b.iv. Courts in States permitting capital punishment should also note the Institute's interest in testing the effectiveness of using special capital litigation law clerks to assist trial judges hearing cases involving the death penalty. See section II.B.2.l.

**Consultant Rates**

The Institute is committed to assuring that the compensation paid to consultants working under SJI grants is reasonable in terms of both the total amount paid to an individual consultant, and the amount paid for individual tasks. A recent internal review of consultant rates found that the number of consultants charging in excess of $300 a day has risen significantly in recent years. Although no changes in the Grant Guideline are required, the Institute will be undertaking changes in procedure (including Board participation in the review process and more detailed reports from applicants and grantees) to assure that the compensation paid consultants is commensurate with the nature and quality of the services to be performed; reasonable, in terms of the tasks performed and in total; and consistent with the public service mission of the Institute.

**Recommendations to Grant Writers**

Over the past 7 years, Institute staff have reviewed approximately 2,700 concept papers and 1,300 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections vi. and vii. of the guideline, respectively.

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected

with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, include the following information:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports x 75 pages each x .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion. The Institute will provide an illustrative budget and budget form upon request.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?* Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. Written prior approval of the Institute is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4. of the Grant Guideline, based on the applicant's audited financial statements

for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.) If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet on computer diskette is available from the Institute upon request.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

**Recommendations To Grantees**

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 800 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. *After the grant has been awarded, when are the first quarterly reports due?* Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first Quarterly Progress Report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, Quarterly Progress Reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. Thus, the Quarterly Project Report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a Quarterly Progress Report and attachments should be submitted to the Institute.

Additional Quarterly Progress Report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. *Do reporting requirements differ for renewal grants or package grants?* Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the reports numbered accordingly. For example, if the last quarterly report filed under the original award is report number six, the first report including a portion of the renewal grant should be report number seven.

Recipients of a package grant should file a summary Financial Status Report covering the entire package as well as separate financial reports for each of the projects in the package, identified by letter of the alphabet (e.g., SJI–93–15R-J–001–A; SJI–93–15R-J–001–B; SJI–93–15R-J–001–C).

3. *What information about project activities should be communicated to SJI?* In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests, should be addressed to the Chief or Deputy Chief of the Institute's Finance and Management Division.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. *Why is it important to address the special conditions that are attached to the award document?* In some instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance and Management Division staff are always available to answer questions and provide assistance regarding these provisions.

5. *What is a Grant Adjustment?* A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

6. *What schedule should be followed in submitting requests for reimbursements or advance payments?* Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. *Do procedures for submitting requests for reimbursement or advance payment differ for renewal grants or package grants?* The basic procedures

are the same for any grant. A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the payment requests numbered accordingly. For example, if the last payment request under the original award is number nine, then the first request for funds from the continuation award should be number ten.

Recipients of a package grant should file separate requests for each project in the package. For example, if there are three projects within a package grant, a grantee should prepare three separate payment requests, each identified by the letter of the alphabet designated in the award document (e.g., SJI–93–15R-J–001–A; SJI–93–15R-J–001–B; SJI–93–15R-J–001–C). Subsequent payment requests should be numbered consecutively for each project within the package (e.g., project SJI–93–15R-J–001–A payment number 2; SJI–93–15R-J–001–B payment number 4; etc.).

8. *If things change during the grant period, can funds be reallocated from one budget category to another?* The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants and package grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period. Prior written Institute approval also is needed to shift funds between projects included in a package grant.

9. *What is the 90-day close-out period?* Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. *Are funds granted by SJI "Federal" funds?* The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grants funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. *If SJI is not a Federal Agency, do OMB circulars apply with respect to audits?* Except to the extent that they are inconsistent with the express provisions of the SJI Grant Guideline, OMB Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128 and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" [see 42 U.S.C. 10711(c)(1)], the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section XI.J.)

Prior to FY 1994, the Institute did not require grantees to comply with the audit-related provisions of OMB circulars A–110, A–128, or A–133, but did require that grantees, lacking an audit report prepared for a Federal agency, conduct an independent audit in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants.

The current Guideline makes it clear that SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and Office of Management and Budget (OMB) Circulars A–128, or A–133, in satisfaction of the annual fiscal audit requirement. Grantees who are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements'.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline Section XI.J.)

12. *Does SJI have a CFDA number?* Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards. Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1995 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees that are required to satisfy either the Single Audit Act, OMB Circular A–128 or A–133, and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in Section XI.J. of the Grant Guideline.

* * * * *

The following Grant Guideline is adopted by the State Justice Institute for FY 1995:

**State Justice Institute Grant Guideline**

**Table of Contents**

*Summary*

I. Background
II. Scope of the Program
III. Definitions
IV. Eligibility for Award
V. Types of Projects and Grants; Size of Awards
VI. Concept Paper Submission Requirements for New Projects
VII. Application Requirements for New Projects
VIII. Application Review Procedures
IX. Renewal Funding Procedures and Requirements
X. Compliance Requirements
XI. Financial Requirements
XII. Grant Adjustments
Appendix I List of State Contacts Regarding Administration of Institute Grants to State and Local Courts
Appendix II SJI Libraries: Designated Sites and Contacts
Appendix III Judicial Education Scholarship Application Forms
Appendix IV Preliminary Budget Form
Appendix V Certificate of State Approval Form
Appendix VI Illustrative List of Model Curricula

**Summary**

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements, and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments. The Institute may also award grants to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may be awarded, as well, to Federal, State or local agencies and institutions other than courts for services that cannot be provided adequately through nongovernmental arrangements. In addition, the Institute may provide financial assistance in the form of interagency agreements with other grantors.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation as amended. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1995 funds. The concept paper submission deadline for all but two funding categories is November 23, 1994. Concept papers proposing projects that follow up on the November 1994 National Conference on the Management of Mass Tort Cases must be mailed by March 10, 1995. Concept papers to implement the plans developed at the March 1995 National Conference on Eliminating Race and Ethnic Bias in the Courts must be mailed by October 6, 1995.

It is anticipated that between $11 million and $11.5 million will be available for award. This Guideline applies to all concept papers and applications submitted, as well as grants awarded in FY 1995.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, Title II, 42 U.S.C. 10701, *et seq.*, as amended.

**I. Background**

The Institute was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

**II. Scope of the Program**

During FY 1995, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

*A. Authorized Program Areas*

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act of 1992, the Judicial Training and Research for Child Custody Litigation Act of 1992, and the International Parental Kidnapping Crime Act of 1993.

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and

removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14–17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction;

20. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds wil l not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

*B. Special Interest Program Categories*

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1995, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Improving Public Confidence in the Courts.* This category includes research, demonstration, evaluation and education projects designed to improve the public's confidence in the State courts' ability to administer justice fairly, and to test innovative methods

for eliminating economic, racial, ethnic, cultural or gender-based barriers to justice.

i. The Institute is particularly interested in supporting innovative projects that examine, develop, and test methods that trial or appellate courts may use to:

- Respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve;
- Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to define the impact of immigration on State courts; design and assess procedures for use in custody, visitation, and other domestic relations cases when key family members or property are outside the United States; facilitate communication with Federal authorities when illegal aliens are involved in State court proceedings; and develop protocols to facilitate service of process, the enforcement of orders of judgment, and the disposition of criminal and juvenile cases when a non-U.S. citizen or corporation is involved;
- Handle cases involving pro se litigants fairly and effectively; and
- Increase public understanding of jury decisions and the juror selection and service process; foster positive attitudes toward jury service; and enhance the attractiveness of juror service through, e.g., incentives to participate, modifications of terms of service, and/or juror orientation and education programs.

Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases. In addition, it is unlikely that the Institute will support development or testing of additional automated kiosks such as those being used by the courts in Arizona, California, and Florida.

ii. *National Town Hall Meeting.* The Institute recently awarded a grant to the National Center for State Courts (NCSC) and the American Judicature Society (AJS) to convene a National Town Hall Meeting on Improving Public Confidence in the Courts in October 1995. The Meeting will be broadcast by satellite up to ten downlink (receiving) sites across the country.

The sponsors of the Meeting are seeking proposals from (a) State and local courts or (b) community groups, other non-profit organizations, universities, and other applicants collaborating with courts, that are interested in conducting a local, State, or regional meeting at a downlink site in conjunction with the National Meeting. Each site will receive several hours of programming from the uplink (originating) site, prepare its own program, and report back to the uplink site about its plans for future collaboration between courts and communities to enhance public confidence in the courts.

*Objectives.* As approved by the Institute's Board of Directors, the objectives of the project are to:

- Raise the level of awareness of both the court community and the public about the need to work together to improve public trust and confidence in the courts;
- Identify strategies for improving court and community collaboration at the local and State level;
- Promote a diverse group of effective local approaches to improve the relationship between courts and the communities they serve; and
- Develop national goals rooted in local experience that will encourage courts and communities to work together more effectively.

*Site Selection.* Representatives of SJI, NCSC, and AJS will select sites to participate in the program on a competitive basis. Site selection will be based on the following criteria:

- The level of support and participation of the State and local courts serving the proposed site;
- The level of support and participation of representatives of a broad range of interested community groups in the proposed site;
- The site's technological and logistical capability to participate in the meeting;
- The likelihood of continued efforts to improve public confidence in the courts serving the site after the meeting;
- The availability of funding from local sources to support the site costs of participating in the meeting; and
- Geographical diversity across all participating sites.

*Meeting Content.* The sponsors presently contemplate an evening orientation program at all downlink sites (including a common video presentation at each site that defines the mission of the Meeting), followed by a full-day program featuring national satellite broadcasts mixed with local discussions.

With the guidance and support of the conference sponsors, each participating site will be responsible for originating local programs to complement the national program. All selected sites will receive:

- Technical assistance regarding the use of satellite technology and the conduct of the local programs;
- Conference materials including the opening videotape, notebooks and other informational materials about effective ways to improve public confidence in the courts; and
- Post-conference products including multiple copies of a manual for implementing model programs, a national directory of programs, and a video of conference highlights.

*Application Process.* Applications seeking to organize and convene a downlink program must respond to a National Town Hall Meeting Request for Proposals (RFP) available from NCSC. To obtain a copy of the RFP, applicants should write to: National Center for State Courts, National Town Hall Project, 300 Newport Avenue, Williamsburg, VA 23187–8798. All applications must be sent to the same address and postmarked no later than February 15, 1995. Further information about the National Town Hall Meeting and the application process is available from NCSC [(804) 253–2000] and AJS [(312) 558–6900].

Previous SJI-supported projects that address these issues include: evaluation of an experimental community court in New York City; development of a manual for management of court interpretation services and materials for training and assisting court interpreters; development of touchscreen computer systems, videotapes and written materials to assist pro se litigants; a demonstration of the use of volunteers to monitor guardianships; studies of effective and efficient methods of providing legal representation to indigent parties in criminal and family cases and the applicability of various dispute resolution procedures to different cultural groups; guidelines for court-annexed day care systems; and development of a manual for implementing innovations in jury selection, use, and management; technical assistance and training to facilitate implementation of the Standards on Jury Management; development of a guide for making juries accessible to persons with disabilities.

b. *Education and Training for Judges and Other Key Court Personnel.* The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional, and national levels. Accordingly, this category is divided into five subsections: (i) State Initiatives; (ii) National and Regional Education Programs; (iii) Judicial Education Technical Assistance; (iv) Conferences; and (v) Scholarships. All Institute-supported conferences and education and training seminars should be accessible to persons with disabilities

in accordance with the Americans with Disabilities Act.

i. *State Initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) *Development of State Court Education Programs.* Projects to assist development of State court education programs include, but are not limited to:

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- Seed money for innovative interdisciplinary and, as appropriate, interbranch educational programs, such as those addressing: (1) the development of better working relationships across court divisions and between courts and criminal justice, social service, and treatment agencies; (2) organizational and leadership development, including team-building; and (3) the specific educational needs of nonsupervisory staff as well of those filling more direct managerial roles; and (4) the development and implementation of strategies for coping with the gap between resources and the demand for services; and
- The development of the expertise, information, and commitment required for the preparation and implementation of State court education plans, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development) and for the career-long education of court managers, clerks, and other court personnel.

(b) *Curriculum Adaptation Projects.* (1) *Description of the Program.* The Board is reserving up to $350,000 to provide support for adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for curriculum adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. The program is designed to provide State and local courts with sufficient support to prepare and conduct a State-specific or regional modification of a model curriculum, course module, national or regional conference program, or other model education program developed with SJI funds by any other State or national organization. An illustrative list of the curricula that may be appropriate for the adaptation is contained in Appendix VI.

Only State or local courts may apply for Curriculum Adaptation funding. Grants to support adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

(2) *Review Criteria.* Curriculum Adaptation grants will be awarded on the basis of criteria including: The need for the educational program; the need for outside funding to support the program; the likelihood of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making implementation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

(3) *Application Procedures.* In lieu of concept papers and formal applications, applicants for grants may submit, at any time, a detailed letter, and three photocopies. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria for evaluating applications is addressed:

- *Project Description.* Why is this education program needed at the present time? What is the model curriculum or training program to be tested? How will it be adapted for State use, and who will be responsible for adapting the model curriculum? Who will the participants be, how will they be recruited, and from where will they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)? How many participants are anticipated?
- *Need for funding.* Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?
- *Likelihood.* What is the proposed date for presenting the program? What types of modifications in the length, format, and content of the model curriculum are anticipated? How will the presentation of the program be evaluated and by whom? (Ordinarily, an outside evaluation is not necessary.) What measures will be taken to facilitate subsequent presentations of the adapted program?
- *Expressions of Interest By Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)
- *Budget and Matching State Contribution.* A copy of budget Form E (see Appendix IV) and a budget narrative (see Section VII.B.) that describes the basis for the proposed costs and the source of the match offered.
- Local courts should attach a concurrence signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix V.)

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning. The Board of Directors has delegated its authority to approve Curriculum Adaptation grants to its Judicial Education Committee. The committee anticipates acting upon applications within 45 days after receipt. Formal grant awards will be made only after committee approval and negotiation of the final terms of the grant.

(4) *Grantee Responsibilities.* A recipient of a Curriculum Adaptation grant must:

(a) Comply with the same quarterly reporting requirements as other Institute grantees (see Section X.L., infra);

(b) Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo, and a disclaimer paragraph based on the example provided in Section X.Q. of the Guideline; and

(c) Submit two copies of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that explains how it intends to replicate the program in the future.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in Sections VI and VII or the requirements for renewal applications set forth in Section IX.

ii. *National and Regional Education Programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Ordinarily, national and regional education projects are expected to develop curricula (as defined in Section III.K.) that may be adapted by State and local courts. Programs to be supported may include:

- Training programs or seminars on topics of interest and concern that transcend State lines including the factors that should be considered in deciding child custody and termination of parental rights;
- Multi-State or regional training programs sponsored by national organizations, non-profit groups, State courts or universities;
- Interdisciplinary and, as appropriate, interbranch educational programs for State trial and appellate court judges, State and local court managers including clerks of court, and non-supervisory staff or other court personnel, including seminars based on Institute-supported research, and programs designed to develop better working relationships across court divisions and between courts and criminal justice, social service, and treatment agencies; and
- Innovative independent study models that would enhance the availability of judicial education, especially for judges and court personnel who do not have ready access to training programs, and possible models for the credentialing of this type of continuing judicial education.

iii. *Judicial Education Technical Assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate their ability to work effectively with State judicial educators.

*The Institute is currently funding the following judicial education technical assistance projects: the Judicial Education Reference Information and Technology Transfer Project (JERITT), which collects and disseminates information (as well as providing technical assistance) on continuing education programs for judges and court personnel; the Judicial Education/Adult Education Project (JEAEP), which provides expert assistance on the application of adult and continuing education theory and practices to court education programs; the Leadership Institute in Judicial Education, which offers an annual training program and follow-up assistance to State judicial education leadership teams to help them develop improved approaches to court education; and NASJE NEWS, a newsletter of the National Association of State Judicial Educators.*

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. Applicants also are reminded that conference sites should be accessible to persons with disabilities in accordance with the Americans With Disabilities Act. In planning a conference, applicants should provide for a written, video, or other product that would widely disseminate the information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting:

(a) *National Symposium on Sentencing: The Judicial Response to Crime*, to enable State and Federal judges, legislators, prosecutors, defense counsel, corrections officials, legal academics, social science researchers, media representatives, and members of the public to:

- Evaluate what is known about the impact of current sentencing practices on adult offenders, juvenile offenders tried as adults, and juvenile offenders, the criminal and juvenile justice systems, and the public's perception of justice;
- Explore how changes in sentencing legislation and judicial practices might better accomplish the goals of sentencing;
- Identify changes in procedure, new sources of information or education, and other innovations that might better assure that a sentence serves the judge's intended sentencing goal(s) in a particular case; and
- Recommend specific changes in law, policy, and procedure that would help courts better accomplish the goals of sentencing and improve the public's confidence in the justice system.

Among the topics which could be addressed at the Symposium would be: the impact that Federal and State sentencing guidelines, mandatory minimums, and other determinate sentencing approaches have had on the courts and other components of the criminal justice system, the public, and offenders; whether these approaches have fulfilled their envisioned purposes; whether sentencing innovations (e.g., giving judges greater access to information about the offender, the victim, and available sentencing options; changed plea bargaining practices; and greater use of intermediate sanctions) might better assure just and effective sentencing; and whether current sentencing legislation, processes, and decisions adequately reflect the public's expectations of justice.

(b) *National Symposium on Reducing Litigation Delay.* The Institute has supported over 20 projects examining methods for improving caseflow in various types and levels of courts, or training judges and court managers on pretrial and trial management. The Institute is interested in supporting a symposium that would bring together litigation delay researchers, technical assistance providers, trial and appellate court judges and managers both from courts that have not successfully implemented programs for improving caseflow and reducing the time to disposition as well as those that have, State court administrators, attorneys, scholars, and others to synthesize and share the information resulting from the projects funded by the Institute and others; determine the approaches to pretrial, trial, and individual docket management that appear to be most effective and the best methods for implementing them; identify the programs that may be needed to assist courts in further reducing litigation delay; define and prioritize the topics for further research on improving caseflow management; and encourage and assist courts that are experiencing litigation delay to undertake measures to ensure the prompt and fair disposition of cases.

v. *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $250,000 (in addition to any scholarship funds remaining from Fiscal Year 1994) to support a scholarship program for State court judges and court managers.

(a) *Program Description/Scholarship Amounts.* The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges

and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. The annual or midyear meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

A scholarship may cover the cost of tuition and travel up to a maximum total of $1,500 per scholarship. (Transportation expenses include roundtrip coach airfare or train fare, or up to $.25/mile if the recipient drives to the site of the program.) Funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

Scholarship recipients are encouraged to check with their tax advisor to determine whether the scholarship constitutes taxable income under Federal and State law.

(b) *Eligibility Requirements.* Because of the limited amount of funds available, scholarships are limited to full-time judges of State or local trial and appellate courts, to full-time professional, State or local court personnel with management responsibilities, and to supervisory and management probation personnel in judicial branch probation offices. Senior judges, part time judges, quasi-judicial hearing officers, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers and other executive branch personnel will not be eligible to receive a scholarship.

(c) *Application Procedures.* Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix III). Applications must be submitted by:

November 1, 1994, for programs beginning between February 1, 1995 and April 30, 1995;

February 1, 1995, for programs beginning between May 1 and July 31, 1995;

May 1, 1995, for programs beginning between August 1, and October 31, 1995; and

August 1, 1995, for programs beginning between November 1, 1995 and January 31, 1996.

No exceptions or extensions will be granted.

(d) *Concurrence Requirement. All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence (Form S2, see Appendix III).* Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor. The Concurrence (Form S2) may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within one week after the appropriate application mailing deadline (i.e. by November 8, 1994, or February 8, May 8, or August 8, 1995). No application will be reviewed if a signed Concurrence has not been received by the required date.

(e) *Review Procedures/Selection Criteria.* The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 60 days after the relevant application deadline. The Committee will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

The factors that the Institute will consider in selecting scholarship recipients are:

- The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained;
- The benefits to the applicant's court or the State's court system that would be derived from the applicant's participation in the specific educational program, including a description of current legal, procedural, administrative or other problems affecting the State's courts, related to topics to be addressed at the educational program (in addition to submission of a signed Form S2);
- The absence of educational programs in the applicant's State addressing the particular topic;
- How the applicant will disseminate the knowledge gained (e.g., by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level);
- The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;
- The likelihood that the applicant would be able to attend the program without a scholarship;
- The unavailability of State or local funds to cover the costs of attending the program;
- The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;
- Geographic balance;
- The balance of scholarships among types of applicants and courts;
- The balance of scholarships among educational programs; and
- The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

(f) *Responsibilities of Scholarship Recipients.* In order to receive the funds authorized by a scholarship award, recipients must submit Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Dispute Resolution and the Courts.* This category includes research, evaluation, and demonstration projects addressing the findings and recommendations developed at the National Symposium on Court-Connected Dispute Resolution Research, conducted in Orlando in October 1993. The Institute is interested in projects that enhance the courts' ability to compare findings among research studies; address the nature and operation of ADR programs within the context of the court system as a whole; compare dispute resolution processes to

attorney settlement as well as trial; and promote the ability of the courts to move toward on-going self-evaluation of court-connected dispute resolution programs. Among the topics of greatest interest are:

i. The Structure of Court-Connected Dispute Resolution Programs including such issues as the appropriate timing for referrals to dispute resolution services and the effects implementing such referrals at various stages during litigation; the effect of different referral methods including any differences in outcome between voluntary and mandatory referrals; cultural issues, including the nature of cultural conflict and its effect on outcomes; and approaches that provide rural courts and other under-served areas with adequate court-connected dispute resolution services.

ii. The Selection, Qualifications and Training of Court-Connected Neutrals including what selection procedures are most effective; what standards should be used to qualify a neutral; what constitutes effective dispute resolution training; on what basis and when people should be eliminated from the training process; how courts can maintain and improve neutrals' skills; and how ineffective neutrals should be removed from the pool.

iii. Innovative uses of court-connected dispute resolution for resolving complex cases including land-use litigation.

Applicants should be aware that the Institute will not provide operational support for on-going ADR programs. Courts also should be advised that it is preferable for the applicant to support operational costs of a new program, with Institute funds targeted to support related technical assistance, training, and evaluation needs.

In previous funding cycles, grants have been awarded to support evaluation of the use of mediation in civil, domestic relations, juvenile, medical malpractice, appellate, and minor criminal cases. SJI grants also have supported assessments of the impact of early neutral evaluation of motor vehicle cases, the impact of private judging on State courts, multi-door courthouse programs, arbitration of civil cases, and civil settlement programs. In addition, SJI has supported the creation of a consumer guide to choosing a mediator; the development of training programs for judges; and technical assistance on implementation of multi-door courthouse programs, developing standards for court-annexed mediation programs, examination of the applicability of various dispute resolution procedures to different cultural groups, and creation of a national database of court-connected dispute resolution programs.

d. *Planning and Managing the Future of the Courts.* The Institute is interested in supporting activities that would enable courts to implement and evaluate long-range strategic planning processes and complementary innovative management approaches in their own jurisdictions.

The types of projects that fall within this category are:

- Development, implementation, institutionalization, and evaluation of long-range planning approaches in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis, benchmarking, and other comprehensive long-range, strategic planning methods as components of courts' current planning processes or as part of the initiation of such a process;
- Adaptation, implementation and evaluation of innovative management approaches, such as total quality management, designed to complement, enhance or support use of a long-range strategic planning process. This includes the development and testing of performance standards and other techniques to enable trial and appellate court officials to conduct user evaluations of the quality of court services and to measure public, internal, and supplier satisfaction as a means to improve court performance. Also included is the planning, implementation, and evaluation of innovative delay and cost reduction programs including assessments of the advantages and disadvantages of privatizing court activities;
- Development, implementation, and evaluation of mechanisms for linking assessments of effectiveness such as the Trial Court Performance Standards to fiscal planning and budgeting, including service efforts and accomplishments approaches (SEA), performance audits, and performance budgeting;
- Development, presentation and evaluation of training necessary to enable judges and court staff to participate productively in the implementation or institutionalization of the planning process and/or related innovative management approaches, including training to enhance the ability of courts to develop effective plans for coping with natural or other disasters.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1995.

The Institute also has supported planning, futures, and innovative management projects including: national and Statewide "future and the courts" conferences and training; development of curricula, guidebooks and a video on visioning, and a long-range planning guide for trial courts; the provision of technical assistance to courts conducting futures and long-range planning activities, including development of a court futures network on Internet; a test of the feasibility of implementing the Trial Court Performance Standards in four States; the development of Appellate Court Performance Standards; the application of total quality management principles to court operations, and the development of TQM guidebook for trial courts; and the development of service efforts and accomplishments (SEA) measures for municipal courts.

e. *Children and Families in Court.* This category includes education, evaluation, technical assistance, and research projects to identify and inform judges of appropriate and effective approaches for:

- Adjudicating child custody litigation in which family violence may be involved;
- Determining and addressing the service needs of children exposed to family violence including the short- and long-term effects on children of exposure to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;
- Adjudicating and monitoring child abuse and neglect litigation and reconciling the need to protect the child with the requirement to make reasonable efforts to maintain or reunite the family;
- Adjudicating and developing dispositions for cases involving elder abuse;
- Determining when it may be appropriate to refer a case involving family violence for mediation, and what procedures and safeguards should be employed;
- Coordinating multiple cases involving members of the same family, and obtaining and appropriately using social and psychological information gathered in one case involving a family member in a case involving another family member; and
- Handling the criminal and civil aspects of interstate and international parental child abductions.

In previous funding cycles, the Institute supported a national and a State symposium on courts, children,

and the family; a national symposium on enhancing coordination of cases involving the same family that are being heard in different courts; development and evaluation of a curriculum addressing the adjudication of allegations of child sexual abuse when custody is in dispute; and the development and testing of curricula to enhance judges' understanding of the dynamics of family violence and guide them in adjudication of family violence cases and custody cases in which spousal abuse is involved. In addition, the Institute has supported studies of the appropriate use of mediation in child abuse cases and in divorce, custody, and visitation cases involving family violence; development of a video and other materials for parties and children awaiting a court hearing in domestic relations cases involving family violence; a benchbook for judges on child abuse and neglect cases stemming from parental substance abuse; curricula to fairly adjudicate child abuse and neglect cases; an examination of the effectiveness of probation as a sanction for child sexual abuse offenders; and the development of guidelines for courts in handling elder abuse cases.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to determine what benefits and problems may occur as a result of courts entering the "information superhighway," including projects to establish standards for judicial electronic data interchange (EDI); local, Statewide, and/or interstate demonstrations of the courts' use of EDI (i.e., the exchange of documents or data in a computerized format that enables courts to process or perform work electronically on the documents received) beyond simple image transfer (facsimile or computer-imaging); and demonstrations and evaluations of innovative judicial/court uses of electronic communications networks including those required to meet the reporting mandates contained in recent Federal legislation such as the Brady Act and the National Child Protection Act. In addition, the Institute is interested in demonstrations and evaluation of the effective use of management information systems to monitor, assess, and predict evolving court needs; and evaluations of innovative technologies highlighted at the Fourth National Conference on Court Technology held in Nashville in October 1994.

Ordinarily, the Institute will not provide support for the purchase of equipment or software in order to implement a technology that has been thoroughly tested in other jurisdictions such as the establishment of videolinks between courts and jails, the use of optical imaging for recordkeeping, and the creation of an automated management information system. (See section XI.H.2.b. regarding other limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g.: interactive computerized information systems to assist pro se litigants; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; an automated appellate court bulletin board; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges.

Demonstration and evaluation of records technology, including: the development of a court management information display system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; an automated judicial education management system; testing of a document management system for small courts that uses imaging technology, and of automated telephone docketing for circuit-riding judges; and evaluation of the use of automated teller machines for paying jurors; and

Court technology assistance services, e.g., circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; and an assessment of programs that allow public access to electronically stored court information.

Grants also provided support for national court technology conferences; preparation of guidelines on privacy and public access to electronic court information; the testing of a computerized citizen intake and referral service; development of an "analytic judicial desktop system" to assist judges in making sentencing decisions; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

• g. *Resolution of Current Evidentiary Issues.* This category includes educational programs and other projects to assist judges in deciding questions regarding:

• The admissibility of new forms of demonstrative evidence, including computer simulations;

• The application of the standards set forth in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc. governing the admissibility of scientific and technical evidence;*

• The admissibility of testimony based on recovered memory, and the admissibility of expert testimony about memory recovery;

• The competence of children to testify in criminal, civil, and family cases;

• The appropriate use of expert testimony regarding the impact of gender-related offenses on victims and their willingness and ability to testify, and the application of rape shield laws and other limits on the introduction of evidence or the cross-examination of witnesses;

• Determining what constitutes clear and convincing evidence of a person's

wish not to initiate or continue life-sustaining treatment, including the implications of the Federal Patient Self-Determination Act; and

• Other complex evidentiary issues.

In previous funding cycles, the Institute has supported the development of a computer-assisted training program on evidentiary problems for juvenile and family court judges; training on medical/legal and scientific evidence issues; regional seminars on evidentiary questions; and development of protocols for handling child victim cases.

h. *Substance Abuse.* This category includes the development and evaluation of innovative techniques for courts to handle the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; and the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse and develop specific plans for how individual courts can respond effectively to the impact of substance abuse-related cases on their ability to manage their overall caseloads fairly and efficiently.

The Institute is particularly interested in funding innovative projects which evaluate the applicability of court-enforced treatment programs to substance abuse-related cases involving juveniles and cases requiring treatment services in addition to substance abuse treatment (e.g., spousal abuse, child abuse, or mental health cases); establish coordinated efforts between local courts and treatment providers for the effective disposition of cases involving substance abuse; or evaluate the effectiveness of various court responses to treating substance abuse. Proposals should demonstrate a direct impact on the ability of State courts to handle cases involving substance abuse fairly and effectively.

The Institute will not fund projects focused on developing additional assessment tools, establishing court-enforced treatment programs for adult substance abusers, or providing support for basic court or treatment services.

The Institute is currently supporting the presentation of a National Symposium on the Implementation and Operation of Court-Enforced Drug Treatment Programs. In previous funding cycles, the Institute has sponsored a National Conference on Substance Abuse and the Courts, and State efforts to implement the plans developed at that Conference. It has also supported projects to evaluate court-enforced treatment programs initiated by the Dade County, Florida, Pulaski County, Arkansas, and New York City courts, and the effectiveness of other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; test the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

The Institute and the Bureau of Justice Assistance (BJA) also are supporting two technical assistance projects: one by the National Center for State Courts to assist courts in implementing the plans developed at the National Conference; and the other by the American University Court Technical Assistance Project to identify successful drug case management strategies, conduct seminars on drug case management, and develop a guidebook for implementing drug case processing initiatives. In addition, the Institute and the Department of Health and Human Services' Center for Substance Abuse Treatment (CSAT) have entered into interagency agreement to conduct regional training programs for State judges and legislators on substance abuse treatment.

i. *Eliminating Race and Ethnic Bias in the Courts.* This category includes State and local court projects to implement the action plans and strategies developed by the teams that participated in the Institute-supported National Conference on Eliminating Race and Ethnic Bias in the Courts, to be held in Albuquerque, New Mexico in March, 1995, and projects designed to assist teams in implementing their plans.

A special accelerated cycle has been established for considering such projects. In order to be considered during the special cycle, concept papers proposing implementation projects must be mailed by October 6, 1995. They will be considered by the Institute's Board of Directors at its meeting in November, 1995. Applications based on those concept papers will be considered by the Board at its meeting in March, 1996.

j. *Assessing the Impact of Health Care-Related Issues on the State Courts.* This category includes projects to develop educational curricula and other materials to assist judges in:

• Determining and preparing approaches for dealing with the impact on the State Courts of proposed or enacted changes in the State and Federal health care systems, including the anticipated increase in the number of disputes regarding the scope and nature of insurance coverage;

• Understanding and responding to the scientific, legal and ethical issues raised by the continuing advances in the application of biotechnology to health care, including the use of gene therapy and genetic testing; and

• Using effective innovative remedies in long-term environmental and toxic substance exposure cases such as medical surveillance orders.

In previous funding cycles, the Institute has supported projects to: Develop guidelines for judges in cases regarding the withdrawal of life-sustaining treatment; prepare benchbooks, handbooks, videotapes, and training materials on guardianship, the Americans with Disabilities Act, and AIDS; conduct a series of health science-law workshops for judges and judicial educators; and develop a deskbook for judges on medical-legal issues arising in juvenile and family cases.

k. *Improving the Courts' Response to Gender-Related Crimes of Violence.* This category includes the development, testing, presentation, and dissemination of education programs for judges and court personnel on:

• The nature and incidence of stalking and gender-related crimes of violence (e.g., rape, sexual assault, spousal abuse), and their impact on the victim and society;

• Sentencing decision-making in cases involving gender-related crimes of violence;

• The use of self-defense and provocation defenses by alleged victims of gender-related violence accused of assaulting or killing their alleged abusers; and

• The effective use and enforcement of protective orders and the implications of mutual orders of protection.

In previous funding cycles, the Institute supported a national conference on family violence and the courts, and follow-up conferences in several States; development of a comprehensive curriculum on handling stranger and non-stranger rape and sexual assault cases; evaluation of the effectiveness of court-ordered treatment for family violence offenders; a demonstration of ways to improve court processing of injunctions for protection and a study of ways to improve the effectiveness of civil protection orders

for family violence victims; an examination of state-of-the-art court practices for handling family violence cases and of ways to improve access to rural courts for victims of family violence; and a manual for judges on the use of expert testimony regarding the battered woman syndrome.

l. *The Relationship Between State and Federal Courts.* This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative education, evaluation, demonstration, technical assistance and research projects that:

i. Build upon the findings and recommendations gained at the Institute-supported National Conference on the Management of Mass Tort Cases to be held in Cincinnati on November 10–13, 1994. Concept papers proposing projects addressing these issues must be mailed by March 10, 1995. Concept papers following up on the Mass Tort Conference will be reviewed by the Board of Directors at its April 1995 meeting. (A summary of the recommendations and findings from the conference will be published in SJI NEWS in December, 1994.)

ii. Develop and test curricula and other educational materials to:

- Enhance the operation of State-Federal Judicial Councils;
- Illustrate effective methods being used at the trial court, State and Circuit levels to coordinate cases and administrative activities; and
- Conduct regional conferences replicating the October, 1992 National Conference on State/Federal Judicial Relationships.

iii. Develop and test new approaches to:

- Improve the fairness and pace of capital litigation by assigning special capital litigation law clerks to assist trial judges hearing cases involving crimes punishable by death;
- Otherwise handle capital habeas corpus cases fairly and efficiently;
- Coordinate related State and Federal criminal cases;
- Coordinate cases that may be brought under the pending Violence Against Women Act;
- Exchange information and coordinating calendars among State and Federal courts; and
- Share jury pools, alternative dispute resolution programs, and court services.

In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships and the Chief Justices' Special Committee on Mass Tort Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining methods of State and Federal court cooperation; procedures for facilitating certification of questions of law; the impact on the State courts of diversity cases and cases brought under section 1983; the procedures used in Federal habeas corpus review of State court criminal cases; the factors that motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions, educational programs for State judges on coordination of Federal bankruptcy cases with State litigation, and a seminar examining the implications of the "Federalization" of crime.

*C. Single Jurisdiction Projects*

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

a. *Description of the Program.* The Board will set aside up to $600,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. *Application Procedures.* Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. *Description of the Program.* The Board will set aside up to $600,000 of Fiscal Year 1995 funds (in addition to any technical assistance funds remaining from Fiscal Year 1994) to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $150,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants, travel by a team of officials from one court to examine a practice, program or facility in another jurisdiction that the applicant court is interested in replicating, or both.

The technical assistance must be completed within 12 months after the start-date of the grant. Only State or local courts may apply for Technical Assistance grants. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount. Technical Assistance grant recipients also are subject to the same quarterly reporting requirements as other Institute grantees.

At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute two copies of a final report that explains how it intends to act on the consultant's recommendations as well as two copies of the consultant's written report.

b. *Review Criteria.* Technical Assistance grants will be awarded on the basis of criteria including: Whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's

recommendations; and the reasonableness of the proposed budget. The Institute will also consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

c. *Application Procedures.* In lieu of concept papers and formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the criteria listed above. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. *Need for Funding.* What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. *Project Description.* What tasks would the consultant be expected to perform? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation must accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by November 4, 1994; February 17, 1995; April 28, 1995; and July 14, 1995).

iii. *Likelihood of implementation.* What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review of the recommendations and development of the implementation plan?

iv. *Budget and matching State contribution.* A completed Form E, "Preliminary Budget" (see Appendix IV to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category. In addition, the budget should provide for submission of three copies of the consultant's final report to the Institute.

v. *Support for the project from the State supreme court or its designated agency or council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix V.) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between October 1, 1994, and January 15, 1995, will be notified of the Board's decision by March 31, 1995; those submitting letters between January 16, and March 15, 1995, will be notified by May 31, 1995. Notification of the Board's decisions concerning letters received between March 16 and June 15, 1995, will be made by August 31, 1995; and applicants submitting letters between June 16 and September 29, 1995, will be notified by November 30, 1995. The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

The Technical Assistance grant program described in this section should not be confused with the Judicial Education Technical Assistance projects described in Section II.B.2.b.iii.

## III. Definitions

The following definitions apply for the purposes of this guideline:

*A. Institute*

The State Justice Institute.

*B. State Supreme Court*

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

*C. Designated Agency or Council*

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

*D. Grantee*

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

*E. Subgrantee*

A State or local court which receives Institute funds through the State Supreme Court.

*F. Match*

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by

the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Institute Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, or the time of participants attending an education program. Amounts contributed as cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

*G. Continuation Grant*

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

*H. On-going Support Grant*

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

*I. Package Grant*

A single grant that supports two or more closely-related projects which logically should be viewed as a whole or would require substantial duplication of effort if administered separately. Closely-related projects may include those addressing interrelated topics, or those requiring the services of all or some of the same key staff persons, or the core elements of a multifaceted program. Each of the components of a package grant must operate within the same project period.

*J. Human Subjects*

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

*K. Curriculum*

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: The learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

*L. Products*

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; and computer software.

**IV. Eligibility for Award**

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Finally, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

**V. Types of Projects and Grants; Size of Awards**

*A. Types of Projects*

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

*B. Types of Grants*

The Institute has established the following types of grants:

1. New grants (See sections VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Package grants (See sections III.J., VI.A.2.b., VI.A.3.b., and VII.).
5. Technical Assistance grants (See section II.C.2.).
6. Curriculum Adaptation grants (See section II.B.2.b.i.(b)).
7. Scholarships (See section II.B.2.b.v.).

*C. Maximum Size of Awards*

1. Except as specified below, concept papers and applications for new projects other than national conferences, and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts

up to $600,000, except as provided in paragraph V.C.3. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. An application for a package grant may request funding in an amount up to a total of $750,000 per year.

4. Applications for technical assistance grants may request funding in amounts up to $30,000.

5. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

6. Applications for scholarships may request funding in amounts up to $1,500.

*D. Length of Grant Periods*

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily will not exceed 12 months.

**VI. Concept Paper Submission Requirements for new Projects**

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

*A. Format and Content*

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a single project or a "package of projects," or whether the applicant is requesting accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

a. *Concept Papers Proposing a Single Project.* The program narrative of a concept paper describing a single project should be no longer than necessary, but *in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12 point and 12 cpi must be used.* The narrative should describe:

i. *Why this project is needed and how it will benefit State courts?* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed sites(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

ii. *What will be done if a grant is awarded?* A summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows.

iii. *How the effects and quality of the project will be determined?* A summary description of how the project will be evaluated, including the evaluation criteria.

iv. *How others will find out about the project and be able to use the results?* A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project.* The program narrative of a concept paper requesting a package grant (see definition in section III.I.) should be no longer than necessary, but in no case should exceed 15 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used.

In addition to addressing the issues listed in paragraph VI.A.2.a., the program narrative of a package grant concept paper must describe briefly each component project, as well as how its inclusion enhances the entire package; and explain:

i. How are the proposed projects related?

ii. How would their operation and administration be enhanced if they were funded as a package rather than as individual projects; and

iii. What disadvantages, if any, would accrue by considering or funding them separately.

3. The Budget

a. *Concept Papers Proposing a Single Project.* A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in Appendix IV of this Guideline.

b. *Concept Papers Requesting a Package Grant Covering More Than One Project*

A separate preliminary budget for each component project of the package, as well as a combined budget that reflects the costs of the entire package, must be attached to the narrative. Each project budget must be identified by the title that corresponds to the narrative description of the project in the program narrative and a letter of the alphabet (i.e. A, B, C). Each of these budgets must include the estimates and information specified on Form E included in Appendix IV of this Guideline.

c. *Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000*

Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see Appendix IV) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources. The budget narrative is not counted against the eight-page limit for the program narrative.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project. Letters of support also may be sent under separate cover. However, in order to ensure that there is sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than January 13, 1995.

5. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2.a. and b. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.c., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

*B. Selection Criteria.*

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b) (as amended) and section IV above); the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

*C. Review Process*

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding.

The decision to invite an application is solely that of the Board of Directors. With regard to concept papers requesting a package grant, the Board retains discretion to invite an application including all, none, or selected portions of the package for possible funding.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

*D. Submission Requirements*

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1995 must be sent by first class or overnight mail or by courier no later than November 23, 1994, except for concept papers proposing projects that follow-up on the National Conference on the Managment of Mass Tort Cases which must be sent by March 10, 1995 (see section II.B.2.l.), and concept papers proposing to implement an action plan developed during the National Conference on Eliminating Race and Ethnic Bias in the Courts which must be sent by October 6, 1995 (see section II.B.2.i.). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. If support letters are sent under separate cover, they must be received no later than January 13, 1995 in order to ensure that there is sufficient time to bring them to the Board's attention.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

**VII. Application Requirements for New Projects**

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept

paper. An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These documents are described below.

*A. Forms*

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

Applications for a package grant must include a separate budget and budget narrative for each project included in the proposed package, as well as a combined budget that reflects the total costs of the entire package.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

*B. Project Abstract*

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8–1/2 by 11 inch paper.

*C. Program Narrative*

*The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8–1/2 by 11 inch paper. The program narrative for an application requesting a package grant for more than one project should not exceed 40 double-spaced pages on 8–1/2 by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used.* The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas to be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

An application requesting a package grant to support more than one project also must describe how the proposed projects in the package are related; how their operation and administration would be enhanced if they were funded as a package rather than as individual projects; and what disadvantages, if any, would accrue by considering or funding them separately.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. *For research and evaluation projects,* the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. *For education and training projects,* the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. *For demonstration projects,* the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

iv. *For technical assistance projects,* the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

An application requesting a package grant for more than one project must describe separately the tasks associated with each project in the proposed package. Each project must be identified by a separate letter of the alphabet (i.e., A, B, C) and a descriptive title.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

i. An evaluation approach suited to many *research* projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating *educational or training* programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a *demonstration* project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. For *technical assistance* projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving *human subjects* should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

vi. The evaluation plan in a package grant application should address the issues listed above for the particular types of projects included in the package, assessing the strengths and weaknesses of the individual components as well as the benefits and limitations of the projects as a package.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Package grant applications must include a management plan for each project included in the package with the same project title and alphabetic identifier describing the project in the program narrative, as well as a plan embracing the package as a whole.

6. Products

A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e.

whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period. Applicants also must submit a one-page abstract summarizing products resulting from a project for inclusion on the Institute's electronic bulletin board, and a diskette of the abstract in ASCII.

Package grant applications must discuss these issues with regard to the products that would result from each of the projects included in the package.

The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproduction. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix II.) To facilitate their use, all videotaped products should be distributed in VHS format.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a non-judicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application, or they may be sent under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received at least four weeks before the meeting of the Board of Directors at which the application will be considered (i.e., no later than October 17, 1994, February 1, 1995, March 31, 1995, June 23, 1995, or August 18, 1995, respectively).

*D. Budget Narrative*

The budget narrative should provide the basis for the computation of all project-related costs. An application for a package grant for more than one project must include a separate budget narrative for each project component, with the same alphabetic identifier and project title used to describe each component project in the program narrative. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to pay for coffee breaks during seminars or meetings, or to purchase alcoholic beverages.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the

individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706 (d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant will perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., number of days x the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section XI.H.2.c. Honorarium payments must be justified in the same manner as other consultant payments.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds many be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.F., VIII.B., X.B. and XI.D.1.)

*E. Submission Requirements*

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photo-copies of the application package must be sent by first class or overnight mail, or by courier no later than May 10, 1995. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated

material will be counted against the 25-page (or in the case of package grant applications, the 40-page) limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. If support letters are sent under separate cover, they must be received no later than four weeks before the meeting of the Board of Directors at which the application will be considered (i.e. no later than October 17, 1994, February 1, 1995, March 31, 1995, June 23, 1995, or August 18, 1995, respectively) in order to ensure that there is sufficient time to bring them to the Board's attention.

**VIII. Application Review Procedures**

*A. Preliminary Inquiries*

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

*B. Selection Criteria*

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.; and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C.1. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.b.

3. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

*C. Review and Approval Process*

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

*D. Return Policy*

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

*E. Notification of Board Decision*

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

*F. Response to Notification of Approval*

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

**IX. Renewal Funding Procedures and Requirements**

The Institute recognizes two types of renewal funding as described below—"continuation grants" and "on-going support grants." The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than $3 million of available FY 1995 grant funds for renewal grants.

*A. Continuation Grants*

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

A continuation grant may be awarded for either a single project or for more than one project as a package grant (see sections III.J., V.C.1 and 3, and V.D.1 and 3).

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form from (applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. *Project Objectives.* A clear, concise statement of what the continuation project is intended to accomplish.

b. *Need for Continuation.* An explanation of why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

c. *Report of Current Project Activities.* A discussion of the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* The key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff and Grantee Capability.* A full description of any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff, or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

A continuation application for a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* A detailed task schedule and time line for the next project period. A continuation application for a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* An indication of why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e. A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

*B. On-going Support Grants*

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2 and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should

be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

An application for on-going support of a package grant should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why. An application for on-going support of a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period. Ordinarily, the Board will not consider an application for on-going support until the Institute has received the evaluator's report.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* Describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

An application for on-going support of a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period. An application for on-going support of a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole. The same alphabetic identifiers and project titles used in the original application should be used to identify the component projects in the renewal application.

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

A continuation application for a package grant must include a separate budget narrative identified alphabetically (i.e. A, B, C) and by project title for each project component.

5. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for

new projects set forth in sections VIII.C.—VIII.E.

**X. Compliance Requirements**

The State Justice Institute Act contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

*A. State and Local Court Systems*

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix I to this Guideline lists the person to contact in each State regarding the administration of Institute grants to State and local courts.

*B. Matching Requirements*

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see section III.F.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

*C. Conflict of Interest*

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

*D. Lobbying*

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

*E. Political Activities*

No recipient shall contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

*F. Advocacy*

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

*G. Prohibition Against Litigation Support*

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

*H. Supplantation and Construction*

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

*I. Confidentiality of Information*

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from

SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

*J. Human Research Protection*

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

*K. Nondiscrimination*

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

*L. Reporting Requirements*

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

*M. Audit*

Each recipient must provide for an annual fiscal audit which shall include an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. (See section XI.J. of the Guideline for the requirements of such audits.)

*N. Suspension of Funding*

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guide-lines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

*O. Title to Property*

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

*P. Original Material*

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

*Q. Acknowledgment and Disclaimer*

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. A camera-ready logo sheet is available from the Institute upon request.

Recipients also shall display the following disclaimer on all grant products:

> This [document, film, videotape, etc.] was developed under [grant/cooperative agreement, number SJI-(insert number)] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

*R. Institute Approval of Grant Products*

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval. These drafts shall be submitted sufficiently before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute.

*S. Distribution of Grant Products to State Libraries*

Grantees shall send 20 copies of each final product developed with grant funds to the Institute, unless the product was developed under either a curriculum adaptation or a technical assistance grant, in which case submission of 2 copies is required.

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II. Labels for these libraries are available from the Institute upon request.) Recipients of curriculum adaptation and technical assistance grants are not required to submit final products to State libraries.

*T. Copyrights*

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

*U. Inventions and Patents*

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

*V. Charges for Grant-Related Products/ Recovery of Costs*

When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may recover its costs for developing, reproducing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

Applicants should disclose their intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products.

Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25.00, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

If, following the end of the grant period, the sale of grant products results in revenues that exceed those costs, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.G. and XI.F. for requirements regarding project-related income.

*W. Availability of Research Data for Secondary Analysis*

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

*X. Approval of Key Staff*

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

**XI. Financial Requirements**

*A. Accounting Systems and Financial Records*

All grantees, subgrantees, contractors, and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

h. *Office of Management and Budget (OMB) Circular A–133,* Audits of Institutions of Higher Education and Other Non-profit Institutions.

*B. Supervision and Monitoring Responsibilities*

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved,

consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; shall be responsible for assuring proper administration of Institute funds; and shall be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

*C. Accounting System*

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

*D. Total Cost Budgeting and Accounting*

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated during the award period, except that with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

*E. Maintenance and Retention of Records*

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

*F. Project-Related Income*

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense only at a price that recovers actual reproduction and distribution costs that were not covered by Institute grant funds or grantee matching contributions to the project. When grant funds only partially cover the costs of developing, producing and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions.

If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner.

Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

*G. Payments and Financial Reporting Requirements*

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should consider these grants as supplements to and extensions of the original award and number their requests on a project rather than a grant basis. (See Recommendations to Grantees in the Introduction for further guidance.)

Payment requests for projects within a package grant may be submitted at the same time, but must be calculated separately by component project. The alphabetic project identifier (A, B, C, etc.) should be appended to the grant number in Block 5 of the Request for Advance or Reimbursement. (See Recommendations to Grantees in the Introduction for further guidance.)

b. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports;

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships

under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

Grantees receiving a continuation or on-going support grant should provide financial information and number their quarterly Financial Status Reports on a project rather than a grant basis.

Grantees receiving a package grant must submit a quarterly financial report summarizing the financial activity for the entire package and separate reports for each project within the package. On the separate reports for the component projects, the alphabetic project identifier (A, B, C, etc.) must be appended to the grant number in Block 5 of the Financial Status Report.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

*H. Allowability of Costs*

1 General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87*, Cost Principles for State and Local Governments; *A–21*, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122*, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

*I. Procurement and Property Management Standards*

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110*.

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

*J. Audit Requirements*

1. Implementation

Each non-scholarship grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits

conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

*K. Close-Out of Grants*

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

**XII. Grant Adjustments**

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

*A. Grant Adjustments Requiring Prior Written Approval*

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

a. For package grants, reallocations among budget categories of an individual project within the package that total less than five percent of the approved budget for that project do not require a grant adjustment. However, transfers of funds between projects included in the package require prior, written approval by the Institute.

b. For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior, written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A change in the name of the grantee organization.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

*B. Request for Grant Adjustments*

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other

information the SJI program managers determine would help the Institute's review.

*C. Notification of Approval/Disapproval*

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

*D. Changes in the Scope of the Grant*

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

*E. Date Changes*

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

*F. Temporary Absence of the Project Director*

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

*G. Withdrawal of/Change in Project Director*

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

*H. Transferring or Contracting Out of Grant-Supported Activities*

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

**State Justice Institute Board of Directors**

John F. Daffron, Jr., Chairman, Judge, Twelfth Judicial Circuit, Chesterfield, Virginia

David A. Brock, Vice Chairman, Chief Justice, Supreme Court of New Hampshire, Concord, New Hampshire

Janice L. Gradwohl, Secretary, Judge (ret.), County Courts, Lincoln, Nebraska

Terrence B. Adamson, Esq., Executive Committee Member, Kaye, Scholer, Fierman, Hays, and Handler, Washington, DC

Carl F. Bianchi, Administrative Director of the Idaho Courts, (ret.) Boise, Idaho

James Duke Cameron, Esq., Bonnett, Fairbourne and Friedman, Phoenix, Arizona

Vivi L. Dilweg, Judge, Brown County Circuit Court, Green Bay, Wisconsin

Carlos R. Garza, Administrative Judge (ret.), Vienna, Virginia

Malcolm M. Lucas, Chief Justice, Supreme Court of California, San Francisco, California

Keith McNamara, Esq., McNamara and McNamara, Columbus, Ohio

Sandra A. O'Connor, States Attorney of Baltimore County, Towson, Maryland

David I. Tevelin, Executive Director (ex officio)

**David I. Tevelin,**

*Executive Director.*

**Appendix I**

**List of State Contacts Regarding Administration of Institute Grants to State and Local Courts**

Mr. Oliver Gilmore, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990

Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547

Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 542–9301

Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100

Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585

Ms. Faith P. Arkin, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–8210

Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue NW., Washington, DC. 20001, (202) 879–1700

Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 922–5081

Mr. Robert L. Doss, Jr., Director, Administrative Office of the Georgia Courts, The Judicial Council of Georgia, 244 Washington Street SW., Suite 500, Atlanta, Georgia 30334–5900, (404) 656–5171

Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8968

Honorable Daniel G. Heely, Administrative Director of the Courts, Office of the Administrative Director, Post Office Box 2560, Honolulu, Hawaii 96813, (808) 539–4900

Honorable Charles F. McDevitt, Chief Justice, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–3464

Mr. Robert E. Davison, Director, Administrative Office of the Courts, 840 S. Spring Street, Springfield, Illinois 62704, (312) 793–3250

Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542

Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241

Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873

Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350

Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747

Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 822–0792

Ms. Deborah A. Unitus, Assistant State Court Administrator, Administrative Office of the Courts, Rowe Boulevard and Taylor Avenue, Annapolis, Maryland 21401, (301) 974–2141

Honorable John J. Irwin, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, Massachusetts 02108, (617) 742–8575

Ms. Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0136

Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474

Honorable Leslie Johnson, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955

Mr. Ron Larkin, State Court Administrator, 1105 R Southwest Blvd, Jefferson City, Missouri 65109, (314) 751–3585

Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643

Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076

Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419

Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275

Honorable E. Leo Milones, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004

Ms. Deborah Kanter, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800

Mr. James C. Drennan, Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (919) 733–7106/7107

Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450

Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046

Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000

Dr. Robert C. Harrell, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3266

Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 734–1800

Honorable Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885

Mr. Charles E. Ferrell, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687

Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625

Mr. Ronald W. Gibson, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371

Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281

Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455

Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780

Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145

Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828

Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581

**APPENDIX II**

**SJI Libraries—Designated Sites and Contacts**

STATE: Alabama
LOCATION: Supreme Court Library
CONTACT: Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347

STATE: Alaska
LOCATION: Anchorage Law Library
CONTACT: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583

STATE: Arizona
LOCATION: State Law Library
CONTACT: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035

STATE: Arkansas
LOCATION: Administrative Office of the Courts
CONTACT: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655

STATE: California,
LOCATION: Administrative Office of the Courts,
CONTACT: William C. Vickery, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100

STATE: Colorado,
LOCATION: Supreme Court Library,
CONTACT: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 52 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720

STATE: Connecticut,
LOCATION: State Library,
CONTACT: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301

STATE: Delaware,
LOCATION: Administrative Office of the Courts,
CONTACT: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480

STATE: District of Columbia,
LOCATION: Executive Office, District of Columbia Courts,
CONTACT: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700

STATE: Florida,
LOCATION: Administrative Office of the Courts,

CONTACT: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621
STATE: Georgia,
LOCATION: Administrative Office of the Courts,
CONTACT: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., Suite 550, Atlanta, Georgia 30334, (404) 656–5171
STATE: Hawaii,
LOCATION: Supreme Court Library,
CONTACT: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
STATE: Idaho,
LOCATION: AOC Judicial Education Library / State,
Law Library in Boise, CONTACT: Ms. Laura Pershing, State Law Librarian; Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–3316
STATE: Illinois,
LOCATION: Supreme Court Library,
CONTACT: Ms. Brenda I. Larison, Supreme Court Library, Supreme Court Building, Springfield, IL 62701–1791, (217) 782–2424
STATE: Indiana,
LOCATION: Supreme Court Library,
CONTACT: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557
STATE: Iowa,
LOCATION: Administrative Office of the Court,
CONTACT: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, Iowa 50319, (515) 281–8279
STATE: Kansas,
LOCATION: Supreme Court Library,
CONTACT: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257
STATE: Kentucky,
LOCATION: State Law Library,
CONTACT: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848
STATE: Louisiana,
LOCATION: State Law Library,
CONTACT: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705
STATE: Maine,
LOCATION: State Law and Legislative Reference Library,
CONTACT: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600
STATE: Maryland,
LOCATION: State Law Library,
CONTACT: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Blvd., Annapolis, Maryland 21401, (301) 974–3395
STATE: Massachusetts,
LOCATION: Middlesex Law Library,
CONTACT: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148
STATE: Michigan,
LOCATION: Michigan Judicial Institute
CONTACT: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804
STATE: Minnesota
LOCATION: State Law Library (Minnesota Judicial Center)
CONTACT: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084
STATE: Mississippi
LOCATION: Mississippi Judicial College
CONTACT: Mr. Rick D. Patt, Staff Attorney, University of Mississippi,
P.O. Box 8850, University, Mississippi 38677, (601) 232–5955
STATE: Montana
LOCATION: State Law Library
CONTACT: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660
STATE: National
LOCATION: JERITT Project/ Michigan State University
CONTACT: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and, Technical Transfer Project (JERITT), Michigan State University, 60 Baker Hall, East Lansing, Michigan 48824
STATE: Nebraska
LOCATION: Administrative Office of the Courts
CONTACT: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730
STATE: Nevada
LOCATION: National Judicial College
CONTACT: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747
STATE: New Jersey
LOCATION: New Jersey State Library
CONTACT: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230
STATE: New Mexico
LOCATION: Supreme Court Library
CONTACT: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850
STATE: New York
LOCATION: Supreme Court Library
CONTACT: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme, Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063
STATE: North Carolina
LOCATION: Supreme Court Library
CONTACT: Ms. Louise Stafford, Librarian, North Carolina Supreme, Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425
STATE: North Dakota
LOCATION: Supreme Court Library
CONTACT: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229
STATE: Northern Mariana Isl.
LOCATION: Supreme Court of the Northern Mariana Islands
CONTACT: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the, Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275
STATE: Ohio
LOCATION: Supreme Court Library
CONTACT: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044
STATE: Oklahoma
LOCATION: Administrative Office of the Courts
CONTACT: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
STATE: Oregon
LOCATION: Administrative Office of the Courts
CONTACT: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
STATE: Pennsylvania
LOCATION: State Library of Pennsylvania
CONTACT: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440
STATE: Puerto Rico
LOCATION: Office of Court Administration
CONTACT: Mr. Alfreado Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court, Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919
STATE: Rhode Island
LOCATION: State Law Library
CONTACT: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3275
STATE: South Carolina
LOCATION: Coleman Karesh Law Library (University of South Carolina School of Law)
CONTACT: Mr. Bruce S. Johnson, Law Librarian, Associate, Professor of Law Coleman Karesh Law Library U. S. C. Law Center, University of South, Carolina, Columbia, South Carolina 29208, (803) 777–5944
STATE: Tennessee
LOCATION: Tennessee State Law Library
CONTACT: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme

Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016
STATE: Texas
LOCATION: State Law Library
CONTACT: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722
STATE: U.S. Virgin Islands
LOCATION: Library of the Territorial Court of the Virgin Islands (St. Thomas)
CONTACT: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804
STATE: Utah
LOCATION: Utah State Judicial Administration Library
CONTACT: Ms. Jennifer Bullock, Librarian, Utah State Judicial Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371
STATE: Vermont
LOCATION: Supreme Court of Vermont
CONTACT: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office, Building, Montpelier, Vermont 05602 (802) 828–3278
STATE: Virginia
LOCATION: Administrative Office of the Courts
CONTACT: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455
STATE: Washington
LOCATION: Washington State Law Library
CONTACT: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2146
STATE: West Virginia
LOCATION: Administrative Office of the Courts
CONTACT: Mr. Richard H. Rosswurm, Deputy Administrative Director, for Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145
STATE: Wisconsin
LOCATION: State Law Library
CONTACT: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707 (608) 266–1424
STATE: Wyoming
LOCATION: Wyoming State Law Library
CONTACT: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509
CONTACT: Clara Wells, Assistant for Information and Library Services, American Judicature Society, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900
CONTACT: Peggy Rogers, Acquisitions/Serials Librarian, National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000

**Appendix III**

**State Justice Institute Scholarship Application**

(This application does not serve as a registration for the course. Please contact the education provider.)
Applicant Information:
1. Applicant Name: _____
(Last) (First) (M)
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box
City _____
State _____
Zip Code _____
5. Telephone No. _____
6. Congressional District: _____
Program Information:
7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____
Estimated Expenses:
(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)
Tuition: $ _____
Transportation: $ _____
(airfare, trainfare or if you plan to drive, the approximate distance and mileage rate)
Amount Requested: $ _____
Additional Information:
Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)
1. How will your taking this course benefit you, your court, and the State's courts generally?
2. Is there any education or training currently available through your State on this topic?
3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.
4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?
5. How long have you served as a judge or court manager?
6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
7. How long has it been since you attended a non-mandatory continuing professional education program?
Statement of Applicant's Commitment
If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature _____
Date
Please return this form and Form S–2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314.

**State Justice Institute—Scholarship Application**

*Concurrence*

I, _____, Name of Chief Justice (or Chief Justice's Designee) have reviewed the application for a scholarship to attend the program entitled _____, prepared by _____, (Name of Applicant) and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

Signature

Name

Title

Date

## APPENDIX IV—STATE JUSTICE INSTITUTE PROJECT BUDGET

| Category | SJI Funds | Cash Match | In-Kind Match |
|---|---|---|---|
| Personnel | $ | $ | $ |
| Fringe Benefits | $ | $ | $ |
| Consultant/Contractual | $ | $ | $ |
| Travel | $ | $ | $ |
| Equipment | $ | $ | $ |
| Supplies | $ | $ | $ |
| Telephone | $ | $ | $ |
| Postage | $ | $ | $ |
| Printing/Photocopying | $ | $ | $ |
| Audit | $ | $ | $ |
| Other | $ | $ | $ |
| Indirect Costs (%) | $ | $ | $ |

APPENDIX IV—STATE JUSTICE INSTITUTE PROJECT BUDGET—Continued

| Category | SJI Funds | Cash Match | In-Kind Match |
|---|---|---|---|
| TOTAL | $ | $ | $ |
| Project Total | | | $ |

Financial assistance has been or will be sought for this project from the following other sources:

**Appendix V—State Justice Institute Certificate of State Approval**

The _____ (Name of State Supreme Court or Designated Agency or Council) has reviewed the application entitled _____ prepared by _____ (Name of Applicant) approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____. (Name of Trial or Appellate Court or Agency) as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

Signature

Name

Title

Date

Instructions—Form B

The State Justice Institute Act requires that: Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

**Appendix VI**

**Illustrative List of Model Curricula**

The following list includes examples of curricula that have been developed with support from SJI, and that might be—or in some cases have been—successfully adapted for State-based education programs for judges and other court personnel. A list of all SJI-supported education projects is available from the Institute. Please also check with the JERITT project (517/353–8603) and with your State SJI-designated library (see Appendix II) for information on other curricula that may be appropriate for your State's needs.

"Manual for Judicial Writing Workshop for Trial Judges" (University of Georgia/Colorado Judicial Department: SJI–87–018/019)

"Judicial Education Curriculum: Teaching Guides on Court Security, and Jury Management and Impanelment" (Institute for Court Management/National Center for State Courts: SJI–88–053)

"Caseflow Management Principles and Practices" (Institute for Court Management/National Center for State Courts: SJI–87–056)

"Adjudication of Farm Credit Issues" (Rural Justice Center: SJI–87–059)

"A National Program for Reporting on the Courts and the Law" (American Judicature Society: SJI–88–014)

"Model Judicial Mediation Training Program" (American Arbitration Association: SJI–88–078)

"Domestic Violence: A Curriculum for Rural Courts" from "A Project to Improve Access to Rural Courts for Victims of Domestic Violence" (Rural Justice Center: SJI–88–081)

"Career Writing Program for Appellate Judges" (American Academy of Judicial Education: SJI–88–086–P92–1)

"Judges Media Relations Seminar" from "A Statewide Program for Improving Media and Judicial Relations" (Minnesota Supreme Court: SJI–89–024)

"Minding the Courts into the Twentieth Century" (Michigan Judicial Institute: SJI–89–029)

"Innovative Juvenile and Family Court Training" (Youth Law Center: SJI–87–060, SJI–89–039)

"Troubled Families, Troubled Judges" (Brandeis University: SJI–89–071)

"Judicial Settlement Manual" from "Judicial Settlement: Development of a New Course Module, Film, and Instructional Manual" (National Judicial College: SJI–89–089)

"Judicial Training Materials on Spousal Support"; "Family Violence: Effective Judicial Intervention"; "Judicial Training Materials on Child Custody and Visitation" from "Enhancing Gender Fairness in the State Courts" (Women Judges' Fund for Justice: SJI–89–062)

"Introduction to the Jurisprudence of Victims' Rights" from "Victim Rights and the Judiciary: A Training and Implementation Project" (National Organization for Victim Assistance: SJI–89–083)

"Fundamental Skills Training Curriculum for Juvenile Probation Officers" (National Council of Juvenile and Family Court Judges: (SJI–90–017)

"Pre-Bench Training for New Judges" (American Judicature Society: SJI–90–028)

"A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts" (National Center for State Courts: SJI–90–052)

"The Crucial Nature of Attitudes and Values in Judicial Education" (National Council of Juvenile and Family Court Judges: SJI–90–058)

"Policy Alternatives and Current Court Practices in the Special Problem Areas of Jurisdiction Over the Family" from "Juvenile and Family Court Key Issues Curriculum Enhancement Project" (National Council of Juvenile and Family Court Judges: SJI–90–066)

"Gender Fairness Faculty Development Workshops" (National Judicial College: SJI–90–077)

"A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts" (Arizona Supreme Court: SJI–90–078)

"National Guardianship Monitoring Program" from "AARP Volunteers: A Resource for State Guardianship Services" (Association for the Advancement of Retired Persons: SJI–91–013)

"Medicine, Ethics, and the Law: Preconception to Birth" (Women Judges Fund for Justice: SJI–89–062, SJI–91–019)

"The Leadership Institute in Judicial Education" and "The Advanced Leadership Institute in Judicial Education" (Appalachian State University: SJI–91–021)

"Managing Trials Effectively: A Program for State Trial Judges" (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026)

"Faculty Development Instructional Program" from "Curriculum Review" (National Judicial College: SJI–91–039)

"Legal Institute for Special and Limited Jurisdiction Judges" (National Judicial College: SJI–89–043, SJI–91–040)

"Managerial Budgeting in the Courts"; "Performance Appraisal in the Courts"; "Managing Change in the Courts"; all three from "Broadening Educational Opportunities for Judges and Other Key Court Personnel" (Institute for Court Management/National Center for State Courts: SJI–91–043)

"An Approach to Long-Range Strategic Planning in the Courts" (Center for Effective Public Policy Studies: SJI–91–045)

"Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide" (National Judicial College: SJI–91–054)

"National Judicial Response to Domestic Violence: Civil and Criminal Curricula" (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055)

"Access to Justice: The Impartial Jury and the Justice System" and "When Justice is Up to You" from "Pre-Juror Education Project" (Consortium of Universities of the Washington Metropolitan Area: SJI–91–071)

"Judicial Review of Administrative Agency Decisions" (National Judicial College: SJI–91–080)

"Strengthening Rural Courts of Limited Jurisdiction" and "Team Training for Judges and Clerks" from "Rural Limited Jurisdiction Court Curriculum Project (Rural Justice Center: SJI–90–014, SJI–91–082)

"Medical/Legal Issues in Juvenile and Family Courts" (National Council for Juvenile and Family Court Judges: SJI–91–091)

"Good Times, Bad Times: Drugs, Youth, and the Judiciary" (Professional Development and Training Center, Inc.: SJI–91–095)

"Judicial Response to Stranger and Nonstranger Rape and Sexual Assault" (National Judicial Education Program to Promote Equality for Women and Men: SJI–92–003)

"Interbranch Relations Workshop" (Ohio Judicial Conference: SJI–92–079)

"Legal Institute for Non-Law Trained Judges" (Arizona Supreme Court: SJI–92–146)

"New Employee Orientation Facilitators Guide" from "The Minnesota Comprehensive Curriculum Design and Training Program for Court Personnel" (Minnesota Supreme Court: SJI–92–155)

"Magistrates Correspondence Course" (Alaska Court System: SJI–92–156)

"Southwestern Judges' Conference on Environmental Law" (University of New Mexico: SJI–92–162)

"Cultural Diversity Awareness in Nebraska Courts" from "Native American Alternatives to Incarceration Project" (Nebraska Urban Indian Health Coalition: SJI–93–028)

"A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel" (American Judicature Society: SJI–93–068)

"Integrating Trial Management and Caseflow Management" (Justice Management Institute: SJI–93–214)

[FR Doc. 94–24660 Filed 10–5–94; 8:45 am]

BILLING CODE 6820–SC–P

federal register

Thursday
October 6, 1994

Part III

# Federal Election Commission

11 CFR Part 9003, et al.
Public Financing of Presidential Primary and General Election Candidates; Proposed Rule

## FEDERAL ELECTION COMMISSION

[Notice 1994–13]

### 11 CFR Parts 9003, 9004, 9006, 9007, 9033, 9034, 9037, and 9038

### Public Financing of Presidential Primary and General Election Candidates

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission is seeking comments on proposed revisions to its regulations governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, which establish eligibility requirements for Presidential candidates seeking public financing and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed campaigns and seek repayment where appropriate. The proposed rules reflect the Commission's experience in administering this program during the 1992 election cycle and also seek to anticipate some questions that may arise during the 1996 Presidential election cycle. The Commission is requesting comments on the draft rules set out in this Notice, and is also seeking comments on several issues for which no specific regulatory language is proposed at this time. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the supplementary information which follows.

**DATES:** Comments must be received on or before December 5, 1994.

**ADDRESSES:** Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is considering revising parts of its regulations governing public financing of Presidential campaigns, 11 CFR Parts 9001 *et seq.* and 9031 *et seq.*, in order to more effectively administer the public financing program during the 1996 election cycle. The Commission is publishing this Notice of Proposed Rulemaking to invite comments on the proposed revisions.

The areas in which the Commission is considering possible revisions are described in this portion of the Notice in narrative form. Those revisions that would affect both primary and general election campaigns are described in the first section of the narrative. The revisions that would affect only primary or general elections, respectively, are set out in the next two sections. The fourth section summarizes other miscellaneous and technical amendments the Commission is proposing for the public financing rules.

The Commission has prepared proposed regulatory language for many of these revisions, and included this language in the last section of the Notice. However, the Commission is also interested in receiving comments on other possible changes for which no regulatory language has been prepared. The narrative describes these approaches and highlights the issues to which commenters are encouraged to direct their attention. Please note that the narrative discussion is arranged by topic, whereas the draft rules are set out in numerical order. Readers should use the citations contained in the narrative to locate the corresponding proposed language in the draft rules.

### Primary and General Election Regulations

*A. Qualified Campaign Expenses*

1. Negligent Handling of Public Funds

Accounting procedures employed by the Commission make allowance for reasonable loss and normal spoilage of equipment leased or purchased by a campaign. However, the Commission has at times encountered incidents involving the mismanagement or negligent handling of public funds that do not fall into either of these categories. The proposed rules therefore seek to clarify how such negligence and mismanagement is handled in the audit process.

The Commission is seeking comment on whether, as a precondition for the receipt of public funds, the candidate should agree to meet certain standards in handling public monies as well as in overseeing the use of and accounting for public funds. Such standards would be specified at 11 CFR 9003.1(b) and 9033.1(b). If this approach is taken, the Commission welcomes comment on what standard(s) would be appropriate.

The proposed rules would amend 11 CFR 9004.4(b) and 9034.4(b), to clarify that the cost of items that are lost or misplaced due to negligence of a campaign committee will be considered a non-qualified expense for purposes of these rules. However, the Commission recognizes that there are varying degrees of negligence in this area, and that certain factors should be considered prior to any determination that a repayment is required. For example, these factors could include, but would not be listed to, whether the committee demonstrates that it made careful efforts to safeguard the missing equipment; the type of equipment involved; the number of items that were lost; and the value of the lost equipment as a percentage of the total value of the equipment leased or owned by the committee. On this latter point, the Commission notes that a lost item, such as a newly-acquired vehicle, may involve a major investment of taxpayer funds, irrespective of the fact that its cost is only a small percentage of the total amount of equipment leased or owned by the campaign committee. The Commission welcomes comments on other factors that should be considered in making this determination.

Another approach would be to limit the dollar amount of lost property that could be considered a qualified campaign expense. If a committee lost goods worth more than the specified amount, any amount over that figure would be a non-qualified campaign expense. This would have the advantage of not requiring the Commission to get involved in what could become a substantial number of negligence determinations, while recognizing that some loss is inevitable in large, lengthy campaigns. The Commission welcomes comments on this approach as well as on what reimbursement limit should be specified, if this were to be adopted.

The Commission is also seeking comments on how lost or stolen uninsured items should be reflected on statements of net outstanding campaign obligations ["NOCO"]. If an item is lost through negligence, the question is whether it should continue to be treated as an asset for purposes of the NOCO statement to avoid increasing the committee's entitlement. Comments are welcome on how this should be done.

Please note that other proposed amendments to the NOCO requirements are discussed under "NOCO Statements," *infra.* A related topic, the treatment of insurance proceeds, is discussed under "Gains on the Use of Public Funds," *infra.*

2. Closed Captioning

In 1992, Congress amended 26 U.S.C. 9003 to add a new paragraph (e), stating that no publicly funded candidate may receive funding for either the primary or general election campaign unless the

candidate agrees that all of his or her television commercials will be closed captioned or otherwise capable of being viewed by deaf and hearing impaired individuals. Pub. L. 102–393, section 534, 106 Stat. 1764 (1992). Although no corresponding amendment was made to 26 U.S.C. 9033, section 9003(e) states that this requirement applies not only to candidates who are eligible to receive amounts from the Presidential Election Campaign Fund, but also to those eligible for funding "under chapter 96" of Title 26 of the United States Code, that is, the Presidential Primary Matching Payment Account Act. The Commission is therefore proposing to add the statutory language to the candidate and committee agreement requirements found at both 11 CFR 9003.1(b) and 9033.1(b).

3. Media Reimbursements

Section 9004.6 contains rules governing expenditures for transportation and other services provided to media and Secret Service personnel by presidential campaign committees receiving public financing for the general election. Section 9034.6 is a parallel provision governing primary committees that receive public funds from the matching payment account. These provisions indicate that expenditures for these purposes will, in most cases, be regarded as qualified campaign expenses subject to the overall limitations of sections 9003.2 and 9035.1, respectively.

However, sections 9004.6 and 9034.6 also allow committees to accept limited reimbursement for these expenses from the media, and deduct any reimbursements received from the amount of expenditures subject to the overall expenditure limitation. These rules set limits on the amount of reimbursement that a committee can accept, and require committees to repay a portion of any reimbursement that exceeds those limits to the Treasury.

The proposed rules seek to clarify the application of sections 9004.6 and 9034.6 by reorganizing them without any substantive change. Under the proposed revisions, paragraphs (a) and (b) have been broken into smaller subparagraphs. Paragraph (c) has been renumbered as paragraph (e). Paragraph (d) has been renumbered as paragraph (c) and broken into smaller paragraphs, and new paragraph (d) has been inserted in order to clarify the interplay between two aspects of the existing rules: The requirement that the committee return to the media representative that portion of any reimbursement received that exceeds the actual cost of the transportation and services provided by more than 10%, and the requirement that the committee repay to the Treasury any part of the reimbursements it receives that exceeds the actual and administrative costs incurred by the committee. The Commission welcomes comments on the proposed revisions to sections 9004.6 and 9034.6.

4. Travel Expenditures

The Commission seeks comments on modifying 11 CFR 9004.7 and 9034.7 to address several issues regarding the cost of campaign-related travel using government airplanes, helicopters and other vehicles. The current rules contemplate that for plane flights between cities served by a regularly scheduled commercial airline service, the campaign must reimburse the appropriate governmental entity for the first class airfare, and that this amount is treated as a qualified campaign expense. New language in section 9004.7(b)(5)(i) and section 9034.7(b)(5)(i) would specify that, for travel by airplane, the amount of the lowest unrestricted non-discounted first class commercial airfare available for the time traveled is to be used. Discounted fares that are subject to restrictions on the dates and times of travel, or restrictions on changing flights, are not comparable to the service provided when the campaign uses a government conveyance. Campaign committees are responsible for determining these amounts at the time of the flight to ensure that the right amount is paid to the appropriate government entity, and would need to maintain documentation supporting these amounts. The lowest unrestricted non-discounted first class airfare is available from several sources including travel agents and the Official Airline Guide.

Questions have also arisen regarding cities that are served by regular air service, but first class flights are not available. In this case, the Commission proposes specifying that committees should use the lowest unrestricted non-discounted coach fare available for the time traveled. This approach is consistent with the valuation method established by the Select Committee on Ethics of the United States Senate for the use of private aircraft. See Interpretive Ruling No. 412, Select Committee on Ethics, United States Senate, 101st Cong., 1st Sess., S. Prt. 101–18 at 251–52 (1989). It is also consistent with the valuation methods used by the House of Representatives' Committee on Standards of Official Conduct with respect to gifts of private transportation not associated with official travel. See, Valuation of Gifts of Transportation on Private Aircraft, Committee on Standards of Official Conduct, Letter dated June 11, 1987.

For cities not served by regularly scheduled commercial service, the current rules specify that the amount to be reimbursed is the charter rate. The proposed revisions would clarify that the charter rate used should be for a comparable airplane of similar make, model and size. This provision would also be consistent with the approaches used by the Congressional Committees.

Questions have also arisen regarding the costs of "positioning" flights that are needed to bring the government aircraft from one stop where it dropped off the candidate and campaign staff to another stop where it will pick them up to continue the trip or return to the point of origin. New language in sections 9004.7(b)(5)(ii) and 9034.7(b)(5)(ii) would incorporate the Commission's policy that the committee should pay the costs noted above for one passenger plus fuel used and crew time. This approach recognizes that positioning flights are campaign-related, and therefore these costs are properly treated as qualified campaign expenses.

Paragraphs (b)(5)(iii) in sections 9004.7 and 9034.7 would contain provisions regarding travel on government conveyances other than airplanes. For travel by helicopter or ground conveyance, the commercial rental rate should be paid for a comparable conveyance in terms of size, model and make. Additional guidance on this area can be found in Advisory Opinion 1992–34. Proposed sections 9004.7(b)(5)(iv) and 9034.7(b)(5)(iv) would continue to require payment for the use of accommodations paid for by a government entity. Under 11 CFR 100.7(a)(1)(iii)(B), the committee should use the usual and normal charge in the market from which it ordinarily would have purchased the accommodations. The term "accommodations" includes both lodging and meeting rooms.

New paragraph (B)(8) of these sections would explicitly reflect Commission policy that travel on corporate conveyances is governed by 11 CFR 114.9(e).

Finally, new language in paragraph (b)(2) of these sections would provide additional guidance as to when a stop will be considered campaign-related. Campaign activity includes soliciting, making or accepting contributions, and expressly advocating the nomination, election or defeat of any candidate. See, e.g., AOs 1994–15, 1992–6, and opinions cited therein. The Commission has also indicated that the absence of solicitations for contributions or express advocacy regarding candidates will not

preclude a determination that an activity is "campaign related." *Id.* Accordingly, the proposed rules would include other factors to be considered in determining whether a stop is campaign-related. The rules would also retain the current language indicating that incidental campaign-related contacts during an otherwise noncampaign-related stop would not cause the stop to be considered campaign-related.

5. Winding Down Costs; Gifts and Bonuses

The current regulations at 11 CFR 9004.4(a)(4)(i) and 9034.4(a)(3)(i) permit candidates to receive contributions and matching funds, and make disbursements, for the purpose of defraying winding down costs over an extended period after the candidate's date of ineligibility ["DOI"]. These amounts are treated as qualified campaign expenses, and can result in additional audit fieldwork and preparation of addenda to audit reports to focus on these receipts and disbursements.

The Commission is proposing several ways to streamline and shorten the audit process, discussed below. In addition, comments are welcome on whether the amount that a candidate may receive for winding down costs should be limited to no more than a flat dollar amount, or a set percentage of the candidate's total expenditures during the campaign, or a set percentage of total matching funds certified for the candidate. If so, what should the amount or percentage be? If campaigns receive a set dollar amount, but do not use the entire amount for winding down costs, should they be permitted to retain the unspent amount? Allowing them to keep the remainder would serve as an incentive to complete the winding down process promptly. However, there are public policy reasons for requiring the remaining funds to be returned to the U.S. Treasury. Placing a cap on winding down expenses would assist the Commission's goal of streamlining, but the amount chosen would have to be sufficient to meet reasonable expenses incurred in winding down the campaign. Another option would be to establish a cutoff date after which winding down expenses would not longer be considered qualified campaign expenses. Other suggestions that would simplify and shorten the required audit process are encouraged. The proposed rules do not include language regarding these proposals.

The Commission seeks comments on new language in section 9034.4(A) incorporating the current practice of permitting publicly-funded primary committees to treat 100% of salary, overhead and computer expenses incurred after the candidate's date of ineligibility (DOI) as exempt compliance expenses, beginning with the first full reporting period after DOI. See, Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing, p. 25 (January, 1992). Please note that this approach does not apply to expenses incurred during the period between DOI and the date on which a candidate either re-establishes eligibility or ceases to continue to campaign. Similarly, for general election candidates, new language would be added to section 9004.4(a) to allow 100% of salary and overhead expenses incurred after the end of the expenditure report period to be paid from the legal and accounting compliance fund, provided these expenses are solely to ensure compliance with the FECA and the Fund Act.

Finally, new language in sections 9004.4(a) and 9034.4(a) would permit campaign committees to use federal funds to defray the costs of gifts or monetary bonuses for committee staff and consultants, as long as the gifts do not exceed $150 per individual and as long as all gifts and bonuses (except bonuses provided for at the outset in employment and consulting contracts) are limited to $20,000. This approach is somewhat similar to a provision included in the public funding rules for convention committees at 11 CFR 9008.7(a)(4)(xii). See 59 FR 33618 (June 29, 1994). With regard to bonus arrangements provided for in advance in employment and consulting contracts, comments are sought on whether the amount of these bonuses should be restricted to a fixed percentage of the compensation paid as provided by the contract, or whether these bonuses should be subject to the overall $20,000 limit. Such an approach would be intended to ensure that committees do not give out sizable bonuses simply because they have surplus public funds at the end of the campaign.

*B. Documentation and Reporting*

1. Documentation of Disbursements

Sections 9003.5(b)(1)(i) and 9033.11(b)(1)(i) set forth the documentation required for disbursements in excess of $200. Although a canceled check, negotiated by the payee, is required in most situations, it is not currently required if the committee presents a receipted bill from the payee stating the purpose of the disbursement. The proposed rules would change the documentation requirements so that committees must provide canceled checks negotiated by the payees for all disbursements over $200. This change would assist the Commission's audit staff in verifying that public funds are spent on qualified campaign expenses. Committees should already have canceled checks in their possession, so production would not be burdensome. Please note that, as in the past, the proposed rules would require that documentation in addition to the committee's check be provided for disbursements exceeding $200.

2. Alphabetized Schedules

The proposed rules include two new sections, 11 CFR 9006.3 and 9037.4, which would require that presidential campaign committee reports containing schedules generated from computerized files, list in alphabetical order the sources of the receipts, the payees and creditors. For individuals, including contributors, the list must be in alphabetical order by surname. However, presidential campaign committees would not be required to computerize their records if they do not wish to do so. The new provision is intended to remedy situations in which committees maintain computerized records of contributors or payees in alphabetical order, but file schedules with the order of the names scrambled. That practice makes it very difficult, if not impossible, to locate particular names on the committee's reports if the schedules are voluminous, thereby thwarting the public disclosure purposes of the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* ["FECA"] and making it more difficult to monitor compliance with the contribution limits.

*C. Audits*

1. Sampling and Disgorgement

The Commission has a statutory obligation to complete the audits of publicly funded committees in a thorough and timely manner. In the past, the resources required to conduct reviews of the contributions received by presidential committees contributed to the Commission's difficulty in fulfilling that obligation.

Beginning with the 1992 election cycle, however, the Commission began to make more extensive use of statistical sampling for audits of contributions received by publicly financed presidential primary election committees, and to use the sample results to quantify, in whole or in part, the dollar value of any related audit

findings. While the Commission continues to conduct a limited non-sample review of contributions received by these committees, most audit testing of contributions and supporting documentation is now done on a sample basis. The Commission is now proposing that new paragraph (f) be added to 11 CFR 9007.1 and 9038.1 to incorporate these procedures.

The Commission notes that this approach would apply in a general election only to contributions raised due to a deficiency in the Presidential Election Campaign Fund, or to contributions raised by new or minor party candidates. See 26 U.S.C. 9003(c)(2), 9006(c); 11 CFR 9003.2(b)(2), 9003.3(b).

The use of statistical sampling is legally acceptable for projecting certain components of a large universe, such as excessive and prohibited contributions. *See, e.g., Chavez County Home Health Service* v. *Sullivan*, 931 F.2d 904 D.C. Cir. 1991) (sampling audit used to recoup Medicaid overpayments to health care providers); *Michigan Dep't of Education* v. *U.S. Dep't of Education*, 875 F.2d 1196 (6th Cir. 1989) (sampling of 259 out of 66,368 total payment authorizations upheld as proper basis for determining amount of misexpended federal funds in vocational-rehabilitative program); *Georgia* v. *Califano*, 446 F. Supp. 404 (N.D. Ga. 1977) (Medicaid overpayments).

The statistical sampling technique currently employed in this process, known as Dollar Unit Sampling, Probability Proportional to Size, or Combined Attribute Variable Sampling, is widely accepted in the auditing profession. This plan is discussed in the American Institute of Certified Public Accounts' Audit and Accounting Guide entitled Audit Sampling, and is the only sampling plan capable of producing dollar projections supported by the audit software package IDEA, which is marketed by the American Institute of Certified Public Accountants. This same technique has been used by the Commission since 1980 to determine the amount of committees' matching fund payments.

The Commission is using this sampling plan to evaluate committees' compliance with contribution prohibitions and limitations, itemization of contributions, omission of disclosure information and receipts documentation. See 2 U.S.C. 432(c), 434(b), 441a, 441b, 441c, 441e, 441g. For example, the Commission projects the total amount of excessive or prohibited contributions based on apparent excessive or prohibited contributions identified in a sample of a committee's contributions. This projection becomes the basis, in whole or in part, of the audit finding.

The Commission informs the committee which items serve as the basis for the sample, and the committee responds only to the specific sample items used to make the projection. If the committee shows that any errors found among the sample items were not excessive or prohibited contributions, timely refunded, reattributed or redesignated, or for some other reason were not errors, a new projection is made, based on the reduced number of errors in the sample.

The Commission is further proposing to clarify at new paragraphs 9007.1(f)(3) and 9038.1(f)(3) that the amount of any excessive or prohibited contributions that are not refunded, reattributed or redesignated in a timely manner shall be paid to the United States Treasury. Committees have 30 days from the date of receipt in which to refund prohibited contributions, and 60 days in which to seek the reattribution, redesignation or refund of excessive contributions. 11 CFR 103.3(b) (1), (2) and (3). A committee's failure to take action on these contributions, as well as attempts to cure them outside of the specified time periods, would cause these contributions to be treated as in violation of the FECA.

The equitable doctrine of disgorgement supports the payment to the Treasury under these circumstances. *See generally, United States* v. *Bonanno Organized Crime Family of La Cosa Nostra*, 683 F. Supp. 1411 (E.D.N.Y. 1988), *aff'd* 879 F.2d 20 (2d Cir. 1989) (disgorgement an appropriate, non-punitive remedy to deprive wrongdoers of their ill-gotten gains and to deter future violations). A payment to the Treasury is an equitable remedy for contributions that have been accepted in violation of 2 U.S.C. 441a and 441b, and is also consistent with past Commission practice. See Matter Under Review ["MUR"] 1704 (based upon preliminary estimates, Commission directed respondents to pay $350,000 to the United States Treasury for contributions that would have exceeded section 441a limits); Plaintiff's Motion to Effectuate Judgment, *FEC* v. *Populist Party*, No. 92–0674 (HHG) (D.D.C. filed May 4, 1993).

Moreover, this proposed payment is analogous to, and consistent with, the requirement at 11 CFR 9038.6 that stale-dated checks be paid to the Treasury. This issue arose after the 1984 election cycle, and the rule was promulgated as a means to codify the Commission practice of requiring disgorgement, which was implemented during that cycle. *See, e.g.*, 52 FR 20864, 20874 (June 3, 1987).

Disgorgement eliminates the need for the Commission to monitor a committee's refunds of excessive or prohibited contributions. In addition, it is easier for a committee to make one payment to the Treasury, as opposed to refunding multiple contributions. Finally, this is a practical approach in those situations where it is difficult to discern the original contributors.

2. Further Streamlining the Audit Process

The Commission is seeking comments and suggestions on ways to further reduce the amount of time it takes to audit publicly funded presidential committees, to make repayment determinations, and to complete the enforcement process for these committees. The Commission's responsibility for conducting a thorough audit and examination of qualified campaign expenses is set out at 26 U.S.C. 9007(a) and 9038(a). The Commission has an additional responsibility to conduct adjudications as to whether any portion of the public funds received should be subject to a repayment. 26 U.S.C. 9007(b) and 9038(b). The public financing statutes at 26 U.S.C. 9007(c) and 9038(c) specify a three year time period in which the Commission will notify publicly funded committees of repayment determinations. Separate enforcement procedures are prescribed under 2 U.S.C. 437g.

The Commission has taken several actions to help insure that the audit and repayment processes are completed as expeditiously as possible. For example, the 1991 revisions to the public financing regulations eased compliance with the state-by-state allocation rules set forth at 11 CFR 106.2, and implemented improved use of subpoenas in presidential audits. See 56 FR 35899–900, 35903–04 (July 29, 1991). In addition, as noted above, the Commission has begun to use generally accepted sampling procedures in conducting these audits, and has instituted a policy that limits a committee to one extension of time in which to respond to the Interim and Final Audit Reports ["IAR" and "FAR"]. These actions are having the desired effect, in that the Commission is currently on schedule, or ahead of schedule, with respect to nearly all 1992 audits.

Given this situation, one approach would be to wait until after the new rules and procedures have been in place for an entire presidential election cycle before evaluating what additional

streamlining methods are warranted, if any. In the alternative, the Commission welcomes suggestions for further streamlining these processes, and seeks comments on several possible changes that are explained below.

The Commission notes that it is important to ensure that whatever streamlining measures are adopted do not adversely affect the statutorily required audit process, the committees' due process rights when repayment determinations are made, or the Commission's ability to effectively conduct subsequent enforcement actions.

As for modifications to the actual audit and repayment processes, the Commission is first considering whether the committee's oral presentation should be held at an earlier point. Currently a committee may request the opportunity to make an oral presentation if the committee submits written materials disputing the initial repayment determination contained in the FAR. 11 CFR 9007.2(c)(3), 9038.2(c)(3). Please note that the Commission is not considering adding a second hearing to the audit and repayment processes, but only whether the current hearing should be held at a different point.

The Commission recognizes that some committees might prefer to make this presentation earlier in the process. Moving up the hearing could also help the Commission resolve issues at an earlier date. However, it is unclear whether advancing the hearing would in and of itself shorten either the audit or repayment process.

The Commission's experience has been that many issues are resolved or narrowed as the audit progresses and the amount of the repayment is further refined. Hence, an earlier date could result in a longer, less manageable hearing on more issues. To date, the Commission has averaged only five oral hearings per cycle, because sufficient issues were resolved in or before the FAR in the other audits to make a hearing unnecessary. The earlier in the process a hearing is held, the more likely it is that a committee will request one. This approach could thus slow down, rather than speed up, the audit process.

The Commission also seeks comments on whether to shorten the time between various stages of the audit, repayment, and enforcement processes, or to eliminate some of these stages. For example, the IAR currently includes a preliminary repayment calculation, while the FAR includes an initial repayment determination. 11 CFR 9007.1(c), (d); 9038.1(c), (d). The Commission issues the final repayment determination following consideration of the initial repayment determination in the FAR, along with, *inter alia*, information contained in the committee's written response or presented at the hearing, if one is held. 11 CFR 9007.2(c)(4), 9038.2(c)(4).

One alternative would be to include the initial repayment determination in the IAR, and include the final repayment determination and statement of reasons in the FAR. The committee would then respond to the IAR with a written statement and could request the opportunity to make an oral presentation, as is now done following the FAR. This hearing and related documentation would serve as the basis for the FAR.

The committee would continue to have the right to petition for a rehearing, in accordance with 11 CFR 9007.5 and 9038.5, but would exercise this right following the FAR/final repayment determination, rather than after the later, separately-issued final repayment determination that occurs under the present rules. Please note that including the initial repayment determination in the IAR would not change the rule that issuance of an IAR serves as notification of repayment determinations. See 11 CFR 9007.2(a)(2) and 9038.2(a)(2).

A variation of this approach would be to provide a staff draft of the IAR to the committee at the same time it is sent to the Commission, much in the manner that the Commission currently provides a probable cause to believe brief to respondents pursuant to 2 U.S.C. 437g(a)(3). The committee could provide a written response to the staff-prepared IAR and request a hearing before the Commission. The hearing and additional materials submitted would serve as the basis for the Commission's adoption of the FAR. The Commission would subsequently issue the final repayment determination and statement of reasons.

While this approach could take less time, committees might prefer to know when they are preparing their responses whether the Commission agrees with the staff's analysis of the issues presented. This would not be possible if the committee received the staff draft of the IAR at the same time it was sent to the Commission. Also, the staff draft could not contain an interim repayment determination, as that must be approved by the Commission.

The Commission is also concerned with how confidentiality requirements could impact on these proposed revisions. When committee activities raise both repayment and enforcement issues, the current confidentiality provisions require that matters already determined by the Commission to warrant enforcement action not be made public during the Commission's discussion of the initial repayment determination. For example, the publicly released FAR does not discuss the referral of specific matters for enforcement under 2 U.S.C. 437g. See 11 CFR 9007.1(e)(2), 9038.1(e)(2).

Regardless of what other changes might be made, the Commission is considering whether the IAR should be made public at the time it is sent to the committee. If this were done, the Commission's "sunshine" rules might require a public discussion of the IAR, unless the document met other criteria requiring closed discussion under 11 CFR 2.4.

The Commission recognizes that committees may prefer that the preliminary repayment calculation, which is now contained in the IAR, not be publicly released, because the amount of the requested repayment may be substantially altered prior to the issuance of the FAR or the final repayment determination. On the other hand, publicly releasing the IAR could encourage committees to address issues at an earlier point, rather than waiting until the later stages of the audit and repayment processes, as now sometimes occurs. If the decision is made to release the IAR, the revised rules would note that the repayment sought could be adjusted upwards or downwards, based on any subsequent information.

Finally, the Commission is considering whether, in those audits that lead to enforcement actions, the enforcement process should begin at an earlier point, such as by making reason to believe findings when the IAR is issued. This would permit the investigation to proceed concurrently with the audit and repayment processes, so that the final repayment determination and statement of reasons could be issued when the enforcement matter is concluded.

The Commission already has begun to initiate enforcement actions at an earlier point, in appropriate cases. However, it may prove difficult, if not impossible, to formulate a specific policy that would apply equitably to all audits as to when the enforcement process should begin and when it should be completed. The Commission would not want the completion of the audit and repayment processes to be delayed because the enforcement action is still underway. Also, in some situations, it may not be possible for the Commission to open an enforcement matter before it issues a final repayment determination, if that determination constitutes the

Commission's earliest analysis of whether certain actions may constitute violations. Thus the current case-by-case approach may prove to be the best alternative.

3. Administrative Record

The Commission also has prepared new sections 9007.7 and 9038.7 to explain which documents constitute the administrative record for purposes of judicial review of final determinations regarding candidate certification, eligibility, ineligibility, and repayment. For example, the administrative record includes documents and other supporting evidence on which the Commission's decision is based such as the candidate agreement, matching fund submissions, Interim Audit Report, NOCO statement, the Final Audit Report, transcript of the committee's oral presentation, the final repayment determination, statements of reasons, and the certifications of Commission votes. On the other hand, the Commission has never considered the administrative record to include documents in the files of individual Commissioners, or documents in FEC employees' files which do not constitute a basis for the Commission's decisions. It would also not be appropriate to include in the administrative record transcripts or tapes of Commission discussions of audit or repayment matters. Although these materials may sometimes be made available under the Freedom of Information and Government in the Sunshine Acts, they do not provide an adequate explanation of the reasons for the Commission's decisions because they represent pre-decisional discussions. Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product, would also not be made part of the administrative record. The Commission welcomes comments regarding the types of documents and materials that should or should not be considered part of the administrative record.

*D. Applicability of the Debt Collection Act to the Certification Process*

The Debt Collection Act, 31 U.S.C. 3701 *et seq.* ["DCA"], at section 3716, authorizes the practice of administrative offset, whereby amounts owed to the Government may be deducted from amounts due from the Government to a debtor if certain requirements are met. This means, for example, that the Commission could obtain repayments from certain publicly funded campaigns that have failed to make timely restitution of improperly-utilized public funds, if that candidate qualified for public funding in a future election cycle.

One of the DCA's requirements is that, before an agency can utilize this procedure, it must have prescribed regulations describing how this will be done. However, the DCA has other ramifications both for public funding, and for the Commission's enforcement process under the FECA. For example, in some situations, section 3717 of the DCA would require charging interest, penalties and processing and handling costs on overdue debts. This could include both overdue repayments and overdue civil penalties.

The Commission has an ongoing rulemaking that would revise various FECA enforcement procedures, and is planning to publish an additional Notice in connection with that rulemaking to seek comments on how the DCA might be utilized in both the FECA and the public funding context. Comments received in response to that Notice will serve as the basis for deciding whether to amend the public funding rules to provide for administrative offset, interest and other charges.

The Commission is also seeking comment on the related question of whether, absent implementation of the DCA, it would be appropriate to assess interest on late repayments (those made after 90 days following notice of the Commission's repayment determination) and during extensions of time on repayment determinations, especially those that exceed the 90-day period established at 11 CFR 9007.2(d)(1) and 9038.2(d)(1).

While the presidential fund Acts contain no language on interest assessment, federal common law holds that interest may be assessed on debts owed the government, even without a statutory provision granting that power. *Robinson* v. *Watts Detective Agency,* 685 F.2d 729, 741 (1st Cir. 1982). In particular, a statute is not necessary to compel payment of interest where equitable principles allow this. *Young* v. *Godbe,* 82 U.S. 562, 565 (1872).

In the absence of charges for delinquent payments, debtors have little or no incentive to make timely payments. Without this requirement, debtors may be more likely to pay their private sector debts first, as these generally accrue interest, and their government debts last.

The Commission has already established the precedent that it may assess interest when a presidential committee seeks a stay of a repayment determination pending appeal. 11 CFR 9007.5(c)(4), 9038.5(c)(4). One reason cited by the Commission for taking this action was to protect the Treasury "by helping to ensure that the repayment challenge is a serious one and not a dilatory tactic." Agenda Document #86–118, Proposed Revision of Title 26 Regulations (Nov. 26, 1986). Another was that, if the candidate is earning interest on the disputed repayment amount, the Treasury and not the candidate should receive the benefit if the Commission's repayment determination is upheld. *Id.* Both reasons are equally applicable to this discussion.

Another argument in support of collecting interest is that, by agreeing to certain conditions, including an audit and appropriate repayment, the presidential committees have established a contractual relationship with the Commission under which interest assessment becomes appropriate. *See West Virginia* v. *United States,* 479 U.S. 305, 310 (1987). Also, if a debtor-creditor relationship is established, "interest is allowed as a means of compensating a creditor for loss of use of his money." *United States* v. *United Drill and Tool Corporation,* 183 F.2d 998, 999 (D.C. Cir. 1950). Such a relationship exists in this context in that, prior to the receipt of public funds, the candidate must agree to repay unexpended funds, money determined to be spent in an unqualified manner, and amounts received in excess of entitlement. 11 CFR 9003.1(b)(6), 9033.1(b)(7).

If the Commission decides to expand the current interest assessment policy, it would seem appropriate that the same interest computation formula be utilized across the board. Under current 11 CFR 9007.5(c)(4) and 9038.5(c)(4), the interest assessed is the greater of that calculated using the formula set forth at 28 U.S.C. 1961 (a) and (b) for computing interest on money judgments in federal civil cases, or the amount actually earned on the set-aside funds in controversy. The Commission welcomes comments on whether this or some other approach should be taken, should additional regulations be promulgated.

Please note that there is no specific language in the regulatory text that addresses this situation. The Commission welcomes comments on any aspect of this proposal.

**Primary elections**

*A. Eligibility for Matching Payments; Amount of Entitlement*

1. Complete Contributor Identifications

Treasurers of political committees, including authorized committees of Presidential candidates, are required by 2 U.S.C. 432(i) and 434(b) to use their

best efforts to obtain, maintain and report the name, address, occupation and employer of all contributors who give over $200 per calendar year. The Commission recently issued revised rules regarding this reporting obligation. See 58 FR 57725 (Oct. 27, 1993). During that rulemaking, two commenters suggested revising 11 CFR 9036.2 so that Presidential primary candidates would only receive matching funds for contributions exceeding $200 containing complete contributor information. While full contributor identifications are required for such contributions in threshold submissions under 11 CFR 9036.1(b), they are not currently required under 11 CFR 9036.2(b)(1)(v) for additional submissions for matching funds. Accordingly, comments are requested on whether to delete section 9036.2(b)(1)(v), thereby requiring complete contributor information for all matchable contributions exceeding $200. In the alternative, comments are sought on only matching these contributions if committees can provide evidence demonstrating they made their best efforts to obtain the information. Please note that neither of these alternatives is included in the proposed regulations which follow.

2. NOCO Statements

Section 9034.5(a) of the regulations requires the candidate to submit a statement of net outstanding campaign obligations ["NOCO"] within 15 days of his or her date of ineligibility. Section 9034.5(f)(1) also requires the candidate to submit a revised statement of net outstanding campaign obligations with each subsequent matching payment request. These NOCO statements provide the Commission with an indication of the campaign's financial status. The Commission uses these statements to determine whether the candidate is entitled to receive any additional matching funds.

In some circumstances, the NOCO statements do not provide adequate information about the candidate's remaining obligations. For example, many NOCO statements list the candidate's estimated necessary winding down costs as a single lump sum, making it difficult for the Commission to review the cost estimate to determine whether the candidate is entitled to receive the entire estimated amount. In addition, because several weeks now elapse between submission of the NOCO statement and certification of the matching payments due to changes in the Treasury Department's payment policy, the certification often does not reflect the true financial status of the committee at the time of certification. The candidate's financial situation invariably changes during this period, and any change in the committee's net outstanding campaign obligations should result in a change in the committee's entitlement.

The proposed rule seeks to address these problems. Section 9034.5(b) would be amended to require a breakdown of the estimated winding down costs listed on the NOCO statement by category and time period. This breakdown would include estimates of quarterly or monthly costs for office space rental, staff salaries, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing, and storage from the date of the NOCO statement until the expected termination of the committee's political activity.

The proposed rule would also require a candidate who submits a matching payment request and accompanying NOCO statement after his or her date of ineligibility to submit an additional revised NOCO statement. This statement would be due just before the certification date, on a date that would be published by the Commission with the dates for matching fund submissions and matching payment certifications. The candidate would be required to prepare the statement so that it reflects the financial status of the campaign three business days before the statement's due date. The Commission would then use this statement to determine whether the amount of matching payments to be certified should be adjusted to reflect a committee's changed financial situation. This would ensure that the amount certified accurately reflects the committee's financial situation at the time of certification. The Commission welcomes comments on these proposed rules.

*B. Qualified Campaign Expenses*

1. Funding General Election Expenses with Primary Funds

The Presidential Election Campaign Fund Act, the Presidential Primary Matching Payment Account Act, and Commission regulations require that publicly funded presidential candidates use primary election funds only for expenses incurred in connection with primary elections, and that they use general election funds only for general election expenses. 26 U.S.C. 9002(11), 9032(9); 11 CFR 9002.11, 9032.9. These requirements are tied to the overall primary and general election expenditure limits set forth at 2 U.S.C. 441a (b) and (c), and at 26 U.S.C. 9004(b) and 9034(b). See also 11 CFR 9004.1, 9004.3(b), 9034.1(d). Therefore, once a primary candidate is the clear and projected winner of the primary election process and begins to campaign by addressing issues and comparability with other projected general election candidates, certain costs incurred prior to the candidate's primary election date of ineligibility are considered general election expenses that are reimbursable by the general election committee.

The Commission is seeking comments on whether the pertinent rules should provide more specific guidance on how certain expenditures might be characterized. Questions have arisen in recent election cycles as to whether certain primary funding was in fact used to benefit the general election. As additional states choose to hold their state nominating conventions or primary elections early in the election cycle, the major parties' selection of a nominee is increasingly likely to be decided long before the convention. Once a candidate has secured enough delegates to win the nomination, the focus of the campaign may turn in large part to the general election. However, the Commission realizes that it can be difficult to distinguish between legitimate primary campaign activity, such as that which is designed to lock up delegates, or is related to the primary outcomes or pre-convention preparation, from activity that is geared towards the general election.

The Commission is considering several alternatives that would provide additional guidance to presidential campaign committees on how such expenditures are treated. The Commission welcomes comments on any of these approaches, as well as suggestions on other ways available to deal with this situation.

One question concerns depreciation of primary committee assets in this situation. Section 9034.5(c)(1) currently permits a standard 40% depreciation of capital assets held by a primary campaign committee, except for items acquired after the committee's DOI. A higher depreciation is allowed for a particular item if the committee demonstrates through documentation that the asset's fair market value is lower.

Under certain circumstances, however, the 40% figure may be overly generous. For example, if the primary committee purchases a $20,000 computer system shortly before the primary election DOI and then sells it to the general election committee, allowing the primary campaign to assume a 40% depreciation would result in a nearly $8,000 subsidy from the primary to the

general election committee. The Commission is therefore proposing that paragraph 9034.5(c)(1) be amended to clarify that a higher, lower, or no depreciation may be claimed in appropriate cases.

Current 11 CFR 9034.4(b)(3) states that expenses incurred after a candidate's primary election DOI are not considered qualified campaign expenses, except for certain winding down costs and costs incurred in continuing to campaign. See 11 CFR 9034.4(a)(3). The Commission is considering whether this language should be expanded to clarify that, consistent with 26 U.S.C. 9002(11)(B) and 11 CFR 9002.11(b), goods received prior to the DOI that are used for the general election, and pre-DOI services that provide a benefit to the general election campaign, are considered qualified campaign expenses for the general election and not for the primary election.

One approach would be to allocate the cost of each capital asset between the primary and the general election, based on when the asset was acquired and the time the committee began to focus on the general election. This could be difficult to administer, however, requiring as it would an asset-by-asset determination.

Another approach would be to include a presumption in section 9034.4(b)(3) that capital assets purchased during a certain period before the first day of the candidate's party's national nominating convention are general election assets. Section 9034.4(b)(3) of the proposed rules would set a presumed cutoff date of 60 days before the start of the candidate's party's national nominating convention. However, the Commission is requesting comments on whether some other cutoff point would better serve this purpose, as well as whether a uniform cutoff date, such as June 15 preceding the national nominating convention, would be more appropriate. If so, what date should be selected? If a more flexible approach is desirable, how should the applicable timeframe be computed? Should it be the date of the candidate's party's last state primary election?

Whatever approach is adopted, the presumption would be rebuttable based on each candidate's particular circumstances. If a candidate could demonstrate that he or she was still largely involved in campaigning for the nomination after the presumptive cutoff date, that date could be moved back. In the case of a brokered convention, several candidates might be found to have focused nearly exclusively on securing the nomination until the date during the convention on which one in fact did so. Conversely, a candidate who became the clear and projected nominee of a party early in the presidential election year might be found to have made expenditures in connection with the general election well in advance of the designated cutoff date.

In determining how expenditures made as of a certain date should be characterized, the Commission might consider such information as how many delegates the candidate has, the number of candidates who received votes in each of the candidate's party's most recent state primary elections or other state nominating procedures, the relative percentages received by each candidate in these proceedings, and whether the candidate had begun to focus on issues raised by other projected general election candidates and his or her comparability with such candidates. The Commission welcomes suggestions of other factors that could prove helpful in making this determination.

Another question involves local campaign offices that continue to operate after a state's primary election or other nominating procedure is over, when the office is no longer focused on securing the nomination in that state. The Commission is proposing a rebuttable presumption that a local campaign office that remains open more than 30 days after a state's primary election, or the close of any other nomination process in that state, is operating in support of the general election campaign. The Commission welcomes comments on this approach, as well as suggestions for others that would result in a fair attribution of these expenditures.

This situation becomes more complicated when applied to supplies and materials. The Commission is therefore seeking comments on how such items should be treated. One approach would be to require an inventory of everything on hand, including campaign materials but perhaps excluding items below a certain threshold amount, as of the DOI. These items would then be sold to the general election at cost. If there was no inventory, everything purchased or delivered in the last 60 days before the DOI would be presumed to be a general election expense. The Commission notes that this approach could be difficult to verify, since the inventory would be at a point in time which could not be recreated. Nevertheless, it is important that primary election funds not be used to subsidize the general election.

Finally, the Commission welcomes comments on how other foods and/or services, such as campaign-related travel and media expenses, should be treated in this context. For example, if a candidate travels to a state where the primary has already been held, some of the travel could be for fundraising to help obtain the nomination, but some or all might be for general election purposes.

Nothing in this NPRM is intended to revise the Commission's "continuing to campaign" rules set forth at 11 CFR 9034.4(a)(3)(ii). These rules allow a candidate who is no longer eligible for matching funds but is still seeking the nomination to use post-DOI contributions to pursue his or her primary campaign—a different situation than that addressed in this proposal.

The Commission recognizes that, under unusual circumstances, a candidate who appears to have been eliminated early in the election cycle may later secure the nomination. As is currently true, these special situations would be evaluated on a case-by-case basis.

Conversely, a candidate who appears to have secured the nomination early in the campaign may in fact fail to obtain it, and thus not qualify for general election funding. The Commission is less concerned with this possibility, as the focus of this portion of the rulemaking is on how certain expenditures should be treated by those candidates who go on to become the convention's nominee.

2. Convention Expenses of Ineligible Candidates

The Commission is seeking comments on whether expenses incurred by losing primary election candidates in attending their party's national nominating convention should be considered a qualified campaign expense under 11 CFR 9032.9. Such attendance could provide a defeated candidate the opportunity to continue to fundraise, perhaps to campaign for the vice presidential nomination, and to maintain contact with his or her pledged convention delegates.

The Commission notes, however, that qualified campaign expenses are defined in the Presidential Primary Matching Payment Account Act at 26 U.S.C. 9032(9)(A) as those "incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election." This definition seemingly does not apply to those no longer seeking the presidential nomination. Also, the term "candidate" is defined as "an individual who seeks nomination for election to be President of the United States," and thus does not on its face

include those seeking the vice presidential nomination. 26 U.S.C. 9032(2). Further, in recent years presidential candidates have increasingly announced their vice presidential selections in advance (at times well in advance) of the national convention. Finally, under 11 CFR 9034.1(b), candidates can already count fundraising expenses incurred following their Date of Ineligibility (DOI), including those incurred at a national nominating convention, as qualified campaign expenses.

The Commission is also concerned about potential practical problems with this approach. For example, if a candidate's DOI occurs early in the election cycle, there will be a substantial gap between the DOI and the date of the convention. The purpose of the 10% rule (26 U.S.C. 9033(c)(1)(B); 11 CFR 9033.5(b)), under which a candidate becomes ineligible for additional funding on the 30th day following the date of the second consecutive primary election in which he or she receives less than 10% of the popular vote, is to discontinue funding of candidates who have not received substantial support following their initial establishment of eligibility. See 122 Congressional Record S.3787 (daily ed. March 18, 1976) (remarks of Sen. Taft).

A related concern is that, under these circumstances, the Commission may be well along in the audit of a candidate's campaign by the time the convention opens. Providing an additional matching fund period to such candidates could substantially complicate the audit process.

If this approach were to be adopted, the Commission welcomes comments on who should be covered by the new provision, and during what timeframe it should apply. Should this be limited to expenses incurred by the candidate, or the candidate and his or her immediate family, or should it also include campaign staff? If the latter, should such staff be limited, either by number or position held in the campaign? The Commission notes that, where a number of candidates sought the nomination, the expenses of these candidates, their families, and accompanying campaign staff could be substantial.

Please note that the draft rules that follow do not include any specific regulatory language on this point.

*C. Audits*

1. Calculation of Repayment Ratio

Under section 9038.2(b)(2), committees are required to repay amounts received from the matching payment account that are used for non-qualified campaign expenses. The amount of any repayment sought under section 9038.2(b)(2) bears the same ratio to the total amount of non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of the candidate's date of ineligibility. Repayment determinations under this section include all non-qualified campaign expenses paid between the committee's date of inception and the point when committee accounts no longer contain matching funds. Thus, the repayment amount is calculated by multiplying the total non-qualified campaign expenses by the repayment ratio, as determined on the candidate's date of ineligibility.

However, this section does not serve its intended purpose when applied to a candidate that receives a significant amount of matching payments after his or her date of ineligibility. Section 9038.2(b)(2) does not take into account private contributions received by the candidate after his or her date of ineligibility. Consequently, when this section is applied to a candidate that receives a significant amount of private contributions after that date, it generates a repayment amount that does not accurately reflect the ratio of matching payments to private contributions actually received by that candidate during the courts of the campaign.

Similarly, section 9038.2(b)(2) is inconsistent with the statute when applied to a candidate who does not receive matching payments until after his or her date of ineligibility. Section 9038(b)(2) of the Matching Payment Account Act requires a candidate who uses public funds for non-qualified campaign expenses to repay a portion of the public funds he or she received to the Treasury. However, when section 9038.2(b)(2) of the regulations is applied to a candidate who does not receive matching payments until after his or her date of ineligibility, the rule arguably generates a repayment ratio of zero even if the candidate incurred numerous non-qualified campaign expenses. Thus, under the regulations, the candidate would not be required to repay any of those funds, even though the statute specifically requires repayment in this situation.

Section 9038.2(b)(2)(iii) of the proposed rules contains two proposed revisions that would address these situations. The first proposal would change the date for determining the candidate's repayment ratio from the date of ineligibility to 90 days after the date of ineligibility. A ratio determined on the later date would take into account most of the post-DOI private contributions received by the candidate. As a result, the ratio will more accurately reflect the amount of matching payments and private contributions actually received. This approach would also produce an accurate repayment ratio and repayment amount for those candidates that do not receive any matching payments until after their date of ineligibility. As a result, this proposed revision would address both of the situations described above.

The second proposal, which is set out in paragraph (A) of this section, would take a narrower approach. Under this proposal, the Commission would treat all matching funds certified in response to matching payment submissions received as of the candidate's date of ineligibility as though they were certified as of the candidate's date of ineligibility. Treating these funds as though they were certified pre-DOI would allow the Commission to use these funds to calculate the repayment ratio, resulting in a ratio of an amount greater than zero that reflects the mix of public funds and private contributions actually received. The Commission could then use this ratio to determine the amount that the candidate is required to repay under section 9038(b)(2) of the statute.

The Commission welcomes comments on which approach would be preferable. Please note that, if the first approach is adopted, paragraph (A) will be unnecessary, and therefore will not be included in the final rules. If paragraph (A) is adopted, the candidate's repayment ratio will continue to be determined as of the candidate's date of ineligibility, as it is under the current rules.

In an effort to improve clarity, the proposed rules would also break this section down in to separate paragraphs. The Commission welcomes comments on the proposed changes to section 9038.2(b)(2).

*D. Part 9039 Investigations*

1. Commission Actions Following Part 9039 Investigations

The Commission's review and investigatory authority for administering the matching fund program is set forth at 26 U.S.C. 9039(b). In carrying out these responsibilities, the Commission must perform a continuing review of candidate and committee reports and submissions, and other relevant information. The implementing regulations are found at 11 CFR part 9039.

For the most part the Commission's review is routine, carried out in accordance with the eligibility, audit and repayment procedures contained elsewhere in the regulations. 26 U.S.C. 9039(b) and its implementing regulations provide authority to conduct audits and investigations outside of the audits required under 26 U.S.C. 9038 and 11 CFR part 9038. Most of these cases have involved issues relating to a candidate's continuing eligibility or the amount of his or her entitlement during the course of the campaign, although they could also involve a post-election inquiry.

Section 9039.3 of the regulations describes how examinations, audits and investigations are conducted in these inquiries. The Commission is considering whether to provide in the final rules a fuller explanation of actions that may be taken at the conclusion of any such action. Please note that there is no specific language in the text of the proposed rules on this point.

Under this approach, if the Commission decided to take no further action in a 9039 case, the candidate(s) and committee(s) involved would be so notified. If the Commission decided that there was a sufficient basis to take further action, such action would follow as closely as possible the procedures already in place for comparable situations. See e.g., 11 CFR 9033.10. For example, a post election inquiry could lead to either an additional repayment determination, in which case the procedures set forth at 11 CFR 9038.2 for making and challenging repayment determinations would apply, or a 2 U.S.C. 437g enforcement action.

The Commission welcomes comments on these proposed amendments to 11 CFR part 9039.

**General Elections**

*A. General Election Legal and Accounting Compliance Costs*

On March 1, 1994, the Commission received a Petition for Rulemaking from the Center for Responsive Politics requesting that the Commission repeal its rules providing for the use of privately-financed general election legal and accounting compliance funds ["GELAC"] in Presidential campaigns. Specifically, the petitioner seeks repeal of 11 CFR 100.8(b)(15) (last two sentences), 106.2(b)(2)(iii) (last sentence), 9002.11(b)(5), 9003.3(a), and 9035.1(c)(1). The petition argues that the Commission's rules undermine the ability of the public financing laws to achieve the objective of reducing the influence of large contributions in Presidential elections. It charges that these regulations permit evasion of the prohibition on accepting contributions to defray qualified campaign expenses established by the Presidential Election Campaign Fund Act. 26 U.S.C. 9003(b). Furthermore, the petition claims that the Commission's regulations violate the spending limits established by the FECA. 2 U.S.C. 441a.

On March 30, 1994, the Commission published a Notice of Availability seeking statements in support of or in opposition to the petition. 59 FR 14794 (March 30, 1994). In response to the Notice, four statements have been received from the Internal Revenue Service, Public Citizen, Common Cause, and a joint comment from the Democratic National Committee and the Republican National Committee. Two were supportive while one opposed the reversal of the Commission's long standing policies regarding legal and accounting costs. The Internal Revenue Service found no conflict with the Internal Code or the Regulations thereunder.

The Commission is continuing to consider the petition as part of this rulemaking and seeks further comment on abolishing the GELAC. The Commission is also seeking evidence either supporting or refuting the petitioner's claim that the privately-funded GELAC undermines the public financing of general election campaigns by allowing the actuality and the appearance of improper influence in Presidential elections. Absent evidence supporting the petitioner's claim, the Commission would be reluctant to completely eliminate the GELAC because Presidential campaigns would need to devote some of their public funds for compliance expenses, instead of using public moneys for campaign expenses. The result could be significant difficulty in complying with the public financing statutes and the FECA. The GELAC is also used to make repayments, which would need to be funded from other sources. Moreover, the elimination of monetary contributions of $1000 or less for compliance purposes could force some committees to turn to much larger in-kind donation of legal and accounting services to ensure that their compliance obligations are satisfied. See 2 U.S.C. 431(8)(B)(ix) and (9)(B)(vii).

Accordingly, comments are requested on several alternative revisions to the GELAC. For example, should the amount raised and spent for compliance costs be limited to a fixed percentage of the general election spending limit? If so, what amount or percentage would be sufficient to ensure that adequate amounts are available for meeting compliance obligations? Please note that this approach is not included in the proposed rules which Follow.

The petitioners and one commenter also challenge the appropriateness of allowing fundraising costs for the GELAC to be paid for by the GELAC on the ground these expenses are campaign expenses that should be subject to the spending limits. The current rules permit fundraising costs to be paid by the GELAC because it would not be appropriate to sue public funds to solicit private contributions that are used solely for legal and accounting compliance purposes. However, the Commission is concerned that fundraising activities for the GELAC could be used to generate electoral support for the candidate's campaign, and if so, should be treated as qualified campaign expenses. Accordingly, comments are sought on whether to continue to permit the GELAC to pay the entire amount of these costs, or whether a fixed percentage of GELAC fundraising costs should be paid by the general election campaign committee. Splitting the costs would recognize that solicitations and other activities conducted to raised GELAC funds have a campaign-related component. Comments are sought as to the appropriate percentage that should be paid from general election funds. Please note that this approach is not included in the proposed rules which follow.

The Commission is also considering modifying section 9003.3(a)(1)(i)(A), which currently requires solicitations to clearly state that the contributions are solicited for the GELAC. A new sentence would also require solicitations to state that contributions to the GELAC may not be used for campaign purposes.

Please note that the provisions regarding predesignations and transfer of primary funds to the GELAC in paragraphs (a)(1) (ii)–(iv) would be reorganized.

Current paragraphs (a)(2)(i) (A) through (H) of section 9003.3 set forth the permissible sues of GELAC funds. The Petition for Rulemaking urged the Commission to delete current paragraph (H) allowing GELAC funds to be used to pay unreimbursed costs of providing transportation for the Secret Service and national security staff. Although this provisions is included in the attached proposed rules, the Commission seeks further comment on whether it is appropriate to use GELAC funds for this purpose. Please note that GELAC funds may not be used to pay transition costs (*cf.* AO 1980–97); legal defense fund expenses (*cf.* AO 1979–37); legal expenses not related to ensuring

compliance, such as contract litigation or electoral college expenses; and winding down expenses that are not for legal and accounting compliance purposes.

In addition, the Commission proposes reducing from 70% to 50% the standard amount that the GELAC may pay for computer-related costs, and the corresponding exclusion from the spending limits. See 11 CFR 9003.3 (a)(2)(ii)(A), (b)(6) and (c)(6). The GELAC is relatively small in comparison to the publicly funded general election account. Much of the computer costs are for basic accounting purposes, which the campaign committee would need to perform regardless of the need to comply with the campaign financing laws. Please note, however, that committees would still be able to deduct a higher amount if they can show that their computer-related compliance costs are higher.

Section 9003.3(a)(2)(iv) would be modified slightly to clarify that funds remaining in the GELAC may only be used to pay debts remaining from the primary or for other lawful purposes if all GELAC expenses have been paid. Finally the Commission is proposing to revise two citations contained in 11 CFR 9003.3(a)(2)(iii). The first sentence of this paragraph currently refers to paragraphs 9003.3(a)(2)(i) (A) through (E). This would be updated to read, "11 CFR 9003.3(a)(2)(i) (A) through (F) and (H)." Also, the citation to paragraph 9003.3(a)(2)(i)(F) in the second sentence should instead refer paragraph 9003.3(a)(2)(i)(G).

*B. Gains on the Use of Public Funds*

Section 9004.5 of the Commission's regulations allows a committee to invest public funds or use them in other ways to generate income, provided that an amount equal to the net income derived from those investments, minus any taxes paid, is repaid to the Treasury. Section 9007.2(b)(4) also lists the receipt of any income as a result of investment or other use of payments from the fund pursuant to 11 CFR 9004.5 as one of the basis for requiring repayment. These provisions seek to ensure that any income received through these use of public funds benefits the public financing system.

The proposed rules would indicate that section 9004.5 applies to any use of public funds that results in come to the committee, regardless of whether the committee engaged in that use with the intention of generating income. The proposed rules also contain a conforming amendment to section 9007.2(b)(4), which would indicate that income on investment or other use of payments from the Fund must be repaid to the Treasury. The Comission notes that if a committee loses an item that is insured, and the insurance proceeds exceeds the cost of replacing the item, such excess would be considered income for the purposes of proposed sections 9004.5 and 9007.2(b)(4).

These provisions are not meant to require repayment of income that qualifies as exempt function income under section 527(c)(3) of the Internal Revenue Code, 26 U.S.C. 527(c)(3), such as receipts from fundraising activities. The Commission welcomes comments on these proposed revisions.

**Miscellaneous and Technical Amendments**

In the interests of clarity, the Commission is proposing to add a comma in the last sentence of 11 CFR 9003.1(b)(4), and in the second sentence of 11 CFR 9033.1(b)(5). Both paragraphs concern candidate and committee agreements to furnish certain documentation to the Commission.

Current 11 CFR 9033.4(b) states that, in evaluating a candidate's matching funds submission, the Commission may consider other relevant information in its possession, including but not limited to past actions of the candidate in an earlier campaign. This provision was held to exceed the Commission's statutory authority in *LaRouche* v. *FEC*, 996 F.2d 1263 (D.C. Cir. 1993), *cert. denied* 114 S. Ct. 550. The Commission is therefore proposing to delete this paragraph from the rule.

**Conclusion**

The Commission welcomes comments on the foregoing proposed amendments to the public financing regulations, the issues raised in this notice, and on other aspects of the public financing process that could be addressed in these regulations. No final decision has been made by the Commission concerning any of the proposals contained in this Notice.

**Certification of No Effect Pursuant to 5 U.S.C. Section 605(b) (Regulatory Flexibility Act)**

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities will be affected by these proposed rules. Further, any small entities affected are already required to comply with the requirements of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act in these areas.

**List of Subjects**

*11 CFR Parts 9003–9004*

Campaign funds, Elections, Political candidates.

*11 CFR Parts 9006–9007*

Administrative practice and procedure, Campaign funds, Elections, Political candidates, Reporting requirements.

*11 CFR Parts 9033–9034*

Campaign funds, Elections, Political candidates.

*11 CFR Parts 9037–9038*

Administrative practice and procedure, Campaign funds, Political candidates.

For the reasons set out in the preamble, it is proposed to amend subchapters E and F of chapter I of title 11 of the Code of Federal Regulations as follows:

## PART 9003—ELIGIBILITY FOR PAYMENTS

1. The authority citation for Part 9003 would continue to read as follows:

**Authority:** 26 U.S.C. 9003 and 9009(b).

2. In § 9003.1, the introductory text of paragraph (b) would be republished, paragraph (b)(4) would be revised, and new paragraph (b)(10) would be added, to read as follows:

**§ 9003.1 Candidate and committee agreements.**

* * * * *

(b) *Conditions.* The candidates shall:

* * * * *

(4) Agree that they and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements (including all books and bank records for all accounts), all documentation required by this subchapter (including those required to be maintained under 11 CFR 9003.5), and other information that the Commission may request. If the Candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1) that meets the requirements of 11 CFR 9003.6(b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation

of the computer system's software and the computerized information prepared or maintained by the committee shall also be made available.

* * * * *

(10) Agree that any television commercial prepared or distributed by the candidate will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

3. Section 9003.3 would be revised to read as follows:

**§ 9003.3 Allowable Contributions.**

(a) *Legal and accounting compliance fund—major party candidates.*

(1) *Sources.*

(i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the Office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions will be used by this fund solely for legal and accounting services to ensure compliance with Federal law. Such solicitations shall also state that contributions to the fund will not be used for the candidate's election.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114, and 115.

(ii)(A) Contributions made during the matching payment period that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund before the nomination only if—

(1) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;

(2) The redesignations are received within 60 days of the Treasurer's receipt of the contributions;

(3) The requirements of 11 CFR 110.1(b)(5) and (l) regarding redesignations are satisfied; and

(4) The contributions have not been submitted for matching.

(B) All contributions redesignated and deposited pursuant to paragraph (a)(1)(ii)(A) of this section shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(b)(2)(i).

(iii) Fund received during the matching payment period that are remaining in a candidate's primary election account after the nomination may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR Part 110 and used for any purpose permitted under this section, only if the funds are in excess of any amount needed to pay remaining net outstanding campaign obligations under 11 CFR 9034.1(b) and any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2. The excess funds so transferred may include contributions made before the beginning of the expenditure report period, which contributions do not exceed the contributor's limit for the primary election. Such contributions need not be redesignated by the contributors for the legal and accounting compliance fund.

(iv) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election may be redesignated for the legal and accounting compliance fund and transferred to or deposited in such fund if—

(A) The candidate obtains the contributor's redesignation in accordance with 11 CFR 110.1;

(B) The funds are in excess of any amount needed to pay remaining net outstanding campaign obligation under 11 CFR 9034.1(b) and any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2; and

(C) The contributions have not been submitted for matching.

(v) Contributions made with respect to the primary election that exceed the contributor's limit for the primary election may be redesignated for the legal and accounting compliance fund and transferred to or deposited in such fund if the candidate obtains the contributor's redesignation in accordance with 11 CFR 110.1.

(2) *Uses.*

(i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* in accordance with paragraph (a)(2)(ii) of this section;

(B) To defray in accordance with paragraph (a)(2)(ii)(A) of this section, that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software;

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund; and

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6.

(ii) (A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with title 2 of the United States Code and chapter 95 of title 26 of the United States Code, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of paragraph (a)(2)(i)(B) of this section, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 50% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time

to perform duties which are considered necessary to ensure compliance with title 2 of the United States Code or chapter 95 of title 26 of the United States Code. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidates shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance within 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function. The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by paragraphs (a)(2)(i) (A) through (F) and (H) of this section shall not be subject to the expenditure limits of 2 U.S.C. 221a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with paragraph (a)(2)(i)(G) of this section are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses set out in paragraph (a)(2)(i) of this section, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR Part 113, including payment of primary election debts.

(3) *Deposit and disclosure.*

(i) Amounts received pursuant to paragraph (a)(1) of this section shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party candidates.*

(1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions must either be deposited in a separate account or be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under paragraph (a) of this section for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. Such costs include the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the employee payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 50% of the costs (other than payroll) associated with computer services.

(i) For purposes of this paragraph, overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of this paragraph, costs associated with computer services include, but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under paragraph (b)(5) or (b)(6) of this section for employee payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under paragraph (b)(6) of this section for costs associated with computer services, the candidate shall establish allocation

percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.*

(1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115.

(3) Such contributions must either be deposited in a separate account or be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR Part 104 and 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the employee payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 50% of the costs (other than payroll) associated with computer services.

(i) For purposes of this paragraph, overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of this paragraph, costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under paragraph (c)(6) of this section for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under paragraph (c)(6) of this section for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under paragraphs (c)(6) and (7) of this section and shall report such disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1.

(10) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

4. Section 9003.5 would be revised to read as follows:

**§ 9003.5 Documentation of disbursements.**

(a) *Burden of proof.* Each candidate shall have the burden of proving the disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.*

(1) For disbursements in excess of $200 to a payee, the candidate shall present a canceled check negotiated by the payee that states the purpose of the disbursement and either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available,

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or

contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) Where the supporting documentation required in paragraphs (b)(1) (i) or (ii) of this section is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office; and

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy.

(2) For all disbursements of $200 or less, the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, and the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) "Purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets.*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2,000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5,000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

## PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

5. The authority citation for Part 9004 would continue to read as follows:

**Authority:** 26 U.S.C. 9004 and 9009(b).

6. In section 9004.4 paragraph (a) would be revised, paragraph (b)(1) would be republished, and paragraph (b)(8) would be added, to read as follows:

### § 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR Part 9005 only for the following purposes:

(1) To defray qualified campaign expenses;

(2) To repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) To restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(iii) 100% of salary and overhead expenses incurred after the end of the expenditure report period may be paid from a legal and accounting compliance fund established pursuant to 11 CFR 9003.3, provided that these expenses are solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(5) *Gifts and monetary bonuses.* Gifts and monetary bonuses for committee employees, consultants and volunteers in recognition for campaign-related activities or services shall be considered qualified campaign expenses, provided that the gifts do not exceed $150 total per individual, and provided that the total for all gifts and monetary bonuses (except bonus arrangements provided for in advance in an employment or consulting contract) does not exceed $20,000

(b) *Non-qualified campaign expenses—*

(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

* * * * *

(8) *Negligent Handling of Public Funds.* The cost of items that are lost or misplaced due to negligence shall not be considered a qualified campaign expense. Factors in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; the type of equipment involved; the number of items that were lost; and the value of the lost equipment as a percentage of the total value of the equipment leased or owned by the committee.

* * * * *

7. Section 9004.5 would be revised to read as follows:

### § 9004.5 Investment of public funds; other uses resulting in income.

Investment of public funds or any other use of public funds that results in income is permissible, provided that an amount equal to all net income derived from such a use, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss from an investment or other use of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such loss shall be paid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

8. Section 9004.6 would be revised to read as follows:

**§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.**

(a) *General.*

(1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement for these expenses and may deduct any amounts received as reimbursements from the amount of expenditures subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(b) *Reimbursement limits.*

(1) The committee may seek reimbursement of the expenses described in paragraph (a)(1) of this section from the media representatives to whom those services were provided. The amount sought shall not exceed the media representative's pro rata share, or a reasonable estimate of the media representative's pro rata share, of the actual cost of the transportation and services mad available by more than 10%. Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available shall be disposed of in accordance with paragraph (d) of this section. For the purposes of this section:

(i) A media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available; and

(ii) "Administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking reimbursement, whether performed by committee staff or independent contractors.

(c) *Deduction of reimbursements from expenditures subject to the overall expenditure limitation.* The committee may deduct from the amount of expenditures subject to the overall expenditure limitation:

(1) The amount of reimbursements received in payment for the transportation and services described in paragraph (a) of this section, up to the actual cost of transportation and services provided; and

(2) An amount of reimbursements received representing the administrative costs incurred by the committee in providing these services and seeking reimbursement for them, equal to:

(i) Three percent of the actual cost of transportation and services provided under this section; or

(ii) An amount in excess of 3% representing the administrative costs actually incurred by the committee, provided that the committee is able to document that it incurred these higher administrative costs.

(d) *Disposal of excess reimbursements.* If the committee receives reimbursements in excess of the amount deductible under paragraph (c) of this section, it shall dispose of the excess amount in the following manner:

(1) Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to a media representative shall be returned to the media representative.

(2) Any amount in excess of the amount deductible under paragraph (c) of this section that is not required to be returned to the media representative under paragraph (d)(1) shall be repaid to the Treasury.

(e) *Reporting.* The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

9. Section 9004.7 would be revised to read as follows:

**§ 9004.7 Allocation of travel expenditures.**

(a) Notwithstanding the provisions of 11 CFR 106.3, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of any candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event, the substance of the remarks or speech made, and the audience, will also be considered in determining whether a stop is campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5)(i) If any individual, including, candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(A) The lowest unrestricted and non-discounted first class commercial air fare available for the time traveled, in the case of travel to a city served by a regularly scheduled commercial airline service; or

(B) The lowest unrestricted and non-discounted coach commercial air fare available for the time traveled, in the case of travel to a city served by regularly scheduled coach airline service, but not regularly scheduled first class airline service; or

(C) The commercial charter rate for a comparable airplane (in terms of size, model and make), in the case of travel to a city not served by a regularly scheduled commercial airline service.

(ii) If a government airplane is flown to a campaign-related stop where it will

pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under paragraph (b)(5)(i) of this section for one passenger plus costs for fuel and crew.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the commercial rental rate for a comparable conveyance, in terms of size, model and make.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline or travel service providing that fare. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a comparable conveyance, including the provider of the conveyance and the size, model and make of the conveyance. For travel under paragraph (b)(5)(ii) of this section, the committee shall maintain documentation of fuel and crew costs.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, who are traveling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(8) Travel on corporate airplanes and other corporate conveyances is governed by 11 CFR 114.9(e).

## PART 9006—REPORTS AND RECORDKEEPING

10. The authority citation for Part 9006 would continue to read as follows:

**Authority:** 2 U.S.C. 434 and 26 U.S.C. 9006(b).

11. Section 9006.3 would be added to read as follows:

### § 9006.3 Alphabetized schedules.

If the authorized committee(s) of a candidate file a schedule of itemized receipts, disbursements, or debts and obligations pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or records, the schedule shall list in alphabetical order the sources of the receipts, the payees or the creditors, as appropriate. Such schedule shall list all individuals, including contributors, payees, and creditors in alphabetical order by surname.

## PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

12. The authority citation for Part 9007 would continue to read as follows:

**Authority:** 26 U.S.C. 9007 and 9009(b).

13. In section 9007.1, new paragraph (f) would be added, to read as follows:

### § 9007.1 Audits.

* * * * *

(f)(1) *Sampling.* In conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violations identified in such a sample may become the basis, in whole or in part, of any audit finding.

(2) A committee in responding to a sample-based finding concerning excessive or prohibited contributions shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any errors found among the sample items were not excessive or prohibited contributions; were timely refunded, reattributed or redesignated pursuant to 11 CFR 103.3(b)(1), (2) and (3); or for some other reason were not errors; the Commission shall make a new projection based on the reduced number of errors in the sample.

(3) The committee shall submit a check to the United States Treasury for the total amount of any contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b)(1), (2) or (3).

14. In section 9007.2, the introductory language of paragraph (b) would be republished, and paragraph (b)(4) would be revised, to read as follows:

### § 9007.2 Repayments.

* * * * *

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the fund must repay the United States Treasury under any of the circumstances described below.

* * * * *

(4) *Income on investment or other use of payments from the Fund.* If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the fund pursuant to 11 CFR 9004.5, it shall so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

* * * * *

15. Section 9007.7 would be added to read as follows:

### § 9007.7 Administrative record.

(a) The Commission's administrative record for final determinations under 11 CFR 9004.9, 9005.1 and 9007.2 may include the following:

(1) Candidate and committee agreements submitted pursuant to 11 CFR 9003.1;

(2) Candidate and committee certifications submitted pursuant to 11 CFR 9003.2;

(3) Statements of Net Outstanding Qualified Campaign Expenses;

(4) Pertinent portions of Interim and Final Audit Reports, including attachments and supporting evidence;

(5) Pertinent portions of Initial and Final Repayment Determinations, including attachments and supporting evidence;

(6) All certifications, notifications, and determinations made by the Commission pursuant to 11 CFR 9004.9 and 9005.1;

(7) Other written correspondence or materials sent to, or received from, the committee, witnesses, state or federal agencies or other persons, including committee requests for extensions of time, pertinent portions of committee responses to the Initial and Final Audit Reports, and documentary or other evidence produced in response to a subpoena duces tecum;

(8) The transcript or audio tape of any deposition taken;

(9) The transcript or audio tape of any oral presentation conducted pursuant to 11 CFR 9007.2;

(10) The certification(s) of the Commission's decision(s) regarding candidate certifications, eligibility determinations, and repayment determinations;

(11) All additional documents and evidence identified or filed by the Commission as part of the administrative record relied on in reaching its decision(s); and

(12) Statements of Reasons adopted by the Commission.

(b) The Commission's administrative record for determinations under 11 CFR 11 CFR 9004.9, 9005.1 and 9007.2 does not include any materials not specifically enumerated in paragraph (a) of this section, such as:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions that are pre-decisional, but such transcripts or tapes may be made available under 11 CFR Parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR 9004.9, 9005.1 and 9007.2

## PART 9033—ELIGIBILITY FOR PAYMENTS

16. The authority citation for Part 9003 would be revised to read as follows:

**Authority:** 26 U.S.C. 9003(e), 9033 and 9039(b).

17. In section 9033.1, the introductory language of paragraph (b) would be republished, paragraph (b)(5) would be revised, and new paragraph (b)(12) would be added, to read as follows:

### § 9033.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidate shall agree that:

* * * * *

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts (including all books and book records for all accounts), all documentation required by this section (including those required to be maintained under 11 CFR 9033.11), and other information that the Commission may request. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee shall be made available.

* * * * *

(12) Agree that any television commercial prepared or distributed by the candidate will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

### § 9033.4 [Amended]

18. In section 9033.4, paragraph (b) would be removed, and paragraph (c) would be redesignated as paragraph (b).

19. Section 9033.11 would be revised to read as follows:

### § 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.*

(1) For disbursements in excess of $200 to a payee, the candidate shall present a canceled check negotiated by the payee that states the purpose of the disbursement and either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If a receipt is not available,

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) Where the supporting documentation required in paragraphs (b)(1)(i) or (ii) of this section is not available, the candidate or committee may present collateral evidence to document the qualified campaign expense. Such collateral evidence may include, but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a daily travel expense policy.

(2) For all disbursements of $200 or less, the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, and

the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A canceled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section,

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(ii) "Purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets.*

(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

## PART 9034—ENTITLEMENTS

20. The authority citation for Part 9034 would continue to read as follows:

**Authority:** 26 U.S.C. 9034 and 9039(b).

21. In section 9034.4, paragraph (a) would be revised, paragraph (b)(1) would be republished, paragraph (b)(3) would be revised, and paragraph (b)(8) would be added, to read as follows:

### § 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses—*

(1) *General.* Except as provided in paragraph (b)(3) of this section, all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made in accordance with 11 CFR 100.8(b)(1) for the purpose of determining whether an individual should become a candidate shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b).

(3) *Winding down costs.*

(i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate has become ineligible due to the operation of 11 CFR 9033.5(b),he or she may only receive matching funds to defray costs incurred before the candidate's date of ineligibility, for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, until the candidate is eligible to receive winding down costs under paragraph (a)(3)(i) of this section.

(iii) For purposes of the expenditure limitations set forth in 11 CFR 9035.1, 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. For candidates who continue to campaign or re-establish eligibility, this paragraph shall not apply to expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(5) *Gifts and monetary bonuses.* Gifts and monetary bonuses for committee employees, consultants and volunteers in recognition for campaign-related activities or services shall be considered qualified campaign expenses, provided that the gifts do not exceed $150 total per individual, and provided that the total for all gifts and monetary bonuses (except bonus arrangements provided for in advance in an employment or consulting contract) does not exceed $20,000.

(b) *Non-qualified campaign expenses—*

(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

* * * * *

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses. In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses. For purposes of this paragraph, it is presumed that capital assets delivered within 60 days of the first day of the candidate's party's national nominating convention are general election assets; and that a local campaign office that remains open more than 30 days after a state's primary election or the close of any other nomination process in that

state is operating in support of the general election campaign.

* * * * *

(8) *Negligent Handling of Public Funds.* The cost of items that are lost or misplaced due to negligence shall not be considered a qualified campaign expense. Factors in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; the type of equipment involved; the number of items that were lost; and the value of the lost equipment as a percentage of the total value of the equipment leased or owned by the committee.

* * * * *

22. Section 9034.5 would be amended by revising paragraphs (b), (c)(1), and (f) to read as follows:

**§ 9034.5 Net outstanding campaign obligations.**

* * * * *

(b) *Liabilities.*

(1) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for nonqualified campaign expenses nor any amounts determined or anticipated to be required a repayment under 11 CFR part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5.

(2) The amount submitted as estimated necessary winding down costs under paragraph (a)(1) of this section shall be broken down by expenses category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected termination of the committee's political activity.

(c)(1) *Capital assets,* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less than 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset. The Commission may disallow all or some portion of the 40% depreciation if the asset was obtained by the primary committee for use in the general election, or falls within a presumption stated in 11 CFR 9034.4(b)(3).

* * * * *

(f)(1) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching fund payments filed after the candidate's date of ineligibility. the revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(2) A candidate who makes a submission described in paragraph (f)(1) of this section shall also submit an additional revised statement of net outstanding campaign obligations. This additional statement shall be due on a date to be determined and published by the Commission, which will be before the next regularly scheduled payment date. This statement shall reflect the financial status of the campaign as of the close of business three business days before the due date of the statement. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(3) After a candidate's date of ineligibility, if the candidate does not receive the entire amount of matching funds on a regularly scheduled payment date due to a shortfall in the matching payment account, the candidate shall also submit a revised statement of net outstanding campaign obligations. The revised statement shall be filed on a date to be determined and published by the Commission, which will be before the next regularly scheduled payment date.

23. Section 9034.6 would be revised to read as follows:

**§ 9034.6 Expenditures for transportation and services made available to media personnel; Reimbursements.**

(a) *General.*

(1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitation of 11 CFR 9035.1(a).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement for these expenses and may deduct any amounts received as reimbursements from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(b) *Reimbursement limits.*

(1) The committee may seek reimbursement of the expenses described in paragraph (a)(1) of this section from the media representatives to whom those services were provided. The amount sought shall not exceed the media representative's pro rata share, or a reasonable estimate of the media representative's pro rata share, of the actual cost of the transportation and services made available by more than 10%. Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available shall be disposed of in accordance with paragraph (d) of this section. For the purposes of this section:

(i) A media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available; and

(ii) "Administrative costs" shall include all costs incurred by the committee for making travel arrangements and for seeking

reimbursement, whether performed by committee staff or independent contractors.

(c) *Deduction of reimbursements from expenditures subject to the overall expenditure limitation.* The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a):

(1) The amount of reimbursements received in payment for the transportation and services described in paragraph (a) of this section, up to the actual cost of transportation and services provided; and

(2) An amount of reimbursements received representing the administrative costs incurred by the committee in providing these services and seeking reimbursement for them, equal to:

(i) Three percent of the actual cost of transportation and services provided under this section; or

(ii) An amount in excess of 3% representing the administrative costs actually incurred by the committee, provided that the committee is able to document that it incurred these higher administrative costs.

(d) *Disposal of excess reimbursements.* If the committee receives reimbursements in excess of the amount deductible under paragraph (c) of this section, it shall dispose of the excess amount in the following manner:

(1) Any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to a media representative shall be returned to the media representative.

(2) Any amount in excess of the amount deductible under paragraph (c) of this section that is not required to be returned to the media representative under paragraph (d)(1) shall be repaid to the Treasury.

(e) *Reporting.* The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

24. Section 9034.7 would be revised to read as follows:

**§ 9034.7 Allocation of Travel Expenditures.**

(a) Notwithstanding the provisions of 11 CFR 106.3, expenditures for travel relating to the office of President by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b) (1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related. Campaign activity includes soliciting, making, or accepting contributions, and expressly advocating the election or defeat of any candidate. Other factors, including the setting, timing and statements or expressions of the purpose of an event, the substance of the remarks or speech made, and the audience, will also be considered in determining whether a stop is campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) (i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(A) The lowest unrestricted and non-discounted first class commercial air fare available for the time traveled, in the case of travel to a city served by a regularly scheduled commercial airline service; or

(B) The lowest unrestricted and non-discounted coach commercial air fare available for the time traveled, in the case of travel to a city served by regularly scheduled coach airline service, but not regularly scheduled first class airline service; or

(C) The commercial charter rate for a comparable airplane (in terms of size, model and make), in the case of travel to a city not served by a regularly scheduled commercial airline service.

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidates's authorized committee shall pay the appropriate government entity an amount equal to the amount required under paragraph (b)(5)(i) of this section for one passenger plus costs for fuel and crew.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the commercial rental rate for a comparable conveyance, in terms of size, model and make.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation for the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline or travel service providing that fare. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a comparable conveyance, including the provider of the conveyance and the size, model and make of the conveyance. For travel under paragraph (b)(5)(ii) of this section, the committee shall maintain documentation of fuel and crew costs.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, who are traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be

determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(8) Travel on corporate airplanes and other corporate conveyances is governed by 11 CFR 114.9(e).

## PART 9037—PAYMENTS AND REPORTING

25. The authority citation for Part 9037 would continue to read as follows:

**Authority:** 26 U.S.C. 9037 and 9039(b).

Section 9037.4 would be added to read as follows:

**§ 9037.4 Alphabetized schedules.**

If the authorized committee(s) of a candidate file a schedule of itemized receipts, disbursements or debts and obligations pursuant to 11 CFR 104.3 that was generated directly or indirectly from computerized files or records, the schedule shall list in alphabetical order the sources of he receipts, the payees, or the creditors, as appropriate. Such schedule shall list all individuals, including contributors, payees and creditors, in alphabetical order by surname.

## PART 9038—EXAMINATIONS AND AUDITS

27. The authority citation for part 9038 would continue to read as follows:

**Authority:** 26 U.S.C. 9038 and 9039(b).

28. In section 9038.1, new paragraph (f) would be added, to read as follows:

**§ 9038.1 Audit.**

* * * * *

(f)(1) *Sampling.* In conducting an audit of contributions pursuant to this section, the Commission may utilize generally accepted sampling techniques to quantify, in whole or in part, the dollar value of related audit findings. A projection of the total amount of violations based on apparent violations identified in such a sample may become the basis, in whole or in part, or any audit finding.

(2) A committee in responding to a sample-based finding concerning excessive or prohibited contributions shall respond only to the specific sample items used to make the projection. If the committee demonstrates that any errors found among the sample items were not excessive or prohibited contributions; were timely refunded, reattributed or redesignated pursuant to 11 CFR 103.3(b) (1), (2) and (3); or for some other reason were not errors; the Commission shall make a new projection based on the reduced number of errors in the sample.

(3) The committee shall submit a check to the United States Treasury for the total amount of any contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b) (1), (2) or (3).

29. In section 9038.2, the introductory language of paragraph (b)(2) would be republished, and paragraph (b)(2)(iii) would be revised, to read as follows:

**§ 9038.2 Repayments.**

* * * * *

(b) *Bases for repayment* * * *

(2) *Use of funds for non-qualified campaign expenses.* * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility. For the purposes of this paragraph—

(A) All matching funds certified in response to matching payment submissions received by the Commission as of the candidate's date of ineligibility will be treated as though they were certified as of the date of ineligibility;

(B) Total deposits is defined in accordance with 11 CFR 9038.3(c)(2); and

(C) In seeking repayment for non-qualified campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to the candidate, using the assumption that the last payment has been expended on a last-in, first-out basis.

* * * * *

30. Section 9038.7 would be added to read as follows:

**§ 9038.7 Administrative record.**

(a) The Commission's administrative record for final determinations under 11 CFR Part 9033 and §§ 9034.5, 9036.5 and 9038.2 may include the following:

(1) Candidate and committee agreements submitted pursuant to 11 CFR 9033.1;

(2) Candidate and committee certifications submitted pursuant to 11 CFR 9033.2;

(3) Threshold submissions and additional submissions for matching fund payments;

(4) Statements of Net Outstanding Campaign Obligations;

(5) Pertinent portions of Interim and Final Audit Reports, including attachments and supporting evidence;

(6) Pertinent portions of Initial and Final Repayment Determinations, including attachments and supporting evidence;

(7) All certifications, notifications, and determinations made by the Commission pursuant to 11 CFR Part 9033, and sections 9034.5 and 9036.5;

(8) Other written correspondence or materials sent to, or received from, the committee, witnesses, state or federal agencies or other persons, including committee requests for extensions of time, pertinent portions of committee responses to the Initial and Final Audit Reports, and documentary or other evidence produced in response to a subpoena duces tecum;

(9) The transcript or audio tape of any deposition taken;

(10) The transcript or audio tape of any oral presentation conducted pursuant to 11 CFR 9038.2;

(11) The certification(s) of the Commission's decision(s) regarding candidate certifications, eligibility determinations, and repayment determinations;

(12) All additional documents and evidence identified or filed by the Commission as part of the administrative record relied on in reaching its decision(s); and

(13) Statements of Reasons adopted by the Commission.

(b) The Commission's administrative record for determinations under 11 CFR Part 9033 and §§ 9034.5, 9036.5 and 9038.2 does not include any materials not specifically enumerated in paragraph (a) of this section, such as:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission

and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions that are pre-decisional, but such transcripts or tapes may be made available under 11 CFR Parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR Part 9033 and §§ 9034.5, 9036.5 and 9038.2.

Dated: September 30, 1994.

**Trevor Potter,**

*Chairman.*

[FR Doc. 94-24623 Filed 10-5-94; 8:45 am]

BILLING CODE 6715-01-M

federal register

Thursday
October 6, 1994

Part IV

# Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101 et al.

Iron-Containing Supplements and Drugs; Label Warning Statements and Unit-Dose Packaging Requirements; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 101, 170, and 310**

**[Docket Nos. 91P–0186 and 93P–0306]**

## Iron-Containing Supplements and Drugs; Label Warning Statements and Unit-Dose Packaging Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing regulations to require label warning statements for products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes. FDA is also proposing regulations to require unit-dose packaging [1] for iron-containing products that contain 30 milligrams (mg) or more of iron per dosage unit.[2] FDA is proposing these regulations because of the acute iron poisonings, including deaths in children less than 6 years of age, attributable to accidental overdoses of iron-containing products. The intent of these proposed regulations is to reduce the risk of accidental iron poisonings of young children by utilizing FDA's authority in conjunction with the existing requirements of the U.S. Consumer Product Safety Commission (CPSC) for child-resistant packaging for household substances. This proposal responds to three citizen petitions (Docket Nos. 91P–0186/CP1, 93P–0306/CP1, and 93–0306/CP2) that requested that FDA take action to ensure that products containing iron or iron salts do not pose a health hazard to young children and infants.

**DATES:** Written comments by December 20, 1994. The agency is proposing that any final rule that may be issued based upon this proposal become effective 180 days after its publication in the **Federal Register.**

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John N. Hathcock, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 8301 Muirkirk Rd., Laurel, MD 20708, 301–594–6006.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Iron is an essential nutrient that, in certain circumstances, can be toxic. For some women of child-bearing age and for some young children, iron from dietary sources alone may be insufficient to meet their metabolic iron requirements. Access to products that provide iron is useful for these groups to ensure that their iron requirements are met. However, when consumed acutely in large quantities by young children, iron is toxic and can, in some cases, lead to death.

Since the mid 1980's, an upsurge in reported accidental pediatric ingestion of iron-containing products has occurred (Ref.1). This fact, and the many resultant injuries and deaths of children, have created a dilemma with respect to how to ensure that iron sources are available while still minimizing the risks to children. In response, FDA is proposing regulations that require that a warning be placed on labeling about the adverse effects of acute, high dose iron ingestion by children and that unit-dose packaging be used for certain iron-containing products. These requirements, if adopted, will apply to iron-containing products in addition to the existing requirements of CPSC, which provide that child-resistant packaging must be used for most iron-containing products available (see section II.B. of this document). The agency tentatively finds that the effect of these new requirements, in conjunction with those of CPSC, will be to significantly reduce the risk of accidental pediatric iron poisoning.

The types of iron-containing products that have been associated with poisonings of young children are those offered in solid oral dosage form (e.g., capsules and tablets) as: (1) Children's and adult's multi-vitamin/mineral supplements that contain iron or iron salts (these products typically provide less than 30 mg of iron per dosage unit), (2) products intended for use as iron supplements (these products typically contain 30 mg or more of iron per dosage unit), and (3) drug products that contain iron or iron salts (these products typically contain 30 mg or more of iron per dosage unit). In this document, the term "iron-containing products" refers to all of these types of products.

The agency is not aware of incidents of poisoning being caused by iron-containing products in liquid or powder form. Therefore, these products are not subject to this proposal. The agency will consider what regulatory action is appropriate to take with regard to iron-containing products in liquid or powder form if it becomes aware of information indicating that these products have caused or can cause poisonings in children.

This document also does not bear in any way on conventional foods containing naturally occurring or added iron. Pediatric iron poisoning from consumption of iron-containing foods in conventional food form is unlikely because of limitations inherent in the large quantity of food that would have to be ingested to cause an adverse effect in young children. For example, a serving of a highly fortified breakfast cereal that contains 100 percent of the recommended daily intake for iron of 18 mg, would provide only 7 percent of the amount of iron that is considered necessary to produce symptoms of iron poisoning in a 10 kilograms (kg) (22 pounds (lb)) child (i.e., 25 milligrams (mg) per (/) kg of iron, which equates to 250 mg total iron for a 10 kg (22 lb) child. (See section I.B. of this document.) Moreover, the agency is not aware of any pediatric iron poisonings that have resulted from ingestion of iron-containing foods in conventional food form.

#### *A. The Iron Requirements of Children and Women of Childbearing Age*

Iron is an essential nutrient because it is a component of blood and muscle tissue and because of its role in metabolic reactions. Iron-containing compounds in the body may be grouped into two categories: (1) Those that serve metabolic functions, and (2) those associated with iron storage. The compounds in the first category include hemoglobin (a component of red blood cells), myoglobin (a muscle protein), and iron-containing enzymes. They account for approximately 80 percent of body iron. Compounds in the second category are involved in the maintenance of iron homeostasis and include the storage compounds ferritin and hemosiderin.

When the supply of dietary iron becomes inadequate to meet the body's needs, iron is mobilized from iron stores to maintain the production of red blood cells and to perform other essential iron-dependent functions. When body iron stores are low or depleted, as often occurs in women of child-bearing age

[1] For the purposes of this document "unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units.

[2] In this document, the term "dosage unit" will be used to denote the individual physical units of the iron-containing product such as tablets, capsules, caplets, or other physical forms, irrespective of whether one or more than one of these physical units comprises the recommended dose.

and in very young children, a person is vulnerable to adverse effects associated with iron deficiency anemia and with a reduction in metabolic and body functions.

Although the prevalence of iron deficiency in the U.S. population is low (Ref. 2), maintenance of adequate iron stores in women of childbearing age and in young children is an important public health issue. A woman's recommended daily allowance (RDA) for iron during pregnancy doubles from 15 to 30 mg/day (Ref. 3). The importance of prenatal iron supplementation in preventing depletion of iron stores in pregnant women has been shown in several clinical trials (Ref. 4). Thus, pregnant women are often counseled to increase their iron intake through dietary changes and the use of iron-containing supplements or drugs.

A committee of the National Academy of Sciences (NAS) has recommended that all pregnant women should be screened for iron deficiency anemia at the first prenatal visit and at least once during each subsequent trimester (Ref. 5). The NAS committee recommended, however, that iron supplementation should only be given when iron status is low or marginal, as indicated by hemoglobin and serum ferritin, in comparison with standard values recommended by NAS for the specific trimester of pregnancy. When these clinical indicators reveal deficient iron status, the NAS committee recommended that the clinician prescribe 60 to 120 mg of supplemental iron per day. If iron status is marginal, the NAS committee recommended that the clinician prescribe 30 mg of supplemental iron per day. If iron status is normal, the NAS committee recommended that these be no iron supplementation.

Aside from the iron needs that arise during pregnancy, women of child-bearing age have a higher requirement for iron than other adults. (The RDA for women of child-bearing age is 15 mg/day because of the depletion of iron through menstrual blood loss. It is 10 mg/day for adult males and older adult women (Ref. 3).) The difficulty of obtaining dietary intakes high enough to replace those losses through consumption of a normal diet is responsible for iron deficiency in some women of child-bearing age. For these women also, the use of iron-containing products may be prudent.

Iron deficiency also affects young children (the RDA for iron for children is 10 mg/day), particularly during the rapid growth period from 6 months to 4 years of age. Some young children fail to develop adequate iron stores to supply the iron needed for their metabolic functions during this early growth period. Data from the National Health and Nutrition Examination Survey (NHANES II) for children show that the prevalence of impaired iron status ranges from an estimated 3 to 12 percent (Ref. 2). Thus, iron supplementation may also be indicated in children whose iron needs are not met through dietary intake.

*B. Iron Toxicity in Young Children*

Although the minimal toxic and lethal doses for iron have not been clearly established (Ref. 6), the severity of iron poisoning when an overdose has been ingested is related to the amount of iron absorbed into the circulatory system. Experts have stated that ingestion of 25 mg/kg of iron (250 mg total iron for a 10 kg child) may produce symptoms of poisoning, and that ingestion of 60 mg/kg total iron for a 10 kg child is the minimum intake for the development of significant iron poisoning (Refs. 6 and 7). One source recommends emergency room evaluation when ingestion of iron exceeds 50 mg/kg (Ref. 6). An acute ingestion of more than 250 mg/kg for a 10 kg child is typically considered a lethal dose for iron (Ref. 8). However, it has been reported that ingestion of 100 to 200 mg/kg for a 10 kg child can be fatal (Ref. 9), and that ingestion of as little as 650 mg of iron (65 mg/kg for a 10 kg child) has resulted in death (Ref. 7). Based upon these reported values, acute ingestions of less than 1,000 mg of iron appear to be likely to cause nonfatal injuries of varying severity, depending on the amount of ingested iron.

Iron overdose results in both local and systemic effects (Ref 10). Toxicity is caused by both a direct corrosive effect on the gastrointestinal mucosa and the presence of unbound iron in the circulatory system. Locally in the stomach and intestine, ingested iron is corrosive and produces death of cells in the mucosa lining the gastrointestinal tract, resulting in ulceration and hemorrhage. While intact mucosa limits the absorption of iron, eroded mucosa permits absorption of relatively huge amounts of iron into the portal circulation that goes immediately to the liver, causing damage to liver cells. Overload of the liver cells, which normally remove iron from the circulation, allows iron to enter the general circulation.

When the circulating iron exceeds the capacity of certain proteins to bind it, free iron reaches other tissues, such as kidneys, lungs, heart and blood vessels, and the brain. The resultant death of cells in these tissues produces the following wide-spread symptoms and signs of iron poisoning: Kidney failure, edema in the lung, hemorrhage, hypotension from damage to the heart and blood vessels, coma from damage to the brain, and acidosis from release of organic acids.

Severe iron poisoning is characterized by four clinical stages (Refs. 6 and 9):

(1) Stage one, which may occur within 30 minutes (min) of ingestion, is characterized primarily by signs and symptoms of hemorrhagic gastroenteritis (i.e., nausea, vomiting, abdominal pain, hematemesis (vomiting blood), and bloody diarrhea) that may progress to shock, coma, seizures, and death.

(2) During stage two, which occurs from 2 to 12 hours (hr) after ingestion, patients may be without symptoms and may appear to have recovered. Some children will recover, but some may progress to stage three. The appearance of recovery should not delay evaluation and treatment for iron poisoning because successful treatment is difficult once the iron is absorbed from the small intestine into the blood.

(3) During stage three, from 12 to 48 hr after ingestion, there is a recurrence of gastrointestinal hemorrhage with severe lethargy or coma, and there may be liver and kidney failure and collapse of the heart and blood vessels.

(4) Stage four, 3 to 4 weeks after survivors of poisonings ingested the iron, may include gastrointestinal obstruction and cirrhosis of the liver.

In evaluating a child who is thought to have ingested an overdose of iron, an abdominal x-ray looking for iron-containing tablets, a qualitative color test for iron in the stomach contents, and an emergency determination of the concentration of iron in blood plasma may be performed.

If an overdose of iron is indicated, an emetic agent may be administered to cause regurgitation of the iron if the patient is fully awake and alert. In addition to emesis, catharsis with saline or sorbitol may be used to induce gastric emptying. However, neither emesis nor catharsis is advised if hemorrhagic gastroenteritis is present. Gastric lavage, i.e., washing out of the stomach, with saline or sodium bicarbonate or whole bowel irrigation with a balanced polyethylene glycol-electrolyte solution by gastric tube have been used to remove undissolved tablets (Ref. 11).

Treatment for an iron overdose frequently includes parenteral administration of deferoxamine (also referred to as desferrioxamine), a drug which chelates (i.e., binds) iron in the intracellular fluid and causes its

excretion in urine (Ref. 6). Given that 1 g deferoxamine can bind 93 mg of iron, and that, to avoid hypotension, infusion is generally recommended at 15 mg/kg/hr, there is a limit to the amount of iron deferoxamine can bind. For example, safe administration of deferoxamine to a 10 kg child over a 24 hr period is capable of binding only 324 mg of iron (Refs. 11 and 12).

Therefore, if very high levels of iron are absorbed, even prompt treatment with deferoxamine or another agent may not prevent a fatal outcome if chelation at the maximum safe rate cannot reduce the iron burden to levels below those that cause death.

Speed of diagnosis and therapy are important. With earlier and more effective treatment, the mortality rate from iron poisoning has been reduced from as high as 45 percent to about 1 percent (Ref. 9).

*C. Summary of Information on Pediatric Deaths and Injuries*

1. Citizen Petitions

Data have been submitted to or obtained by FDA on reports of deaths attributable to accidental pediatric iron poisoning that were made between 1983 and 1993 to the American Association of Poison Control Centers and between 1986 and 1993 to CPSC (Table 1). Although these two sets of data are not identical, they do have extensive overlap (cases included in both databases). They both point to an increase in reported fatalities from accidental iron poisonings of children in the early 1990's.

The number or rate of fatalities does not represent the totality of the health hazard, however. Data obtained by FDA from the American Association of Poison Control Centers (AAPCC) show that from 1986 through 1992 there were nearly 63,000 reports to poison control centers involving ingestion of adult iron- containing products, with over 47,000 of these reports involving children under 6 years of age (Refs. 14 through 20). Many of these victims required hospitalization, and many others required some medical treatment. For example, Table 2 shows that over 1,500 of these cases were classified as having "moderate outcomes," i.e., the patient had symptoms that, while not life threatening, usually required some form of treatment. One hundred fifty-nine cases were classified as "major outcomes," i.e., they were life threatening or resulted in permanent injury. Except for 1992, AAPCC data do not indicate how many of the moderate and major outcomes involved children under 6 years of age. However, for 1992, 55 percent (17/31) of the major outcomes, and 51 percent (141/278) of the moderate outcomes, involved children under 6 years of age.

TABLE 1.—IRON POISONING DEATHS FOR CHILDREN UNDER SIX

| Year | Number of deaths reported to CPSC from 1986–1993 | Number of deaths reported to AAPCC from 1983–1993 [1] |
|---|---|---|
| 1993 | [2] 1 | 3 |
| 1992 | 9 | 7 |
| 1991 | 11 | 11 |
| 1990 | 7 | 5 |
| 1989 | 3 | 2 |
| 1988 | 5 | 3 |
| 1987 | 3 | 1 |
| 1986 | 4 | 1 |
| 1985 | | 1 |
| 1984 | | 1 |
| 1983 | | 2 |

[1] Data through 1991 were taken from the AAPCC petition. Data for 1992 and 1993 were taken from AAPCC annual reports.

[2] Data through August 1993 (partial year) were taken from the Attorneys General petition.

TABLE 2.—OUTCOMES OF INGESTIONS OF ADULT IRON-CONTAINING PRODUCTS REPORTED TO POISON CONTROL CENTERS FROM 1986–1992 [1]

| Year | Total ingestions for all ages [2] | Outcomes for total ingestions [3] | |
|---|---|---|---|
| | | Moderate | Major |
| 1992 | 11,007 | 278 | 31 |
| 1991 | 10,671 | 276 | 26 |
| 1990 | 9,550 | 229 | 28 |
| 1989 | 9,734 | 194 | 22 |
| 1988 | 9,201 | 245 | 15 |
| 1987 | 7,132 | 153 | 20 |
| 1986 | 5,674 | 144 | 17 |
| Total | 62,969 | 1,519 | 159 |

[1] Products included for the 1989–1992 data are iron-containing supplements and drug products and adult multiple vitamin tablets with iron. Products included for the 1986–1988 data are iron-containing supplements and drug products and adult multivitamin type supplements of unspecified dosage form. Some of the products also contained fluoride.

[2] 47,690 of this total involved children under 6 years of age.

[3] Only the 1992 data report moderate and major outcomes for children under 6 years of age. In 1992, 141 such moderate outcomes and 17 major outcomes were reported.

In addition, AAPCC data show that during the same 7-year period, there were over 76,000 reports to poison control centers involving ingestion of pediatric iron-containing products with over 69,000 of these reports involving children under 6 years of age (Refs. 14 through 20). Table 3 shows that over 495 of these cases were classified as having "moderate outcomes," and 29 cases were classified as "major outcomes." Again, except for 1992, AAPCC data do not indicate how many of the moderate and major outcomes involved children under 6 years of age. However, for 1992, the single major outcome, and 91 percent (52/57) of the moderate outcomes, involved children under 6 years of age.

TABLE 3.—OUTCOMES OF INGESTION OF PEDIATRIC IRON-CONTAINING PRODUCTS REPORTED TO POISON CONTROL CENTERS FROM 1986–1992 [1]

| Year | Total ingestions for all ages | Less than 6 years of age | Outcomes for total ingestions [2] | |
|---|---|---|---|---|
| | | | Moderate | Major |
| 1992 | 11,803 | 10,769 | 57 | 1 |
| 1991 | 10,900 | 10,022 | 42 | 2 |
| 1990 | 10,910 | 9,883 | 55 | 4 |
| 1989 | 10,313 | 9,275 | 72 | 1 |
| 1988 | 10,475 | 9,483 | 104 | 1 |
| 1987 | 10,013 | 9,024 | 94 | 5 |
| 1986 | 11,676 | 10,622 | 71 | 15 |
| Total | 76,090 | 69,078 | 495 | 29 |

[1] Products included for the 1989–1992 data are pediatric multiple vitamin tablets with iron. Products included for the 1986–1988 data are pediatric multivitamin type products of unspecified dosage form.

[2] Only the 1992 data report moderate and major outcomes for children under 6 years of age. In 1992, 52 such moderate outcomes and 1 major outcome were reported.

Likewise, CPSC reports that, based upon data from its National Electronic Injury Surveillance System (NEISS) (NEISS is a probability sample of hospital emergency rooms in the United States that is used by the CPSC to measure the magnitude of the injury problem associated with consumer products and to provide a source for followup investigations of selected cases), there was a significant upward trend in the estimated number of hospital emergency room-treated iron ingestion cases involving children under 5 years of age in the 1980 to 1993 period. Every annual estimate in the 1980 to 1985 period was smaller than every annual estimate in the 1986 to 1993 period. The estimated average number of cases annually was 1,240 for the 1980 to 1985 period and 3,170 for the 1986 to 1993 period (Ref. 1).

2. CPSC Case Reports

CPSC considers iron-containing products to be potentially hazardous to

children and, thus, has taken a number of significant steps designed to reduce the risk from these products. As part of its efforts, CPSC has collected detailed information on pediatric iron poisoning fatalities and has also conducted followup (from NEISS data) investigations of incidents of nonfatal pediatric iron ingestion where the victim was taken to a hospital emergency room. In order to evaluate the available data on specific occurrences of iron poisoning as fully as possible, FDA obtained from CPSC the case reports on 37 fatal pediatric poisonings (Ref. 21) and on 70 NEISS followup investigations of nonfatal pediatric iron ingestions for the years 1986 to 1993 (Ref. 22). These data are described below and are summarized in Tables 4 and 5.

Table 4 summarizes the data obtained from CPSC on 37 iron poisoning fatalities of young children since 1986. Among these fatalities, the average age of the victim was 16.8 months. In 25 of these 37 deaths, the iron potency of the implicated product was reported. These 25 products contained, on average, 63 mg iron per dosage unit. The lowest reported potency of an iron-containing product involved in these pediatric deaths was 40 mg iron per dosage unit. The potency of the iron-containing product involved in the 12 other deaths was not reported.

Table 4 shows that, in 21 of the 37 fatalities, information on the number of tablets or capsules consumed by the victim was reported. Among these 21 reports, the average number of iron tablets or capsules consumed by the victim was 39.

Table 4 also shows that in 56 percent of these 37 pediatric deaths (21/37), the iron-containing product visually appeared to be packaged in child-resistant packaging (CRP), and more specifically, in containers with apparently child-resistant closures (CRC). In 16 percent of the deaths (6/37), the iron-containing supplement was not packaged in CRP. Among the remaining deaths (10/37), the type of packaging was not reported.

TABLE 4.—PEDIATRIC DEATHS FROM IRON EXPOSURE REPORTED TO CPSC FROM 1986–1993

| Case Report | Year | Age[1] | Packaging | Number of tablets | Rx[2] | Potency |
|---|---|---|---|---|---|---|
| 1 | 1986 | 15 | CRC[3,4] | 15 | Yes | 65 mg[5] |
| 2 | 1986 | 14 | No Lid | NR | Yes | 70 mg |
| 3 | 1986 | 24 | NR[6] | NR | NR | NR |
| 4 | 1987 | 11 | CRC[7] | 70 | Yes | 65 mg |
| 5 | 1987 | 21 | Non-CRC | 5 | NR | 40 mg |
| 6 | 1988 | 16 | NR | NR | NR | 60 mg |
| 7 | 1988 | 17 | Non-CRC | 10–30 | Yes | NR |
| 8 | 1988 | 18 | CRC[8,9] | NR | Yes | 65 mg |
| 9 | 1988 | 19 | CRC[9] | ≥14 | Yes | 65 mg |
| 10 | 1988 | 18 | CRC[9] | NR | Yes | NR |
| 11 | 1989 | 18 | CRC[4] | 20 | NO | 65 mg |
| 12 | 1989 | 9 | CRC[10] | 98 | NR | 65 mg |
| 13 | 1990 | 10 | Non-CRC | 40 | Yes | 65 mg |
| 14 | 1990 | 11 | Non-CRC | 18 | Yes | 65 mg |
| 15 | 1990 | 12 | CRC[10] | NR | Yes | NR |
| 16 | 1990 | 15 | CRC[9] | 30–35 | Yes | 65 mg |
| 17 | 1990 | 16 | NR | NR | Yes | NR |
| 18 | 1990 | 36 | CRC[9] | 30 | Yes | NR |
| 19 | 1991 | 9 | CRC[4] | 15–35 | NR | 65 mg |
| 20 | 1991 | 13 | CRC[7] | 30–40 | Yes | NR |
| 21 | 1991 | 14 | Non-CRC | 60–80 | Yes | 65 mg |
| 22 | 1991 | 15 | CRC[10] | 30 | Yes | 65 mg |
| 23 | 1991 | 16 | NR | NR | NR | NR |
| 24 | 1991 | 18 | NR | NR | NR | 65 mg |
| 25 | 1991 | 21 | CRC[4] | 90 | No | 65 mg |
| 26 | 1991 | 24 | NR | NR | NR | NR |
| 27 | 1991 | 16 | CRC[11] | NR | No | 65 mg |
| 28 | 1991 | 36 | CRC[11] | 20–40 | Yes | 65 mg |
| 29 | 1992 | 11 | NR | 40 | NR | 65 mg |
| 30 | 1992 | 12 | CRC[4] | NR | NR | NR |
| 31 | 1992 | 15 | NR | 50 | Yes | 60 mg |
| 32 | 1992 | 16 | CRC[9] | 40 | Yes | 60 mg |
| 33 | 1992 | 20 | CRC[7] | NR | Yes | 65 mg |
| 34 | 1992 | 16 | NR | NR | Yes | 60 mg |
| 35 | 1992 | 18 | CRC[11] | 35–40 | Yes | NR |
| 36 | 1992 | 17 | CRC[10] | NR | Yes | 65 mg |
| 37 | 1993 | 14 | Non-CRC | NR | Yes | NR |
| | | Avg= | Total: | Avg= | Total: | Avg=63 |
| | | 16.8 | CRC=21 | 39 | Yes= | Range= |
| | | Range= | Other= | Range= | 24 | 40–70 |
| | | 9–36 | 16 | 5–98 | No=3 | NR=12 |
| | | | | | NR= | |
| | | | | | 10 | |

[1] Age in months

[2] Even though these products were obtained by prescription (Rx), some information suggests that they were not drug products, but rather, they were dietary supplements dispensed by pharmacists for third party reimbursement purposes.

[3] Child-resistant closure.

[4] No information in case report on who opened the CRC; or the CRC was not involved in the accidental poisoning. *Total=5.*

[5] All potency levels have been converted from weight of the iron salt to iron contents. Potency is expressed as mg iron per dosage unit.

[6] No Reported (NR) or stated as unknown in the case report.

[7] Opened by sibling or another child (either actually or possibly). *Total=3.*
[8] Container was dual use—conventional and child resistant.
[9] Opened by victim (actually or possibly). *Total=6.*
[10] Left opened by the mother, or not closed properly. *Total=4.*
[11] CRC defective. *Total=3.*

Among the 21 reported pediatric poisoning deaths that involved iron-containing products packaged in CRP, Table 4 shows that 29 percent (6/21) of these deaths resulted from iron-containing products whose child-resistant package was reportedly opened (actually or possibly) by the victim. In 14 percent (3/21) of these deaths, the CRP was reported to have been opened (actually or possibly) by another child. An adult was reported to have opened the CRP in 19 percent (4/21) of the pediatric iron poisoning deaths. Among the remaining reports of pediatric iron deaths in which the iron-containing product was packaged in child-resistant containers, the means of opening the container were not identified in 24 percent (5/21). The CRP was reported to be defective in 14 percent (3/21) of these deaths.

Table 5 shows the total amount of iron ingested in the fatal poisoning incidents in which both the amount of tablets ingested and the iron potency of these tablets were reported. Among 17 fatalities, in all but 1 case, the iron potency of the tablets was 60 to 65 mg, and with 1 exception (the same reported case), the calculated amount of iron ingested was at least 900 mg.

The 70 case reports of NEISS followup investigations of nonfatal pediatric iron ingestions involved 80 children. The 80 children were either treated in the emergency room and released or hospitalized for a period of time. Table 6 summarizes these case reports. The average age of the children was about 31 months.

TABLE 5.—TOTAL AMOUNT OF IRON INGESTED IN PEDIATRIC DEATHS [1]

| Case report | Number of tablets | Potency, mg iron/ dosage unit | Total ingestion, mg |
|---|---|---|---|
| 1 | 15 | 65 | 975 |
| 4 | 70 | 65 | 4,550 |
| 5 | 5 | 40 | 200 |
| 9 | ≥14 | 65 | 910 |
| 11 | 20 | 65 | 1,300 |
| 12 | 98 | 65 | 6,370 |
| 13 | 40 | 65 | 2,600 |
| 14 | 18 | 65 | 1,170 |
| 16 | 30–35 | 65 | 1,900–2,275 |
| 19 | 15–35 | 65 | 975–2,275 |
| 21 | 60–80 | 65 | 3,900–5,200 |
| 22 | 30 | 65 | 1,950 |
| 25 | 90 | 65 | 5,850 |
| 28 | 20–40 | 65 | 1,300–2,600 |
| 29 | 40 | 65 | 2,600 |
| 31 | 50 | 60 | 3,000 |
| 32 | 40 | 60 | 2,400 |

[1] Calculated on information reported in only 17 case studies. Range: 200–6,370 mg of iron.

TABLE 6.—NONFATAL PEDIATRIC EXPOSURES TO IRON—DATA REPORTED TO CPSC FROM 1986–1993

| | Age [1] | Package | Ingested [2] | Rx [3] | Potency [4] | Type [5] | Open [6] | T&R [7] | Serum [8] | Symptoms |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 12 | CRC [9] | 1 | NR | NR | Tablets | Mother | Yes | NR | NR |
| 2 | 24 | Non-CRC | 1–2 | No | NR | Tablets | — | Yes | NR | NR |
| 3 | 48 | No Lid | Unknown | NR | NR | Pills | — | Yes | NR | NR |
| 4 | 20 | CRC | Unknown | NR | NR | Tablets | Victim? | Yes | NR | NR |
| 5 | 24 | No Lid | 10–15 | No | NR | Pills | — | Yes | NR | NR |
| 6 | 10 | CRC | 1 | No | NR | Tablets | Victim | Yes | NR | NR |
| 7 | 36 | NR [10] | Unknown | NR | NR | Pills | NR | Yes | NR | Diarrhea |
| 8 | 48 | NR | Unknown | NR | NR | Pills | NR | Yes | NR | Diarrhea |
| 9 | 11 | CRC | 15 | No | NR | Pills | Victim | No | Yes | Vomiting |
| 10 | 24 | CRC | 8 | Yes | NR | Prenatal | Victim? | Yes | NR | NR |
| 11 | 12 | CRC | 3 | NR | 64mg | Prenatal | Sibling | Yes | NR | NR |
| 12 | 24 | CRC | 1–2 | Yes | NR | Prenatal | Victim | Yes | NR | NR |
| 13 | 16 | CRC | Unknown | Yes | NR | Prenatal | Victim | Yes | No | None |
| 14 | 17 | CRC | 6–8 | Yes | NR | Prenatal | Victim | Yes | NR | NR |
| 15 | 26 | Non-CRC | Unknown | Yes | 65mg | Prenatal | — | Yes | No | NR |
| 16 | 15 | CRC | 2 | Yes | NR | Prenatal | Victim | Yes | No | NR |
| 17 | 16 | CRC | 5 | Yes | 60mg | Anemia | Victim | No | NR | Vomiting |
| 18 | 16 | CRC | 3–15 | Yes | NR | Prenatal | Victim | No | NR | Vomiting |
| 19 | 36 | Non-CRC | Unknown | Yes | NR | Pills | — | Yes | NR | NR |
| 20 | 15 | CRC | 50 | Yes | NR | Pills | Victim | No | NR | Vomiting |
| 21 | 22 | Non-CRC | 0 | Yes | 60mg | Pills | — | Yes | NR | NR |
| 22 | 29 | CRC | Unknown | Yes | NR | Pills | Victim? | Yes | Yes | Vomiting |
| 23 | 19 | Not original | Unknown | NR | NR | Prenatal | — | Yes | NR | Vomiting, Lethargic |
| 24 | 23 | CRC | 4 | Yes | NR | Prenatal | Victim | Yes | NR | NR |
| 25 | 20 | CRC | 30–50 | NR | NR | Prenatal | Sibling | No | Yes | Vomiting, turned blue |
| 26 | 59 | Non-CRC | 1 | No | NR | Prenatal | — | Yes | NR | Vomiting |
| 27 | 23 | CRC | 1 | Yes | NR | Prenatal | Victim | Yes | NR | Vomiting |
| 28 | 20 | CRC | Unknown | Yes | 65mg | Tablets | Victim? | Yes | NR | NR |
| 29 | 21 | NR | Unknown | NR | NR | Prenatal | NR | Yes | NR | NR |
| 30 | 36 | CRC | Unknown | Yes | NR | Prenatal | Victim | Yes | NR | NR |
| 31 | 26 | CRC | Unknown | Yes | NR | Prenatal | Victim | Yes | NR | Vomiting, drowsiness |

TABLE 6.—NONFATAL PEDIATRIC EXPOSURES TO IRON—DATA REPORTED TO CPSC FROM 1986–1993—Continued

| | Age[1] | Package | Ingested[2] | Rx[3] | Potency[4] | Type[5] | Open[6] | T&R[7] | Serum[8] | Symptoms |
|---|---|---|---|---|---|---|---|---|---|---|
| 32 | 14 | CRC | 4–5 | Yes | 65mg | Prenatal | Victim | Yes | Yes | Lethargic |
| 33 | 48 | CRC | 30 | NR | 18mg | Multivitamins. | Victim | Yes | NR | NR |
| 34 | 24 | CRC | 32 | NR | NR | Children's | Victim | Yes | NR | NR |
| 35 | 36 | CRC | 1 | Yes | NR | Multivitamins. | Victim | Yes | Yes | NR |
| 36 | 46 | CRC | Unknown | No | NR | Children's | Victim | Yes | NR | NR |
| 37 | 24 | CRC | Unknown | No | NR | Children's | Sibling | Yes | NR | NR |
| 38 | 59 | CRC | 20–25 | No | NR | Children's | Victim | Yes | NR | Lethargic |
| 39 | 24 | CRC | 20–25 | No | NR | Children's | Sibling | Yes | NR | Lethargic |
| 40 | 24 | CRC | 36 | No | NR | Children's | Sibling | Yes | Yes | NR |
| 41 | 26 | CRC | Unknown | No | NR | Children's | Victim? | Yes | Yes | NR |
| 42 | 36 | CRC | 25 | No | NR | Children's | Mother | Yes | Yes | Vomiting |
| 43 | 36 | CRC | 15 | No | NR | Children's | Victim? | NO | NR | NR |
| 44 | 29 | CRC | 20 | No | NR | Children's | Victim? | Yes | NR | NR |
| 45 | 44 | CRC[9] | 42 | No | NR | Children's | Victim? | Yes | NR | Diarrhea |
| 46 | 39 | CRC | 30 | No | NR | Children's | Victim? | Yes | NR | NR |
| 47 | 42 | CRC | 25 | No | NR | Children's | Victim | Yes | NR | Cramps, Diarrhea, Vomiting |
| 48 | 36 | Not original | NR | NR | NR | Children's | — | Yes | NR | NR |
| 49 | 42 | CRC | 15 | No | NR | Children's | Victim | Yes | NR | NR |
| 50 | 38 | CRC | 16–24 | No | NR | Children's | Victim? | Yes | NR | NR |
| 51 | 36 | Non-CRC | NR | No | NR | Children's | — | Yes | NR | NR |
| 52 | 35 | CRC | 50 | No | 15mg | Children's | Victim? | Yes | NR | NR |
| 53 | 36 | CRC | UnkNown | No | NR | Children's | Cousin | Yes | NR | NR |
| 54 | 33 | CRC | 60–80 | No | NR | Children's | Victim | Yes | NR | NR |
| 55 | 36 | CRC | 40 | No | NR | Children's | Victim | Yes | Yes | NR |
| 56 | 36 | CRC | 25–35 | No | NR | Children's | Victim | Yes | NR | Diarrhea |
| 57 | 24 | CRC | 25–35 | No | NR | Children's | Sibling | Yes | NR | Diarrhea |
| 58 | 36 | CRC | 8–10 | No | NR | Children's | Victim | Yes | NR | NR |
| 59 | 60 | CRC | 8–10 | No | NR | Children's | Victim | Yes | NR | NR |
| 60 | 44 | CRC | 9 | No | NR | Children's | Victim | Yes | NR | NR |
| 61 | 3 | NR | 1 | No | NR | Children's | — | Yes | NR | Fever, Constipation |
| 62 | 36 | CRC | 5–10 | No | 15mg | Children's | Victim? | Yes | NR | NR |
| 63 | 24 | CRC | 10 | No | NR | Children's | Victim | Yes | NR | Nausea, Dizziness |
| 64 | 48 | CRC | UnkNown | No | NR | Children's | Sibling | No | Yes | Vomiting |
| 65 | 24 | Non-CRC | 20–30 | No | NR | Children's | — | No | Yes | None |
| 66 | 48 | CRC | 5–6 | No | 60mg | Children's | Sibling | Yes | NR | NR |
| 67 | 30 | CRC | 5–6 | No | 60mg | Children's | Victim | Yes | NR | NR |
| 68 | 24 | CRC | 75 | No | NR | Children's | Victim | Yes | NR | NR |
| 69 | 36 | CRC | 58 | No | NR | Children's | Victim | Yes | Yes | NR |
| 70 | 12 | Non-CRC | NR | No | NR | Multivitamins. | — | Yes | NR | Vomiting |
| 71 | 24 | CRC | 40 | No | NR | Children's | Victim | No | Yes | Hyperactive |
| 72 | 24 | CRC | 30–40 | No | NR | Children's | Victim | No | NR | Vomiting, Lethargy, Turning Colors |
| 73 | 24 | CRC | 30–40 | Yes | NR | Children's | Victim? | No | NR | Profuse Sweating |
| 74 | 42 | CRC | 25 | No | 15mg | Children's | Victim | Yes | NR | NR |
| 75 | 24 | CRC | 25 | No | 15mg | Children's | Sibling | Yes | NR | NR |
| 76 | 36 | CRC | 20 | No | NR | Children's | Sibling | Yes | NR | Vomiting |
| 77 | 72 | CRC | 20 | No | NR | Children's | Victim | Yes | NR | Vomiting |
| 78 | 48 | CRC | 9–10 | No | NR | Children's | Sibling | Yes | NR | Vomiting, Diarrhea |
| 79 | 36 | CRC | 5 | No | NR | Children's | Sibling | Yes | NR | Diarrhea |
| 80 | 36 | CRC | 2 | No | NR | Children's | Victim | Yes | NR | None |

[1] In months. *Avg.=31 Range 3–72.*

[2] Number of pills or tablets ingested.

[3] Even though these products were obtained by prescription (Rx), some information suggests that they were not drug products, but rather, they were dietary supplements dispensed by pharmacists for third party reimbursement purposes.

[4] All potency levels have been converted from the weight of the iron salt to iron contents. Potency is expressed as milligram iron per dosage unit. *Avg.=43.3 Range 15–65.*

[5] Type of iron-containing product. *Tablets and Pills=14 Prenatal and Anemia=18 Multivitamins=3 Children's=45.*

[6] Who opened the CRC. *Victim? (CRC Not closed properly, possibly aiding victim)=13 Victim 36 Other (—)=13 Family Member 15 NR=3.*

[7] T&R=Treatment and Release. *Yes=69 Treatment and Release Only. No 11=Hospitalized.*
[8] Elevated levels of iron in blood serum. *Yes=14 No=3 NR=63.*
[9] CRC=Child resistance closure. *CRC=64, Non-CRC=16.*
[10] Not reported (NR).

The types of products ingested were described as iron tablets, iron pills, prenatal vitamins, vitamins for anemia, multivitamins, and children's vitamins. Children's vitamins were the most numerous and were involved in 56 percent (45/80) of the cases, followed by prenatal vitamins in 23 percent (18/80). Sixty percent (48/80) of the iron products were nonprescription items, and 25 percent (20/80) were prescription items. (The remainder were not described.)

The average number of tablets ingested by the children was about 20 tablets, and the greatest number was 80 tablets. One child was taken to the emergency room as a precaution, but it was discovered that the child had not actually swallowed any tablets. The iron potency of the product was documented only in 13 case reports and in those, it ranged from 15 to 65 mg.

Most of the iron products (80 percent, 64/80) were reportedly packaged in CRP, whereas 10 percent (8/80) of the products were reportedly not packaged in CRP. In the remainder of the cases, the iron products were in packages with lost lids, the product had been removed from the original container, or no details were reported. The victims opened the CRP in 45 percent (36/80) of the cases. In 16 percent (13/80) of the cases, the victim was able to open the CRP because the lid was not secured tightly, whether by intent or accidentally, by an adult. A family member such as a sibling, cousin, or mother opened the CRP in 18 percent (15/80) of the incidents, allowing the victim access to the iron product.

Elevated iron serum levels were reported in 18 percent (14/80) of the reports, and normal levels were reported in 3 of the cases. However, most of the cases (79 percent, 63/80) did not report test results for serum iron. Eighty-six percent (69/80) of the cases were treated and released from the hospital, while 14 percent (11/80) were admitted to the hospital.

Symptoms, or lack of symptoms, were reported for 34 of the 80 children. The symptoms included diarrhea, vomiting, and lethargy. Gastrointestinal symptoms were the most common, vomiting occurred 18 times, diarrhea occurred 8 times, and 2 children suffered both vomiting and diarrhea. Fever and constipation were reported only for the 3-month old victim. Cramps, nausea, drowsiness, dizziness, hyperactivity, and profuse sweating were other symptoms that were documented only once each. A combination of at least two symptoms were documented for eight children.

Two of the pediatric iron poisoning incidents, including one fatality, occurred after an adult removed several dosage units from their original container and stored them in nonchild-resistant containers, as follows: (1) "The aunt took the prenatal vitamin pills out of their original container and placed them in a tin can that was half full of pennies." (Ref. 22, case report No. 23.)

(2) "For reasons as yet unknown, she (the mother) took them from the original container believed to be equipped with a child-resistant closure, and put them in a container that was not equipped with a child-resistant closure, possibly a vitamin bottle." (Ref. 21, case report No. 21.)

*D. Response to the Epidemic*

1. Petitions Submitted to FDA

FDA has received three citizen petitions requesting that the agency take various actions concerning labeling, packaging, and formulation for iron-containing products. One of the petitions suggested that the agency undertake efforts to educate the public about the danger of pediatric iron poisoning. The petitions were submitted by the American Association of Poison Control Centers (the AAPCC petition) (Docket No. 91P–0186/CP1) (Ref. 12); the Attorneys General of 34 States, Commonwealths, and Territories (the AG petition) (Docket No. 93P–0306/CP1) (Ref. 13); and the Nonprescription Drug Manufacturers Association (the NDMA petition) (Docket No. 93P–0306/CP2) (Ref. 23). The principal issues in these petitions are summarized in Table 7 and discussed in this section.

TABLE 7.—SUMMARY OF KEY ELEMENTS OF PETITIONS

| Element | AAPCC | AG | NDMA |
|---|---|---|---|
| Warning labels. | X ≥30 Fe | X ..... All products ..... | X All products |
| Packaging. Requirements . | | X ..... Individual Blister ..... Packaging for. ≥30 Fe ... | X Eliminate CRP Exemption[1] |
| Reformulation. | X | X ..... | X No sweet Outer coating On products ≥30 Fe |
| Education | X | ..... | X |

[1] Included in petition to CPSC.

a. *The AAPCC petition.* The AAPCC petition was submitted on April 30, 1991, and was supplemented by an additional submission by AAPCC on February 28, 1992. It was based upon pediatric poisoning data collected by the AAPCC National Data Collection System from 1983 through 1991. The petition stated that iron products are the leading cause of poisoning deaths in children under age six. A letter was submitted to the agency in support of the AAPCC petition by the American Academy of Pediatrics on February 17, 1993. The AAPCC petition requested that the agency take the following actions concerning the labeling and formulation of iron-containing products:

(1) *Labeling.* The petition requested that FDA declare labels on drug products and food supplements containing 30 mg or more of iron per dosage unit as misleading if the label does not clearly state that accidental pediatric ingestion of these products can be lethal.

(2) *Formulation.* The petition requested that the agency urge the industry to voluntarily reformulate iron-containing products containing 30 mg or more of iron per dosage unit in less attractive dosage units, specifically avoiding resemblance to popular candies.

The AAPCC petition also requested that the agency initiate an educational effort to alert the public and health professionals to the dangers of accidental pediatric ingestion of iron-containing products. The AAPCC stated that efforts need to be directed especially to parents, babysitters, daycare providers, and other consumers; to pediatricians, urging these health professionals to target parents at the 6-month visit; to obstetricians, urging these health professionals to educate mothers at the final postpartum visit; to other health professionals who prescribe

iron-containing products; and to pharmacists who dispense them.

b. *The AG petition.* The AG petition, submitted on August 16, 1993, cited data on injuries and deaths attributable to accidental iron poisoning in children reported to the AAPCC National Data Collection System and reported to CPSC through 1992. It requested that the agency take the following actions concerning the labeling, formulation, and packaging of iron- containing products:

(1) *Labeling.* For iron-containing products containing 30 mg iron or more per tablet or capsule, the petition requested that the agency promulgate a regulation requiring that the label bear a conspicuous boxed warning that states:

> **Warning**—Keep away from children. Contains iron which can be harmful or fatal if swallowed by a child.

The petition recommended that this warning be in bold face type and in a color that contrasts with the background and with other printed material on the label and labeling.

The petition also recommended that immediately following the above boxed warning, the following information appear:

> Acute overdosage of iron may cause nausea and vomiting and, in severe cases, cardiovascular collapse and death.

For iron-containing products containing less than 30 mg iron per tablet or capsule, the petition recommended that the agency promulgate a regulation requiring that the label contain a conspicuous boxed warning that states:

> **Warning**—Keep away from children. Contains iron which can be harmful or fatal in large doses if swallowed by a child.

The petition recommended that this warning also be in boldface type and in a color that contrasts with the background and with other printed material on the label and labeling.

(2) *Packaging*—The petition recommended that FDA require that iron-containing products containing 30 mg or more of iron per tablet or capsule be packaged in child-resistant individual blister packs.

(3) *Formulation*—The petition recommended that FDA prohibit the manufacture and sale of adult formulations of iron-containing products that look like candy or contain a sweet outer coating.

*c. Nonprescription Drug Manufacturers Association petition.*

The Nonprescription Drug Manufacturers Association (NDMA), a trade association that represents U.S. manufacturers and distributors of nonprescription medicines and vitamin and mineral products, submitted a citizen petition to FDA on October 15, 1993, in response to the AG petition. The NDMA petition requested that FDA adopt into regulation the newly initiated voluntary NDMA program on the labeling, packaging, and formulation of iron-containing products. NDMA stated that it submitted a similar petition to CPSC requesting that CPSC adopt into regulation the elements of the voluntary industry program that are under the regulatory jurisdiction of CPSC. The petition also requested that FDA deny the other citizen petitions submitted on iron-containing products and pediatric poisoning insofar as they would contradict, add to, or subtract from the NDMA program.

The NDMA petition requested that FDA adopt the following labeling, formulation, and packaging provisions:

(1) *Labeling.* Iron-containing products must bear on the primary container (or box for blister packaging, glassine envelope, etc.), conspicuously, prominently, and clearly distinguished from other labeling by type, color, or contrast, the following warning statement:

> **Warning:** Close tightly and keep out of reach of children. Contains iron, which can be harmful or fatal to children in large doses. In case of accidental overdose, seek professional assistance or contact a Poison Control Center immediately.

The petition stated that in circumstances in which the packaging did not involve a reclosable CRP element (e.g., cap to a bottle), the term "close tightly" would not need to appear in the warning statement.

(2) *Packaging.* The NDMA specifically requested that FDA deny the request made by the AG petition to require that iron- containing products containing 30 mg or more of iron per tablet be packaged in child-resistant individual blister packs. In support of this request, NDMA pointed out that its voluntary program calls for the packaging of all iron-containing products with 30 mg or more iron per dose in complying CRP (i.e., there will be no CRP-exempt sizes for this type of product). (See discussion on CRP requirements of CPSC in section II.B. of this document.) NDMA noted that its voluntary program is being carried out in conjunction with a national consumer education campaign that it launched with CPSC on September 27, 1993, in conjunction with CPSC's Conference on Pediatric Iron Poisonings and Fatalities, which was held on September 28, 1993, in Washington, DC.

(3) *Formulation.* The NDMA stated that iron-containing products with greater than or equal to 30 mg iron per solid dosage form will not be formulated with sweet outer coatings.

2. The Consumer Product Safety Commission Conference

CPSC held this conference because of the increase in iron poisonings of children. The objective of the conference was to provide a forum for health care professionals and representatives of government and industry to identify solutions to this problem. The conference included invited speakers from CPSC, AAPCC, Georgetown University, FDA, NDMA, the National Nutritional Foods Association (NNFA), and the Office of the New York State Attorney General. This conference highlighted the seriousness of the pediatric iron poisoning problem and the steps that were being taken to address the problem.

Factors that may have contributed to the increased incidence of pediatric iron poisonings were discussed, including the requirement by many women for iron supplementation during pregnancy; the use of iron-containing products in homes where small children are present; the ability of older siblings of potential victims to open CRP; the misconception that vitamin and mineral products are inherently safe; improper use or failure to properly close child-resistant closures; and the formulation of some iron-containing products to appear like candy, potentially explaining why some children consumed large quantities of tablets (30 to 100 tablets).

CPSC described the regulations that it issued in 1978 under the Poison Prevention Packaging Act, which require CRP on most drugs and food supplements with more than 250 mg of iron per container (see section II.B. of this document). CPSC noted that its Office of Compliance and Enforcement recently discovered that several manufacturers of iron-containing products were not using CRP, and that some of these manufacturers had voluntarily agreed to recall these products.

At this conference, FDA explained that most iron-containing products are regulated as dietary supplements under the food provisions of the Federal Food, Drug, and Cosmetic Act (the act). FDA noted that, although there are currently no specific regulations for iron-containing supplements, the general food safety and food labeling provisions of the act require that all foods, including iron-containing supplements, be safe under their intended conditions

of use, and that their labeling be truthful and nonmisleading. FDA also noted that iron-containing products that are regulated as drugs under the drug provisions of the act must be approved before marketing as safe and effective for their intended conditions of use and are subject to labeling and good manufacturing practice requirements.

The industry's voluntary efforts in response to the iron poisoning problem were described by representatives of NDMA and NNFA. NDMA described its newly initiated voluntary program of packaging, labeling, and formulation changes which it had petitioned FDA to adopt into regulation. NDMA also described the newly launched joint consumer education campaign that it had developed in cooperation with CPSC to inform adults how to protect children from accidental iron poisoning. (See section IV.B. of this document.)

NNFA stated that its members were adopting a voluntary program similar to NDMA's, with the added provision that iron will be limited to a maximum of 30 mg per dosage unit and 30 mg per recommended dose.

In an open discussion of possible solutions, several ways to address the problem of pediatric iron poisoning were suggested. These suggestions included:

(1) Labeling iron-containing products with statements warning that accidental ingestion by children can be lethal.

(2) Packaging changes for iron-containing products with 30 mg or more iron per dosage unit, including packaging these products in child-resistant unit-dose (e.g., blister) packages and not offering such products in packaging that is not child- resistant (no exempt sizes).

(3) Reformulating iron-containing products that resemble candy and that have a sweet outer coating to discourage consumption of large amounts by small children.

(4) Requiring prescription status for iron products, reducing the number of units per package, and closer monitoring of the iron status of pregnant women to determine whether iron supplementation is really needed.

(5) Multi-ethnic educational efforts to increase public awareness of the dangers associated with iron and patient counseling by obstetricians, gynecologists, and pharmacists, because many poisonings involve iron-containing drug products.

Several participants at the conference commended the trade associations for their voluntary programs. However, some participants urged that child-resistant unit-dose blister packaging, an element not included in the voluntary industry programs, be implemented as a significant measure to reduce the incidence of iron poisonings. The participants in the conference called upon industry, government, and the healthcare community to undertake efforts, including cooperative efforts, to address this problem.

*E. The Scope and Purpose of this Document*

The purpose of this document is to: (1) Propose requirements designed to reduce the risk of pediatric poisonings from the accidental ingestion of iron-containing products, (2) solicit additional information concerning the issue, raised in the petitions, of reformulating iron-containing products to avoid the resemblance to candy and to avoid use of a sweet outer coating, and (3) describe the efforts that FDA intends to undertake to respond to the need for public education concerning iron poisonings, reinforcing the NDMA/CPSC education campaign.

As stated above, the agency believes that the new requirements that it is proposing, in conjunction with CPSC's existing requirements for CRP for iron-containing products (see section II.B. of this document), will significantly reduce the risk of accidental pediatric iron poisoning. FDA and CPSC have worked together closely in coordinating their respective efforts toward this goal, and the two agencies intend to continue to work in close cooperation.

## II. Regulation of Iron-Containing Products

*A. Regulation by FDA*

1. Types of Iron-Containing Products Addressed in this Proposal

This proposal addresses iron-containing products available as dietary supplements and as prescription drug products.

FDA defined "dietary supplement" as a food, not in conventional food form, that supplies a component to supplement the diet by increasing the total dietary intake of that component (59 FR 425, January 4, 1994).

Section 201(f) of the act (21 U.S.C. 321(f)) defines "food" as: (1) Articles used for food or drink for man or other animals; (2) chewing gum, and (3) articles used for components of any such article. In *Nutrilab Inc.* v. *Schweiker,* 713 F.2d 335, 338 (7th Cir. 1983), the court noted that taste, aroma, or nutritive value were the primary reasons why people consume food. The *Nutrilab* court said that in section 201(f)(1) of the act, the statutory definition of "food" includes the common sense definition of food: "When the statue defines 'food' as 'articles used for food, it means that the statutory definition of food' includes articles used by people in the ordinary way most people use food—primarily for taste, aroma, or nutritive value." Other courts have followed suit. (See *United States* v. *Undetermined Quantities of Cal-Ban 3000,* 776 F. Supp. 249, 254–255 (E.D.N.C.1991); *American Health Products Co.* v. *Hayes,* 574 F. Supp. 1498, 1508–1509 (S.D.N.Y. 1983), aff'd 744 F.2d 912 (2d Cir. 1984).)

Types of iron-containing products that meet the definition of a dietary supplement and are regulated as foods include products intended for use primarily to supplement the dietary intake of iron (iron supplements) and multi-vitamin/mineral supplements that contain iron. Products intended for use as iron supplements generally contain 30 mg or more or iron per dosage unit, while multi-vitamin/mineral supplements generally contain 18 mg or less of iron per dosage unit.

Under section 201(g)(1) of the act, drugs are defined as:

> (A) Articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in clause (A), (B), or (C).

Iron-containing products that are regulated as prescription drugs include iron preparations that also contain folic acid and that are prescribed to meet requirements during pregnancy. These products are regulated as drugs because of the amount of folic acid that they contain. These products generally contain 30 mg or more of iron per dosage unit.

Thus, how an iron-containing product is regulated turns on its intended use.

2. Legal Authority for FDA Regulation of Iron-Containing Products

a. *Safety of iron and iron salts added to dietary supplements.* The act is intended to ensure that all food, including dietary supplements, is safe. The act does so, in part, by stipulating that no substances may be added to food unless they are safe. FDA has defined "safe" as meaning there is a reasonable certainty that no harm will result from the use of an ingredient in food (§ 170.3(i)(21 CFR 170.3(i)). The determination as to whether there is a "reasonable certainty of no harm" can

be made in a number of ways. The two most common are the existence of general recognition among qualified experts that the substance will be safe for its intended use (GRAS) (see § 170.3) or a determination by FDA that the use of the substance is safe (see sections 201(s), 402(a)(2)(C), and 409 of the act (21 U.S.C. 342(a)(2)(C) and 348)).

Under section 201(s) of the act, for a substance to be GRAS, general recognition of its safety must exist among experts qualified by scientific training and experience to evaluate the safety of substances directly or indirectly added to food. The experts' conclusion as to the safety of the substance for its intended use may be based on either: (1) Scientific procedures, that is, published scientific evidence that provides the quantity and quality of scientific evidence that would justify listing the use of the substance as a food additive; or (2) in the case of a substance used in food prior to January 1, 1958, evidence derived from common use of the substance in food.

Under section 409(c)(1)(A) of the act, the agency is authorized to prescribe the conditions of safe use of the substance, including, but not limited to: "* * * specifications as to the particular food or classes of food in or on which such additive may be used, the maximum quantity which may be used or permitted to remain in or on such food, the manner in which such additive may be added to or used in or on such food, and any directions or other labeling or packaging requirements for such additive deemed necessary by [the Secretary of Health and Human Services] to assure the safety of such use."

Section 402(a)(1) of the act also provides authority to take action to ensure that food is not harmful. It states:

> A food shall be deemed to be adulterated—(a)(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health.

Using its authority under these sections of the act, FDA has reviewed the safety of various iron salts that are used in food. FDA listed reduced iron, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric phosphate, ferric pyrophosphate, and ferric sodium pyrophosphate as GRAS nutrients in a regulation published in the **Federal Register** of November 20, 1959 (24 FR 9368). Subsequently, FDA listed iron and these compounds as GRAS "nutrients and/or dietary supplements" in a regulation published in the **Federal Register** of January 31, 1961 (26 FR 938). In addition, the ferrous salt of fumaric acid (§ 172.350 (21 CFR 172.350)) (originally promulgated as 21 CFR 121.1130 (29 FR 559, January 23, 1964) and iron-choline citrate complex (§ 172.350 (21 CFR 172.370)) (originally promulgated as 21 CFR 121.247 (28 FR 4509, May 4, 1963)) have been listed by the agency as food additives for use in foods for special dietary use.

In a final rule published in the **Federal Register** of September 5, 1980 (45 FR 58837), the agency divided the "nutrients and/or dietary supplements" category into separate listings for ingredients whose intended use was as a dietary supplement (part 182 (21 CFR part 182), subpart F) and for ingredients whose intended use was as a nutrient supplement in foods in conventional food form (part 182, subpart I). For example, reduced iron is listed as GRAS in § 182.5375 for use as a dietary supplement ingredient and in § 182.8375 for use in food in conventional form as a nutrient. Similarly, ferric phosphate (§ 182.5301), ferric pyrophosphate (§ 182.5304), ferric sodium pyrophosphate (§ 182.5306), ferrous gluconate (§ 182.5308), ferrous lactate (§ 182.5311), and ferrous sulfate (§ 182.5315) are listed as GRAS for use as dietary supplement ingredients and are listed in § 182.8301, 182.8304, 182.8308, 182.8311, and 182.8315, respectively, as GRAS for use as nutrients in food in conventional food form.

In a regulation published on May 12, 1988 (53 FR 16862), the agency affirmed that elemental iron (21 CFR 184.1375), ferrous ascorbate (21 CFR 184.1307a), ferrous carbonate (21 CFR 184.1307b), ferrous citrate (21 CFR 184.1307c), ferrous fumarate (21 CFR 184.1307d), ferrous gluconate (21 CFR 184.1308), ferrous lactate (21 CFR 184.1311), ferrous sulfate (21 CFR 184.1315), ferric ammonium citrate (21 CFR 184.1296), ferric citrate (21 CFR 184.1298), ferric phosphate (21 CFR 184.1301), and ferric pyrophosphate (21 CFR 184.1304) are GRAS for use as nutrient supplements, as that use is defined in 21 CFR 170.3(o)(20), and removed their listing from part 182, subpart I. However, in the final rule, FDA did not affirm that these iron salts are GRAS for use in dietary supplements (i.e., in forms such as capsules, tablets, or liquids) because there were insufficient data on their consumption as dietary supplement ingredients. However, these ingredients continue to be listed as GRAS for use in dietary supplements under part 182, subpart F.

Even though FDA has affirmed as GRAS the use of numerous iron salts in foods, there are differences in the toxicity of these various salts.

b. *Safety and efficacy of iron-containing drugs.* The act also authorizes FDA to regulate the marketing of any products to help ensure that the products are safe and effective for their intended uses. "New drugs" may not be introduced into interstate commerce unless they are the subject of approved new drug applications (NDA's)(25 U.S.C. 355(a)). The act defines a "new drug" as: (1) Any drug (except a new animal drug or an animal feed bearing or containing a new animal drug) the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions (21 U.S.C. 321(b)). In order to be approved, an NDA must contain adequate data to demonstrate that the drug product is safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling (21 U.S.C. 355(d)). In addition, for NDA approval, the product must be manufactured using current good manufacturing practice and the product labeling must not be false or misleading (21 U.S.C. 355(d)).

Section 411 of the act (21 U.S.C. 350) provides that the Secretary of Health and Human Services may not classify any natural or synthetic vitamin or mineral (or combination thereof) as a drug solely because it exceeds the level of potency which the Secretary determines is nutritionally rational or useful except in the case of a vitamin, mineral, other ingredient of food, or food, which is represented for use by individuals in the treatment or management of specific diseases or disorders, by children (individuals under the age of 12 years), or by pregnant or lactating women.

Most of the iron-containing products that FDA regulates are considered dietary supplements. The iron-containing products that FDA currently regulates as drug products are generally prescription products and are so designated, in most cases, because they

contain an amount of folic acid that exceeds the amount in which folic acid may be used as a food additive (see 21 CFR 172.345).

FDA currently has no packaging or labeling requirements specifically for iron-containing drug products. As prescription drug products, these iron-containing products must comply with the labeling requirements of section 503(b)(2) of the act (21 U.S.C. 353(b)(2)) and 21 CFR part 201, as well as other applicable provisions.

*B. CPSC Regulations*

CPSC, under authority of the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C 1471–1475), regulates the packaging of household substances, including food, drugs, and cosmetics, as these terms are defined under the PPPA. Under this authority, CPSC has promulgated regulations establishing special packaging [1] standards for several household substances, including noninjectable animal and human iron-containing drugs (16 CFR 1700.14(a)(12)) and dietary supplements (16 CFR 1700.14(a)(13)) containing a total amount of iron in a single package [2] equivalent to 250 mg or more per container.

For nonprescription covered products, the PPPA permits one type of package for each product to be sold without special packaging if all other package types of the product comply with the requirements. However, exempt packages must bear a conspicuous label stating: "This package for households without young children." CPSC may, by regulation, prescribe a substitute statement to the same effect for packaging too small to accommodate this statement.

In the case of prescription drugs, the PPPA allows for an exemption to such packaging requirements only when directed in the prescription or when requested by the purchaser.

CPSC provides for testing for special packaging in 16 CFR 1700.20. This regulation establishes test protocols to evaluate child-resistant effectiveness and adult accessibility to such packaging. Recently, CPSC proposed to amend 16 CFR 1700.20 to establish new test protocols under which CRP is evaluated (55 FR 40856, October 5, 1990, and 59 FR 13264, March 21, 1994).

In establishing these regulations, CPSC considered the degree and nature of the hazard to children from accidental acute overdose of dietary supplements and drugs containing iron. It found that special packaging is required to protect children from serious injury from ingesting iron-containing drugs and dietary supplements. This finding was based on: (1) Data from FDA's National Clearing House for Poison Control Centers (no longer in operation) and NEISS, which showed that products containing iron are frequently ingested by children under the age of 5 years; (2) published human experience data, symptomatology associated with many of the National Clearinghouse for Poison Control Centers ingestion reports, and data from death certificates, which showed that the accidental ingestion of 250 mg or more of iron has caused death or serious illness; and (3) the fact that iron-containing drugs and dietary supplements are normally stored in their original containers, and that many accidental ingestions of these products result from children gaining access to the contents of the original container (43 FR 17335, April 21, 1978).

## III. Proposed Regulation

*A. Labeling*

1. Review of Labeling Issues in Citizen Petitions

As noted in section I.D.1. of this document, the AG and NDMA petitions agreed that iron-containing products should bear label warning statements. However, these petitions did not agree on what the warning should state, or on how it should appear on the label.

In requesting the labeling provisions described in section I.D.1. of this document, the AG petition stated that the hazard presented by iron-containing products is the result, in part, of the perception that they are nontoxic household products. Thus, according to this petition, they are likely to be left within easy reach of children and not kept properly secured. The petition also noted that these products are extremely attractive to children because of their typical candy-like appearance and sweet outer coating and pointed to case reports that illustrate how children ingest iron tablets in large quantities (see Table 4).

The AG petition stated that the recent increase in iron poisoning deaths among children might reflect an increase in the extension of primary health care, especially prenatal care. It noted: "While more doctors are prescribing prenatal iron supplementation to more women, there has been no concomitant increase in warnings regarding their potentially lethal effects."

The AG petition also noted that, while more women were using iron-containing products, the labeling of these products does not reflect the dangers inherent in their misuse:

> While labeling for a few multi-vitamins containing iron bears the statement that iron can be harmful in large doses, most iron supplements bear only the non-specific phrase, "Keep out of reach of children." Few, if any, packages of iron supplements contain the word "WARNING" or "CAUTION," words universally accepted as denoting danger, to alert the user to the dangers of iron overdose. Further, the meager statements that do exist are, for the most part, printed in the same color and type size as other material on the label and therefore fail to catch anyone's attention. The statements are often obscured within other small print on the labeling and are neither prominent nor specific enough to reach parents with a warning about these pills' potential fatal effect on children. Consumers who have no knowledge of iron's hazards before purchasing iron supplements will not gain that knowledge by purchasing the product and examining the label.

The AG petition presented data showing that many iron-containing products commonly available do not carry any label information conveying the need to keep the product out of the reach of children or conveying any message specific to iron poisoning. A summary, which was included as part of the AG petition, of the label information found on 25 commonly available iron-containing products revealed that 10 of the 25 did not include information on the label that the product should be kept away from children, and that 17 did not contain information stating that iron could be harmful. Six of the products had no cautionary information at all, and none of the products that did have cautionary information used the terms "WARNING" or "CAUTION," to accompany the statements on the label.

NDMA, in its petition, stated that its proposed warning label was more appropriate than that proposed in the AG petition because its warning goes beyond awareness in its focus and extends its message to include information that is preventive in nature, i.e., "Close tightly," and treatment oriented, i.e., "In case of accidental overdose seek professional assistance immediately."

---

[1] "*Special packaging* means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time." 16 CFR 1700.1(b)(4).

[2] "*Package* means the immediate container or wrapping in which any household substance is contained for consumption, use or storage by individuals in or about the household and, for purposes of section 4(a)(2) of the act, also means any outer container or wrapping used in the retail display of any such substance to consumers * * *." 16 CFR 1700.1(b)(3).

NDMA also argued for allowing for flexibility in the manner in which the warning statement is to be applied to the label. The petition stated:

> It has been the experience of NDMA members in implementing the Association's Label Readability Guidelines that such factors as contrast, color, type size, substrate, paragraphing, etc. are inter-related in a complex way on labeling, such that goal-oriented flexibility is perhaps the most important principle in assuring prominence to special label language. That is to say, specifying a box, when boxed labeling may already be stipulated under NLEA regulations, is not necessarily as good a way to ensure prominence to label language as is a more flexible approach whose goal is to ensure that the language is conspicuous, prominent and clearly distinguishable from other labeling.

2. Agency Response

FDA considered the following questions in evaluating and responding to the labeling issues raised in the citizen petitions: (1) Should label warning statements that alert users to the potential dangers that iron-containing products pose to young children be required on these products? (2) If so, what legal authority does the agency have to require such statements on food and drug products? (3) What should the warning be required to state? and (4) How should the warning appear on the label?

a. *Should label warning statements be required for iron-containing products?* Based on the data in the AAPCC and AG petitions and in the CPSC case reports, iron-containing products can cause injury, including serious injury, and death when children gain access to these products. FDA finds from these data that the potential for harm exists for all three types of iron-containing products available, i.e., multi-vitamin/mineral supplements that contain iron, iron supplements, and iron-containing drugs.

Supporting this finding are the data cited in Tables 1, 2, and 3 that show that, since 1983, at least 40 deaths have been attributed to the accidental ingestion of iron supplements and iron-containing drugs, and that, since 1986, nearly 190 poisonings that were life threatening or that resulted in permanent injury, and over 2,000 poisonings requiring some form of treatment, have resulted from accidental ingestion of adult iron-containing products.

Further support is provided by the data in the CPSC case reports, which show 80 ingestions of iron leading to hospital emergency room visits with varying types of injury, including vomiting, lethargy, diarrhea, and elevated serum iron (see Table 6).

The data in Tables 4 and 6 show that in several documented poisoning incidents, children have ingested 30, 40, 50, or more tablets of iron-containing products when these amounts of tablets were accessible. Aside from the potential for such ingestion of iron-containing supplements and drugs to be fatal, the consequences of ingesting even multi-vitamin/mineral type products in these amounts is evident from Table 8. This table shows that an amount of iron that may produce symptoms of iron poisoning (i.e., 25 mg/kg) can be ingested by a 10 kg child if the child consumes 25 tablets containing 10 mg of iron each or approximately 14 tablets containing 18 mg each. (Ten mg and 18 mg of iron are the amounts typically contained in multi-vitamin/mineral supplements with iron including children's vitamins.) Based upon the data in Tables 4 and 6, ingestion of this many tablets is not atypical. Thus, FDA finds that injury can result anytime a small child is able to gain access to even the lowest potency iron-containing products available.

Further, the fact that over 2,000 reported poisoning incidents of varying severity have been recorded in recent years (Tables 2 and 3), and the fact that AAPCC reports that accidental iron poisoning is presently the leading cause of pediatric poisoning deaths, lead FDA to find that pediatric iron poisonings have occurred, and continue to occur, with significant frequency. Further, FDA finds that the fact that these poisonings continue to occur, even though there have been over 40 deaths from accidental iron ingestion (See Table 1), strongly suggests that many adults are not aware of the potential for serious harm or death in young children from accidental ingestion of iron-containing products. Support for this finding is provided by statements made by the parents of the victims in several of the poisoning incidents, described in the case reports obtained from CPSC as follows:

(1) "The mother stated that she thought the pills (prenatal iron pills) were just vitamins and would not harm the victim" (Ref. 21, case report No. 10).

TABLE 8.—NUMBER OF IRON-CONTAINING TABLETS INGESTED RESULTING IN TOXIC AND LETHAL DOSAGES

| Potency of Iron Product, mg Iron per Dosage Unit | Number of Tablets Containing Toxic Dose (25mg/kg) for a 10 kg Child | Number of Tablets Containing Potentially Lethal Dose (100-250mg/kg) for a 10 kg Child[1] |
|---|---|---|
| 10 | 25 | 100–250 |
| 18 | 14 | 55.5–139 |
| 30 | 8 | 33–83 |
| 60 | 4 | 16.5–41.5 |
| 100 | 2.5 | 10–25 |
| 130 | 2 | 7.5–19.5 |

[1] Values for a lethal dose cited by authorities generally range from 100 to 250 mg of iron per kg of body weight. The Attorneys General petition states that fatality has occurred at doses as low as 60 mg/kg.

(2) "She (the mother) said that she did not think he (the victim) had taken very many pills at the time, and that she was unaware of the danger of iron overdose" (Ref. 21, case report No. 20).

(3) "The mother stated that she called her sister and asked if iron tablets could hurt the victim. The mother stated, that her sister told her that the tablets were just vitamins and would not hurt the victim" (Ref. 21, case report No. 37).

(4) "The mother thought at the most if her son had taken more than a couple of the vitamins he would simply throw up and that would be the end of it. She had no idea what a dangerous situation her child was in" (Ref. 22, case report No. 62).

(5) "Later in the day (after child had ingested 30–40 iron tablets) the mother went to the pharmacy to get a prescription for the daughter's ear infection and she asked the pharmacist about the possible ingestion of iron tablets" (Ref. 22, case report No. 73).

In addition, as stated above, the data presented by the AG petition show that

few, if any, of the commonly available iron-containing products have carried label statements using terms such as "WARNING" or "CAUTION." Because these terms are universally accepted as connoting danger, they could be expected to promote awareness among adults of the danger that these products pose to young children and of the importance of preventing children from gaining access to these products.

Therefore, because the data demonstrate that: (1) Iron-containing products of all types can cause injury or death when small children gain access to them, (2) more than 2,000 poisonings have occurred over approximately 7 years and continue to occur, (3) a small child is at risk of injury any time he or she gains unlimited access to any iron-containing product, and (4) many adults are not aware of the potential for serious harm posed by iron-containing products, FDA tentatively concludes that it should require label warning statements for iron-containing products to ensure that adults are fully informed as to the potential of these products to cause devastating outcomes and, thus, to promote the safe handling and storage of these products.

b. *FDA's legal authority to require label warning statements on foods.* FDA's authority to require label warning statements on food products derives from sections 201(n), 403(a)(1), and 701(a) of the act (21 U.S.C. 321(n), 343(a)(1), and 371(a)). Under section 403(a)(1) of the act, a food is misbranded if its labeling is false or misleading in any particular. Section 201(n) of the act states, "If an article (e.g., a food product) is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual." These statutory provisions, combined with section 701(a) of the act, which grants the agency authority to promulgate regulations for the efficient enforcement of the act, clearly authorize FDA to promulgate a regulation designed to ensure that persons using iron-containing multi-vitamin/mineral products and iron supplements will receive information that is material with respect to consequences that may result from the use of the product under its labeled conditions or under conditions that are customary or usual.

FDA requires label warning statements on certain types of protein products represented for use in reducing weight. The agency adopted this requirement in response to a series of sudden deaths of individuals, mostly young women, who consumed high protein, very low calorie diets (§ 101.70(d)(21 CFR 101.17(d)). Use of such diets was intended to achieve rapid weight loss. As a result of these deaths, which occurred in the late 1970's, FDA promulgated the warning requirement for such products to ensure that users of these products are aware of the potential adverse consequences of very low calorie protein diets, to indicate the necessity for appropriate medical supervision for persons on such diets, and to identify individuals, i.e., infants, children, or pregnant or nursing women, who should not use these products (49 FR 13679, April 6, 1984).

FDA's legal authority under sections 201(n), 403(a)(1), and 701(a) of the act to require a warning statement on dry, whole protein products was upheld in *Council for Responsible Nutrition* v. *Goyan*, Food Drug Cosm. L. Rep. (CCH) ¶ 38,057 (D.D.C. 1980). In that case, the plaintiff asserted that the fatal consequences arising from the use of dry, whole protein products while dieting were not the result of the customary or usual use of these products, but rather, the result of unusual misuse of such products. Based on FDA's showing that the consumption of dry protein products could occur in the course of a diet, and that, under certain circumstances in dieting, serious adverse effects could arise from such use of these products, the court found that FDA properly invoked sections 201(n), 403(a)(1), and 701(a) of the act to impose a requirement that manufacturers warn consumers of the consequences that could result from the use of such products.

The facts presented by the evidence on iron poisonings parallel those that led the agency to require a warning on protein products. The use of iron-containing products in households where children are present is in no way an unusual practice. Multi-vitamin/mineral supplements with iron are routinely taken by children, and products of this type specifically intended for use by children are widely available and commonly sold. Iron supplements and adult vitamin/mineral supplements with iron are frequently taken by pregnant women (often with a prescription) and other women of child-bearing age because they require more iron than other adults (see discussion in section I.A. of this document). Yet, the evidence on poisonings and deaths shows that the use of any type of iron-containing product in such households can readily lead to accidental injury or death if children gain access to the products, even though the products are not intended to be used by children or to be taken in the numbers in which iron-containing tablets or capsules are consumed when poisonings occur. Thus, *Council for Responsible Nutrition* v. *Goyan* provides strong support for the agency's authority to require label warning statements concerning the risk of accidental poisoning from iron-containing food products.

Based upon FDA's authority under sections 201(n), 403(a)(1), and 701(a) of the act, the agency proposes to require that manufacturers of iron-containing dietary supplements (i.e., children's and adult's multi-vitamin/mineral supplements that contain iron and products intended for use as iron supplements) disclose information about their products in the form of a label warning statement that would appear on such products in the manner described below.

c. *FDA's legal authority to require label warning statements for drugs.* The act authorizes FDA to regulate the marketing of drug products to ensure that such products are properly labeled. To carry out the public health protection purposes of the act, FDA, among other things, monitors drug labeling to ensure that it provides accurate information about drug products.

Under section 502(a) of the act (21 U.S.C. 352), a drug product is misbranded if its labeling is false or misleading in any particular. The provisions of section 201(n) of the act concerning failure of the labeling to reveal material facts are applicable to drugs as well as to foods in determining whether labeling is misleading. In addition, under sections 505(d) and (e) of the act (21 U.S.C. 355(d) and (e)), FDA must refuse to approve a new drug application, and may withdraw approval for a product, if the product's labeling is false or misleading in any particular.

These statutory provisions, together with section 701(a) of the act, clearly authorize FDA to promulgate a regulation designed to ensure that patients using drugs will receive information that is material with respect to consequences that may result from the use of a product. (See

*Pharmaceutical Manufacturers Association* v. *Food and Drug Administration*, 484 F. Supp. 1179 (D. Del. 1980), aff'd per curiam, 634 F.2d 106 (3d Cir. 1980).)

The act also authorizes FDA to regulate the marketing of drug products to ensure that such products are safe and effective for their intended uses. Iron-containing drug products are not safe for their intended use as currently labeled, in part because the labeling fails to warn of iron-containing products' toxic effects in children. Adults are, therefore, not aware of the need to prevent children from ingesting these products. Because the labeling fails to warn adequately that these products may produce toxic effects in children, iron-containing products are not being used as intended; that is, even though they are not intended for children, they are handled in a way that permits their ingestion by children.

The act anticipates that new information about the safety or effectiveness of marketed drugs may require changes in labeling to reflect necessary limitations on use or to warn of previously unanticipated hazards (see e.g., 21 U.S.C. 355(e)). FDA has required by regulation that manufacturers provide warning statements for specific drug products (e.g., drugs for internal use which contain mineral oil, 21 CFR 201.302; isoproterenol inhalation preparations, 21 CFR 201.305; acetophenetidin (phenacetin)-containing preparations, 21 CFR 201.309). The impetus for requiring warnings for each of these products or product classes was evidence of risk in a specific patient population or from a specific use of the product. FDA responded to these risks by requiring warnings to help patients use prescription drug products more safely and effectively. For example, given the particular risk of severe paradoxical bronchoconstriction associated with repeated, excessive use of isoproterenol inhalation preparations, FDA requires that warning information to patients be included as part of the label and as part of the instructions included in the package dispensed to patients (See 21 CFR 201.305). The specified warning statement may be placed on the immediate container with a statement to the pharmacist not to remove it or may be included in a package with instructions to pharmacists to place the warning on the container prior to dispensing (see 21 CFR 201.305(c)(2)).

Based upon FDA's authority under sections 201(n), 502(a), 505 and 701(a) of the act, the agency is proposing to require that manufacturers of prescription iron-containing products disclose information about the risks presented by their products in the form of a warning statement that would appear on such products in the manner described below.

d. *What should the label warning be required to state?* FDA has considered what information should be required in the warning statement to ensure that, as required by sections 201(n), 403(a)(1), 502(a), and 505 of the act, users of iron-containing products are made aware of the potential consequences of their use, i.e., that the labeling of iron-containing products states the facts that are material with respect to the consequences that may result from the use of these products. The proposed warning statements in the AG and NDMA petitions contained the various information elements as shown in Table 9. FDA tentatively concludes that to fulfill the requirements of the act, the warning statement should incorporate some elements from both of these petitions, as well as other elements that are designed to ensure that the statement performs its function. In reaching this tentative conclusion, FDA considered several factors.

FDA agrees with the AG petition that the term "Warning" is necessary to alert the user to the potential consequences of the use of the product, that is, to the dangers of iron overdose. This term is universally accepted as denoting danger. FDA tentatively concludes that the potential for iron-containing products to cause death or serious injury any time a small child gains access to the product warrants the use of this term.

FDA tentatively concludes that the statement must bear the instruction to "Keep away from children." Because a child is at risk of serious injury or death any time he or she gains access to iron-containing products, this statement is a material fact about the consequences of use of the product and is also necessary to ensure the safe use of the product.

TABLE 9.—ELEMENTS OF PETITIONERS' WARNING LABELS

| Information Elements | Petitioner | | |
|---|---|---|---|
| Fe[1] Overdose Warning Label Elements | AAPCC | AG | NDMA |
| "WARNING" (stated first) | ..... | X | X |
| "Close tightly" (for bottles) | ..... | ..... | X |
| Accessible to children | ..... | X[2] | X[3] |
| Consequences of Fe overdose (injury and death) | X (For products. ≥ 30 mg Fe; no suggested language) ..... | X | X |
| Warning language dose dependent | ..... | X[4] | ..... |
| Reference to "large doses" as presenting a greater hazard | ..... | X[5] | X[6] |
| Listing of symptoms | ..... | X[7] | ..... |
| Treatment action | ..... | ..... | X[8] |

[1] Fe denotes iron.
[2] "Keep away from children."
[3] "Keep out of reach of children."
[4] Products ≥ 30 mg Fe: "Contains iron which can be harmful or fatal if swallowed by a child."
[5] Product < 30 mg Fe: "Contains iron which can be harmful or fatal in large doses if swallowed by a child."
[6] All iron-containing products: "Contains iron, which can be harmful or fatal to children in large doses."
[7] Products ≥ 30 mg Fe: "Acute overdosage of iron may cause nausea and vomiting and, in severe cases, cardiovascular collapse and death."
[8] "In case of accidental overdose, seek professional assistance or contact a Poison Control Center immediately."

FDA also recognizes that the warning needs to be crafted to reflect the type of packaging used. Iron-containing products may be packaged in unit-dose packages, e.g., blister packs, or in containers with closures, e.g., a bottle

with a cap. FDA tentatively concludes that for iron-containing products packaged in unit-dose packages, the warning statement should include the instruction "Keep in original package until each use." This statement instructs the user not to misuse the product by removing more dosage units from their individual packs than will be ingested at one time. This instruction is important because such misuse can result in poisoning if children gain access to the dosage units that have been removed from their original packaging. This instruction was not specifically requested by any of the petitions. Because some incidents of pediatric iron poisoning have occurred after adults removed multiple dosage units from their original containers and stored them in nonchild-resistant vessels (see section I.C. of this document), however, the agency tentatively concludes that this statement is necessary to ensure that the product is properly used.

The agency concurs with the NDMA petition that the statement "Close Tightly" should be included in the warning statement for containers with closures. Such a statement provides information on how to maintain the child-resistance of the container. FDA finds that this message is a material fact. FDA bases this finding, in part, on the fact that some incidents of iron poisoning have occurred even though the product was in child-resistant packaging. Children were able to gain access to iron products because the child-resistant closure was not properly secured (See section I.C. of this document). Thus, to ensure that iron-containing products are used safely, the child-resistance of the packaging must be maintained, and FDA tentatively concludes that inclusion of the statement "Close Tightly" is necessary to ensure that condition of use is maintained.

FDA also tentatively concludes that the label must include the information "Contains iron, which can harm or cause death to a child." This statement informs the user or the serious and potentially life-threatening nature of the consequences that can occur when a child ingests an uncontrolled amount of these products.

FDA also tentatively concludes that the label must state: "If a child accidentally swallows this product, call a doctor or a poison control center immediately." FDA agrees with the NDMA petition that treatment-oriented information should be included on the label because it informs attending persons in a poisoning incident of the need to take immediate action that could save the child's life and about what that action should be. Thus, it relates directly to the consequences of use of the product.

FDA does not believe that the warning statement should be based upon or contain information relating to the potency of the iron product (i.e., different statements for products above and below 30 mg per dosage unit as requested by the AG petition, or reference to "large doses" of iron as a factor in determining whether poisoning may occur). The agency tentatively finds that such statements could cause members of the public to attempt to determine whether a large dose has been taken in a possible poisoning incident. Because most people are not capable of determining what dosage of iron may be nontoxic, toxic, or capable of causing serious harm or death, qualified medical or poison control personnel should determine the significance of the dose a child has ingested.

Nor does there appear to be any reason to require that the statement include reference to the specific types of consequences that may arise from acute overdosage, i.e., nausea, vomiting, cardiovascular collapse, as requested by the AG petition. FDA does not believe that this information would materially add to the label statement that overdose can cause harm or death, and fears that it may lead to the erroneous conclusion that, because a child does not exhibit one of the listed symptoms, the child is not in danger.

e. *How should the warning appear on the label?* FDA agrees with the AGs' contention that the warning statement should appear prominently on the label of iron-containing products to effectively convey its message. Further, the act specifically requires, in sections 403(f) and 502(c), that information required to appear on the label of a food or a drug be prominently placed and appear with such conspicuousness, as compared with other printed matter, as to render it likely to be read by the ordinary individual under customary conditions of use.

However, the AG petition provided no evidence to support the specific presentation elements that it requested for the warning statement, i.e., that it be boxed, in boldface type, and in a color that contrasts with the background and with other printed material on the label or labeling. The agency is not aware of any basis on which it can conclude that any of these specific elements are necessary to ensure that the statement appears on the label in a prominent and conspicuous manner.

Further, in the agency's rulemaking that mandated warning statements on certain protein products, the agency decided not to mandate specific requirements for letter size and other format elements. However, the agency did require that the warning statement appear "prominently and conspicuously on the principal display panel of the package label" (21 CFR 101.17). FDA made a determination to give manufacturers flexibility to design their own label warning formats, while ensuring that the statement is prominent and conspicuous, so that consumers are given adequate notice of the information contained in the warning (47 FR 25379 at 25382, June 11, 1982). In addressing the placement of the label warning, the agency noted that the seriousness and nature of the risk associated with the use of protein products in very low calorie diets was sufficient to require placement of the warning statement on the principal display panel (49 FR 13679 at 13689).

Section 201(k) of the act defines the term "label" as "a display of written, printed, or graphic matter upon the immediate container of any article" and further states that a requirement "that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper if any there be, of the retail package of such article * * *." Thus, if FDA requires a label warning statement to appear on the immediate container of iron-containing products, it would also have to appear on the retail package of such a product if that package is not the immediate container.

As stated above, the fact that iron-containing products have resulted in reports of 2,000 poisonings in children over approximately 7 years provides evidence that many adults are not aware of the potential for serious harm posed by iron-containing products. Based on this fact, FDA tentatively finds that there are sufficient grounds to require that the label warning statement be printed directly on the immediate container of the product, i.e., the container that holds the tablet or capsule, and on the principal display panel of the retail package, i.e., an outer box, if such package is not the immediate container (many iron-containing products are packaged in this manner). If a product is sold in unit-dose packaging, this requirement will mean that the product will have to bear the warning directly on each unit-dose package or on a strip of unit-dose packages in such a way that separating the unit dose packages would not destroy the warning labeling.

The placement of the warning statement on the principal display panel of the retail package will make it likely that the warning statement will be seen at the time the product is purchased. The statement will inform the purchaser of the product's potential to cause poisoning and of the need to keep the product away from children when it is brought into the house. FDA tentatively concludes that placement of the warning statement on the principal display panel is necessary to fulfill the requirement of sections 403(f) and 502(c) of the act, that information required to appear on the label of a food or a drug be placed with conspicuousness (as compared with other printed matter) as to render it likely to be read by the ordinary individual under customary conditions of use. Moreover, placement of the warning statement on the principal display panel is consistent with the requirement that FDA established for protein product warning statements discussed previously. In both cases, the products in question could cause serious, even life-threatening, problems if misused. Thus, FDA tentatively concludes that the standard of conspicuousness established in the protein products case should also be adopted for iron-containing products.

The agency tentatively concludes that placement of the warning statement on the immediate container is also necessary to fulfill the requirement of sections 403(f) and 502(c) of the act because, under customary conditions of use, the retail container is frequently disposed of, and individuals other than the purchaser may use the product. Therefore, the warning statement must be printed on the immediate container if this statement is to perform its function throughout the life of the product.

Regulating the placement of the warning is consistent with other labeling requirements that the agency has imposed. In 21 CFR 201.314(h)(1) and (h)(2), FDA has required that the labeling of orally or rectally administered aspirin and aspirin-containing drug products intended for sale without prescription bear a warning that reads: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness reported to be associated with aspirin." The warning must appear on the immediate container labeling. In cases where the immediate container is not the retail package, the retail package must also bear the warning statement. (see 51 FR 8180, March 7, 1986).

FDA tentatively concludes that the objectives of the proposed regulation regarding the packaging and labeling of iron-containing products will be best met if the agency requires that the proposed warnings appear on the immediate container. In case the strip packaging or individual unit-dose packages are removed from the box in which they are sold to the consumer, or in case a strip of unit-dose packages is transferred by a pharmacist to a vial, each unit-dose package, or strip of unit dose packages, would bear the warning that FDA considers essential to the safe use of these products. The warning would remind adults not to remove the iron-containing products from the unit-dose package. In addition, it would ensure that each time an adult takes one of these products, he or she is reminded of the danger that the product poses to children.

In addition, if the warning accompanies each tablet or group of tablets, an adult who finds a child eating the product will know to call for help immediately and will know, when asked by a health care professional, that the ingested tablets contain iron.

FDA is not proposing specific requirements for the graphics (e.g., type size, bold type) of the warning statement but is proposing to require that the label warning appear prominently and conspicuously on the immediate container of the product and on the principal display panel of the retail package, so that consumers are given adequate notice of the information contained in the warning. These proposed requirements for the warning statement are consistent with the requirement FDA established for protein products. FDA tentatively concludes that they will effectively achieve, through placement rather than graphical requirements, the objective sought by the AG petition of reaching consumers who have no knowledge of iron's hazards.

If FDA adopts the regulations that it is proposing, manufacturers will have the flexibility, as requested in the NDMA petition, to design their own label and warning notice formats. The agency is requesting comments on the most efficient way to ensure that warnings on the immediate container will accompany every tablet until the time it is used. Suggestions about the placement and design of unit-dose packaging that can best accommodate the required warnings are invited.

FDA also specifically solicits comments on whether the general requirement that the label warning appear prominently and conspicuously on the label is adequate. Should the agency more explicitly define in its regulation the level of prominence and conspicuousness that it expects? If so, what should the agency require? The agency notes, for example, that in a final rule that required a new warning on Reye syndrome for aspirin, it specifically stated that the requirement of "prominence" in its regulations meant that manufacturers of aspirin and aspirin-containing drug products had to use an attention-getting statement, such as "see new warning" on the label for at least 1 year (53 FR 21633, 21635, June 9, 1988). Similarly, in the final rule on nutrition labeling that FDA adopted in response to the Nutrition Labeling and Education Act of 1990, FDA specified a number of format elements to ensure that the nutrition facts label would be readily observable and comprehensible (see 58 FR 2079, January 6, 1993). FDA requests comments on whether, to ensure that the warning statement will have its intended effect, the agency should specify more completely how the warning should be presented on iron-containing products.

3. Proposed Labeling Requirements

Having tentatively concluded that label warning statements should be required on iron-containing products, and having evaluated the information that the warning statement should include, FDA is proposing to amend its regulations by adding new § 101.17(e) for foods, and new § 310.55 for drugs, to require label warning statements for iron-containing products offered in solid oral dosage form. As noted above, under these proposed regulations, the warning statement that must be used will depend upon how the product is packaged. For products that are packaged in unit-dose packaging (e.g., blister packs) the agency is proposing to require the following warning:

> WARNING—Keep away from children. Keep in original package until each use. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

Under this proposal, this warning statement will be required for all iron-containing products packaged in unit-dose packaging. Therefore, it would be required to appear: (1) On the labeling of products containing 30 mg or more iron per dosage unit, which are subject to the proposed requirement for unit-dose packaging described below (see section III.B. of this document); and (2) on the labeling of products that contain less than 30 mg iron per dosage unit but

that are packaged voluntarily in unit-dose packaging.

For products that contain less than 30 mg iron per dosage unit and that are packaged in any form of packaging other than unit-dose packaging, e.g., containers with child-resistant closures, the agency is proposing to require the following warning:

WARNING—Close tightly and keep away from children. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

The agency may conduct focus group research to evaluate consumer understanding of the proposed warning messages and to ensure that the messages are not misleading. Focus group research involves gathering small, representative groups of consumers (no more than nine consumers per group) and leading then in a directed discussion of the research topic. For the present research, consumers will provide feedback as to their level of understanding of the warnings and the degree to which the specific wording of the messages is believable, relevant, confusing, or irritating. The agency intends to consider the results of the focus group research in arriving at any warning statement that is included in the final regulations. FDA will make a report on the results of its research available for public comment before it issues the final regulations.

*B. Packaging*

1. Review of Packaging Issues in Citizen Petitions

Two of the citizen petitions suggested that FDA take action with respect to the packaging of iron-containing drugs and dietary supplements. Both petitions recommended packaging requirements as a means of reducing pediatric poisonings from ingestion of multiple doses of drugs and dietary supplements containing 30 mg or more iron per dosage unit.

The AG citizen petition requested that FDA use its authority under the act to require that all iron-containing drugs and dietary supplements containing 30 mg or more iron per dosage unit be packaged in child-resistant blister packs.

The NDMA petition recommended that FDA incorporate into its regulations the NDMA-initiated voluntary program to address pediatric poisonings by such iron-containing products. This voluntary program includes, in part, a proviso that all iron-containing products currently subject to CPSC's special packaging regulations that contain 30 mg or more of iron per dosage unit be packaged in CRP's, and that there be no exemption to CPSC's child-resistant special packaging requirements for these types of products. As discussed previously, NDMA's voluntary program also specifies labeling statements and includes an educational program. Implicit in NDMA's recommendation is the view that CRC's, labeling warning statements, and consumer education programs are sufficient to ensure the safe use of iron-containing products.

2. Agency Response

FDA considered the following questions in evaluating and responding to the packaging issues raised in the citizen petitions: (1) Can educational efforts and label warning statements alone sufficiently reduce pediatric iron poisonings? (2) Are noncomplying child-resistant packages a principal cause of iron poisoning deaths? (3) Are additional packaging requirements necessary to ensure the safe use of certain iron-containing products? (4) What is FDA's legal authority to regulate packaging for foods and drugs? (5) Should child-resistant blister packaging be required for iron-containing products?

a. *Can educational efforts and label warning statements significantly reduce pediatric iron poisonings?* FDA agrees with NDMA that educating consumers on the proper use of CRC's and on the hazards posed by iron-containing drugs and supplements is very important. However, based on the available evidence, even if all CRC's were properly used, these closures could not have prevented the majority of the 37 reported fatalities. Improper use of CRC's was reported in only 4 of the 21 (19 percent) pediatric iron fatalities known to involve child-resistant packaging (Table 2). Educational programs and label warning statements should help to increase proper use of reclosable CRC's, and thereby help to prevent some pediatric iron-poisonings. However, FDA knows of no information showing that a consumer education program, either that recommended by NDMA or any other such program, will be adequate to ensure that children will not be able to defeat even properly closed CRC's, or that improper use of such closures will cease. In the absence of such information, FDA believes that measures beyond consumer education programs are necessary to ensure that the use of certain iron-containing products is safe.

FDA also tentatively finds that label warning statements will not be sufficient to ensure the safe use of these products. This tentative conclusion is based on the fact that label warning statements do not in any way bar access to the product. Label statements are an important educational tool for making adults aware of the significant consequences for young children if they gain access to the product. Young children, however, cannot read and have little judgment. Thus, a warning statement is likely to have little or no effect on their efforts to gain access.

The available data show that poisonings are occurring in large measure because of the efforts of children. Table 4 shows that in 9 of the 21 reported pediatric poisoning deaths that involved iron-containing products packaged in containers with CRC's, the victims gained access to multiple doses of iron-containing product by their own efforts or through the efforts of another child. Most of these children were under 51 months of age. Thus, a label warning statement is unlikely to have any meaning or significance to them.

FDA requests comments on its tentative conclusion that label warning statements are not sufficient to ensure that the use of certain iron-containing products will be safe. Comments that bear on the effectiveness of labeling warning statements to deter young children from directly gaining access to these products will be most compelling if they contain supporting data and information.

As stated above, FDA believes that label warning statements will help to reduce the incidence of pediatric poisoning because they will ensure that adults are aware of the pediatric toxicity of iron and will encourage responsible adults to properly reclose and store iron-containing products. However, FDA is concerned that warning statements alone will not prevent the misuse of CRP's that has contributed to the epidemic of iron poisonings of children. FDA notes that CRP's themselves are a de facto warning that the contents of the package present hazards for children. Yet, in 21 of the 26 pediatric poisoning deaths in which the type of packaging was reported, the product was packaged in containers with CRC's (Table 4).

Furthermore, the effectiveness of label warning statements is generally considered to be dependent on several factors including, but not necessarily limited to: The personal relevance of the warning information; familiarity with the warning information; perceived hazard from the product; and desensitization or habituation to warnings after repeated exposures (Ref. 24). Moreover, a report on the effectiveness of a labeling and educational program to prevent pediatric poisonings from accidental

ingestion of prescription drugs shows that labeling and educational programs are not always sufficient to prevent pediatric poisonings, and that, in some instances, additional packaging safeguards are necessary to ensure the safe use of certain substances (Ref. 25). Therefore, FDA tentatively concludes that label warning statements will not be sufficient to ensure the safe use of certain iron-containing products.

FDA finds that iron-containing drugs and dietary supplements pose a unique hazard to young children. The pediatric hazard presented by these products is directly related to their iron content. As discussed above in section I.B. of this document, ingestion of 25 mg or more iron per kg of body weight is considered a toxic dose, and ingestion of 100 to 200 mg iron per kg of body weight can be lethal. Once a potentially lethal dose of iron has been ingested and absorbed, medical intervention to halt the toxic progression of iron poisoning is difficult and often unsuccessful. Successful treatment for iron poisoning is determined primarily by the amount of iron ingested and how rapidly medical intervention occurs. In light of the risk of pediatric iron poisonings with irreversible and potentially fatal consequences that is presented by higher potency iron-containing products, and of the inherent limitations on the effectiveness of labeling and educational programs, FDA tentatively concludes that it would be inappropriate to rely solely on these measures to ensure the safe use of these products.

b. *Are noncomplying CRP's a principal cause of iron poisoning deaths?* The NDMA contends that new packaging requirements beyond those outlined in its petition are not necessary to reduce the incidence of pediatric iron poisonings. The NDMA petition asserts that the available data on pediatric iron-poisonings are deficient to the extent that it cannot be determined whether products associated with the poisonings were packaged in compliance with CPSC's packaging requirements, and it suggests that iron-containing products packaged in noncompliant CRP's are the principle cause of pediatric iron-poisonings. However, NDMA provided no information to support its view.

FDA has carefully examined the available information on pediatric iron poisonings and could find no evidence to support the NDMA's contention that the iron-containing products associated with these poisonings were packaged in CRP's that did not comply with regulations established by CPSC. In the absence of such evidence, FDA can find no basis on which to conclude that noncompliant, child-resistant special packaging is the primary cause of pediatric iron-poisonings.

c. *Are additional packaging requirements appropriate?* FDA tentatively concludes that full compliance with CPSC's CRP requirements, even if there are warning statements in labeling of iron-containing products and appropriate educational programs, will not be adequate to ensure the safe use of certain iron-containing drugs and dietary supplements if bottle and closure packaging were to continue as the predominant means of packaging such products. FDA recognizes that each of these measures either has been successful in limiting the number of poisonings or can be reasonably expected to be effective in reducing the number of poisonings. However, given the potentially fatal outcome that can result from pediatric iron-poisoning, FDA is not persuaded that these measures are adequate to ensure the safety of the use of certain iron-containing drugs and dietary supplements. FDA tentatively concludes that to reduce the incidence of pediatric iron poisonings to a level that would permit the agency to conclude that there is a reasonable certainty of no harm from the use of these products, it is necessary to require a specific type of physical barrier to access these products. Therefore, FDA tentatively concludes that additional packaging requirements are necessary.

FDA requests comments on this tentative conclusion. The agency is particularly interested in receiving comments that bear on the effectiveness of different types of packaging to limit pediatric access to toxic amounts of iron. Comments will be most persuasive if they are supported by studies and other data and information.

d. *Consideration of legal authority of FDA and other agencies to require specific packaging measures for foods and drugs.* In its consideration of what action to take concerning the packaging of iron-containing drugs and dietary supplements to ensure their safe use, FDA recognized that it must act within the limits of its statutory authority and consider the statutory authority of other government agencies. As noted above, under the PPPA, CPSC has authority to regulate the packaging of household substances. Under the PPPA, CPSC can establish special packaging performance standards. Thus, by regulation, CPSC has established special packaging standards and performance criteria for special packaging, 16 CFR 1700.15 and 1700.20, respectively. However, the PPPA specifically limits CPSC from establishing regulations that require specific packaging designs, product content, and package quantity for household substances, including food and drugs.

i. *Packaging for iron-containing dietary supplements.* The act provides FDA with broad authority to ensure that food is safe and wholesome. In particular, the act prohibits the adulteration of food in sections 301 and 402 (21 U.S.C. 331 and 342) and requires, in sections 409(a) (21 U.S.C. 348(a)) and 402(a)(2)(C), that all food additives be listed for use by FDA before they are added to food.

In section 409(a), the act deems a food additive to be unsafe unless its use conforms to the conditions specified in the listing regulation. These conditions include, but are not limited to, specifications as to the particular food or classes of food to which the additive may be added, as to the manner in which the additive may be added to such food, and any directions or other labeling or packaging requirements for such additive deemed necessary to ensure the safety of such use (section 409(c)(1)(A) of the act. Thus, under the act, the agency is authorized to specify packaging requirements for a food additive when it finds that use of such packaging is necessary to ensure the safe use of the additive.

In section 201(s), the act provides an exemption to the food additive definition for substances that are generally recognized as safe (GRAS) under the conditions of their intended use. FDA has issued regulations delineating conditions under which use of certain substances is GRAS. If the conditions of a particular use of a substance are not those that are generally recognized as safe, the use is not GRAS, but subject to regulation under the food additives provisions of the act.

Should FDA determine that a particular type of packaging is necessary to ensure the safe use of iron substances in dietary supplements, either as GRAS substances or as listed food additives, then any use of iron substances in dietary supplements that does not involve use of that type of packaging would constitute a use of an unapproved food additive and render the dietary supplements adulterated under the act.

ii. *Packaging for iron-containing drug products.* Section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)) states that a drug shall be deemed to be adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to, or are not operated or administered in conformity with,

current good manufacturing practice to assure that such drug meets the requirements of the act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

A drug product may be safe and effective as manufactured but used in an unsafe and ineffective manner. Current good manufacturing practice is, to some extent, an evolving standard. To remain "current," a manufacturer must take into account advances in technology as well as new information about the use of the product including, but not limited to, information about any dangers associated with use of the drug product. Manufacturers must use this knowledge to alter, adapt, or change their manufacturing procedures to ensure that all possible measures have been implemented to eliminate known dangers. Therefore, advances in technology and new information about dangers associated with a drug product can mean that further steps by the manufacturer are necessary to guard against such foreseeable dangers, in order to hold the drug product in a manner that ensures its safety and, thus, comports with current good manufacturing practice.

FDA has promulgated regulations to ensure that, among other things, drug products are held, pending use by the intended consumer, in a manner that ensures their safety (Parts 210 and 211 (21 CFR parts 210 and 211)). The term "held" includes not only manufacturing and shipping time, but also the time from point of purchase to consumer use. Thus, manufacturers are responsible for the manner in which their products are held pending actual consumer use, and they are responsible if the packaging that they use is not adequate to prevent unintended ingestion of iron by children.

The regulations are replete with examples of FDA's authority to regulate the manufacturer beyond the point of shipping the product from the manufacturing site. For example, § 211.94(b) requires that container closure systems "provide adequate protection against *foreseeable external factors* in storage and *use* that can cause deterioration or contamination of the drug product (emphasis added)." This regulation requires that manufacturers protect against deterioration or contamination occurring during storage of drug products throughout the chain of distribution, up to the point of use by the consumer.

Under section 501(a)(2)(B) of the act, manufacturers also are responsible for preventing intentional misuse of a drug product. In 1982, in response to a series of capsule tamperings, FDA promulgated a regulation (§ 211.132) that requires tamper-resistant packaging for all over-the-counter (OTC) human drug products except dermatologics, dentifrices, and insulin (47 FR 50442). The agency's action assured greater package integrity and product security beyond the point of manufacture. FDA's authority to require tamper-resistant packaging is found primarily in section 501(a)(2)(B) of the act.

Significantly, the health risk that prompted the tamper-resistant packaging regulation was not attributable directly to manufacturing or packing practices that contravened the current good manufacturing practice regulations in effect at that time. Rather, despite compliance with existing regulations, drug product quality was compromised because of previously unforeseeable and unintended intervention by persons other than the consumer.

Because tamper resistant packaging was a means to obviate a newly apparent danger, and because tamper-resistant packaging technology was available, current good manufacturing practice mandated that it be used.

Similarly, in 1989, recognizing the persistent vulnerability of the hard-capsule dosage form, FDA amended the tamper-resistant regulation to require that OTC products marketed in two-piece, hard-gelatin capsules be packaged using at least two tamper-resistant features (54 FR 5227, February 2, 1989). Likewise, in 1994, the agency proposed to amend the tamper-resistant regulation to require that the packages for all OTC human drug products marketed in two-piece, hard-gelatin capsules be sealed (59 FR 2542, January 18, 1994). The proposed amendment is part of "the agency's continuing review of the potential public health threat posed by product tampering," and was proposed to "address specific vulnerabilities in the OTC market and to improve consumer protection." (59 FR 2543). In the preamble to the proposed rule, FDA recognized that, although the packaging used at the time of the latest poisoning incidents met FDA requirements in effect at that time, the packaging was not designed to reveal visible evidence of tampering. The proposed rule would change "tamper-resistant" to "tamper-evident" to underscore the fact that current packaging technology is not invulnerable to tampering and would require packaging that not only erects barriers to tampering, but also alerts the consumer to signs of tampering.

In addition, in September 1993, FDA published a regulation that requires the imprinting of solid oral dosage form drug products for human use (See 58 FR 47948, September 13, 1993). The regulation requires that every such product be imprinted with a code that allows identification of the drug product and its manufacturer or distributor. The regulation will ensure, among other things, that consumers and health care professionals will have this information available in the event of an emergency. The imprinting rule, like the proposed rule for iron-containing products, responds to concerns that are related to consumer use of drug products rather than concerns focused on the integrity and composition of such products.

The proposed rule, therefore, like those pertaining to tamper-evident packaging and drug imprinting, is intended to enhance the safety of drug products, specifically iron-containing drug products. The recent statistical data available to FDA demonstrate that the current manner of holding iron-containing drug products until their use by the intended consumer fails to ensure that the drug products will be safe because large numbers of children are ingesting such products and suffering serious injuries or death. Existing technology permits additional safeguards, such as child-resistant blister packs, to be used for holding iron-containing drug products. Given the known dangers and the ability to minimize or eliminate such dangers through the use of existing technology, FDA tentatively concludes that current good manufacturing practice dictates that unit-dose packaging be used.

e. *Should child-resistant blister packaging be required?* Requiring child-resistant blister packaging of iron-containing drugs and supplements, as recommended by the AG petition, is one packaging approach to reduce the incidence of pediatric iron-poisoning fatalities. This approach can be viewed as embodying three distinct packaging components: (1) Require unit-dose packaging; (2) require a specific type of unit-dose packaging (i.e., blister packs); and (3) require CRP's.

FDA recognizes that unit-dose packaging provides certain packaging features that reclosable containers do not provide. Products packaged in unit-dose packaging require that the packaging be opened for each individual dosage unit. The additional time and effort needed to open each unit restricts the number of doses available for ingestion during the time that a child has access to the package. In contrast, a multi-dose reclosable package (i.e., a bottle and closure) allows a child access to all of its contents once the closure is opened. In addition, the effectiveness of

child-resistant unit-dose packaging does not depend upon adults' properly resecuring a cap as is the case with reclosable CRP's. Therefore, FDA tentatively concludes that unit-dose packaging of products will contribute in a significant, over and above the protections provided by warning statements and CRP's, to reduce children's access to potentially fatal doses of product.

This tentative conclusion is supported by studies of the pediatric accessibility of products in different types of conventional (i.e., nonchild resistant) packaging. The results from these studies show that unit-dose packaging, in comparison to snap type and screw cap closure packaging, will limit access to multiple doses of product by young children. Studies of pediatric accessibility of product packaged in conventional unit-dose "pouches," conventional unit-dose "blister cards," and containers with conventional "snap type" and "screw cap" closures have been reported. Children, 42 to 51 months old, participated in each of these studies. Results from the study of conventional pouch packaging show that 55.5 percent of the children (n = 200) were unable to access more than eight tablets in 10 min (Ref. 26). In a similar study of conventional blister card packaging 64 percent of the children (n = 200) were unable to access more than eight tablets in 10 min (Ref. 27). In contrast, studies of pediatric accessibility of conventional "snap type" and "continuous threaded type" packaging show that most young children are able to gain access to products packaged in these types of conventional packaging in a relatively short period of time. Results from studies of "snap type" packaging show that with upward opening forces of less than 3 lb (average 1.9 lb), 96 percent of the children (n = 650) were able to open such packaging within 12 to 75 seconds (Ref. 28). Results from studies of pediatric accessibility of conventional, 33 mm diameter, "screw type" packaging and having caps with 2, 4, 6, and 8, torque-inch-pounds (TIP) rotational closing forces, show that approximately 100 percent of the children (n = 400) were able to open the packaging within an average of 11 seconds. Fifty-four percent of the children were able to open "screw type" packaging with rotational closing forces of 10 to 25 TIP within 71 seconds (Ref. 29).

As noted above, blister packaging is one type of unit-dose packaging. However, FDA does not agree with the AG petition's contention that blister packaging is necessary to ensure the safe use of iron-containing drugs and supplements. FDA tentatively finds that requiring a specific type of unit-dose packaging may be more restrictive than necessary if other types of unit-dose packaging accomplish the same objective. As discussed above, other types of conventional unit-dose packaging provide a comparable length of time for children to open as that required by conventional blister packaging.

With regard to the child-resistant component of the AG petition's recommendation, FDA notes that CPSC has established regulations that require CRP's for iron-containing drugs and dietary supplements in packages that contain 250 mg or more total iron (16 CFR 1700.14(a)(12) and (13)). In addition, CPSC has promulgated regulations for performance standards to establish the effectiveness of CRP's (16 CFR 1700.20). FDA finds that establishing CRP's standards for iron-containing drugs and dietary supplements therefore would be redundant and could place an unnecessary regulatory burden on manufacturers of such iron-containing products. Furthermore, requiring CRP's for all iron-containing products with 30 mg or more iron per dosage unit would circumvent the intention of the PPPA to allow access by elderly and handicapped persons who are unable to use such household substances when packaged in compliance with CRP's requirements. Therefore, FDA is not proposing to separately require CRP's of iron-containing drugs and dietary supplements.

3. Proposed Packaging Requirements

FDA is proposing to amend its regulations to establish safe conditions of use for iron-containing products by requiring that all such products that contain 30 mg or more iron per dosage unit be packaged in nonreusable, unit-dose packaging. FDA tentatively concludes that the use of iron and iron salts in products at potencies at or above 30 mg iron per dosage unit is not safe (and, therefore, is not GRAS) unless the food to which it is added, or the drug which contains it, is packaged in a manner that is adequate to prevent unintended ingestion by children. Thus, while iron and several of its salts will continue to be listed as GRAS under 21 CFR part 182 for use as dietary supplements and under part 184 (21 CFR part 184) for use as nutrient supplements, FDA is proposing to add § 170.55, which will require unit-dose packaging when iron or iron salts are used at a level of 30 mg or more per dosage unit in dietary supplements. Section 170.55 will also apply to approved food additive uses of iron salts in foods for special dietary and nutritional uses. Unit-dose packaging of drug products that contain 30 mg or more of iron per dosage unit is required under proposed § 310.518(a).

a. *Rationale for requiring unit-dose packaging for iron-containing products with 30 mg or more iron per dosage unit.* FDA is proposing to require unit-dose packaging for iron-containing drugs and supplements with 30 mg or more iron per dosage unit to ensure that the use of these products is safe. FDA's tentative conclusion to use 30 mg per unit-dose as the threshold for requiring unit-dose packaging is based on its consideration of a number factors including: (1) The amount of ingested iron that can cause pediatric fatality; (2) the amount of ingested iron that can cause significant iron poisoning; (3) the average number of dosage units associated with pediatric fatalities; (4) the types and potency of iron-containing products associated with pediatric iron poisoning fatalities; (5) information on how iron products are sold; and (6) the citizen petitions that were submitted to FDA. These factors pointed to the use of 30 mg per unit-dose as a threshold.

As discussed above, the toxicity of any iron ingestion is related to the total amount of iron ingested and absorbed (section I.B. of this document). Ingestion of 250 mg iron per kg of body weight (2.5 g total iron for a 10 kg child) is typically considered to be a lethal dose of iron. However, there have been reports of fatalities from ingestion of lesser amounts (less than 2.5 g) of iron, and the available data bear this out. For example, Table 5 shows that several pediatric fatalities have been associated with ingestion of approximately 1 g of iron. Moreover, the amount of iron that can cause serious adverse effects is given as 60 mg/kg (section I.B. of this document). For a 10 kg child this translates to 600 mg of iron.

FDA recognizes that there is variability among individuals with respect to the lethal dose of iron. Because of this variability, and because of the variable size and age of children at risk, FDA tentatively concludes that, to protect the wide range of susceptible children, it is necessary through packaging measures (unit-dose packaging) to limit pediatric access to iron-containing drugs and dietary supplements at potencies that can be reasonably expected to provide 1 g of iron. Restricting pediatric access to this amount of iron by packaging measures will substantially reduce the potential for a fatal or significant iron poisoning outcome should an accidental pediatric

ingestion of iron-containing products occur. As discussed above, because of the time and effort needed to access products contained in unit-door packaging, the likelihood that young children will be able to ingest a lethal amount of iron will be significantly reduced, thereby reducing the likelihood that they will be seriously injured or die.

In the 37 case reports of iron poisoning fatalities available, the average number of dosage units ingested by the pediatric victim was 39 tablets or capsules, with a range of 5 to 98 (Table 2). FDA notes that ingestion of 39 tablets or capsules at potencies of 25 to 30 mg iron per dosage unit is sufficient to provide a potentially lethal dose of iron (i.e., approximately 1,000 mg) to a young child.

As for the types of products that have been involved in pediatric iron poisonings, none of the 37 pediatric fatalities was reported to be associated with a multivitamin/mineral supplement product. All of the products reported to be involved in these fatalities were either single or double nutrient products that were provided for use as prenatal supplements. Single or double nutrient iron-containing products generally contain 30 mg or more iron per dosage unit.

As for the potency of the products involved, all of the pediatric fatalities were reported to be associated with iron-containing products at potencies of 40 mg iron or more per dosage unit. FDA is not aware of any pediatric iron poisoning fatalities associated with iron-containing products whose potency was less than 40 mg iron per dosage unit. Moreover, only 1 of the 37 pediatric fatalities was reported to be associated with an iron-containing product that contained less than 60 mg iron per dosage unit. Thus, FDA observed that requiring unit-dose packaging of products that contain 30 mg or more iron per dosage unit will provide about a two-fold margin of safety from the potency of products that have usually been associated with pediatric fatalities.

The information available to the agency shows that products that contain 30 mg or more iron per dosage unit are primarily sold to women of childbearing age for prenatal use. Prenatal iron-containing products may be obtained as dietary supplements or prescription drug products. FDA notes that all of the iron-containing products associated with the 37 pediatric poisoning fatalities were apparently obtained as prenatal drugs or supplements. FDA finds that prenatal iron-containing drugs and supplements present the greatest potential for pediatric iron poisonings and fatalities because of their iron content, and because they are likely to be available in households with young children. Prenatal iron-containing products are likely to be in households with young children either because they remain in the household after childbirth, or because young children are present in the household during pregnancy.

Fourth, FDA notes that both the AG and NDMA citizen petitions recommended 30 mg iron per dosage unit as an appropriate level to establish additional safeguards to reduce the incidence of pediatric iron poisonings.

Therefore, FDA is proposing unit-dose packaging for all dietary supplements and drugs containing 30 mg or more iron per dosage unit. FDA tentatively concludes that unit-dose packaging will reduce the incidence of pediatric poisonings by providing the additional safeguards necessary to limit pediatric access to a potentially fatal amount of iron.

*b. Practical effect.* As discussed above, CPSC's child-resistant packaging regulations require that any iron-containing drug or dietary supplement packaged in a container with 250 mg or more iron must be packaged in accordance with their child-resistant packaging regulations (16 CFR 1700.14(a)(12) and (a)(13)). Therefore, FDA anticipates that manufacturers and distributors of drugs and dietary supplements containing 30 mg or more iron per dosage unit, and containing 250 mg or more total iron per package, under this proposed action and CPSC's current regulations (16 CFR 1700.14(a)(12) and (a)(13)), a manufacturer or packer will have the option of packaging the product in child-resistant unit-dose packaging (e.g., child-resistant blisters, child-resistant pouches), or of exercising its right to an exemption to CPSC's special packaging requirements to allow access by elderly or handicapped persons. However, under this proposed rule, in the latter case, the products will have to be packaged in conventional unit-dose packaging and will be subject to CPSC's requirements for exempt packaged products (16 CFR 1700.5).

FDA tentatively concludes that, regardless of which packaging option a manufacturer or packer uses, unit-dose packaging of all iron-containing drugs and supplements that contain 30 mg or more per dosage unit will ensure the safe use of such products by limiting unintended access to such products by young children.

In proposing this action, it is not FDA's intention to circumvent the aim of the PPPA to allow access by elderly and handicapped persons who may be unable to use such household substances when packaged in CRP's. The agency requests comments on the effect that this proposed packaging requirement will have on the accessibility of iron-containing drugs and dietary supplements to elderly and handicapped persons.

c. *Iron-containing drug products that are removed from and dispensed in other than unit-dose packaging are adulterated and misbranded.* In order to be exempt from the requirement in section 502(f)(1) of the act that a drug bear adequate directions for use, a prescription drug product for human use must bear, among other things, a statement, directed to the pharmacist, specifying the type of container to be used in dispensing the drug product to maintain the product's identity, strength, quality, and purity (21 CFR 201.100(b)(7)). However, directions for repackaging are "not required for prescription drug products packaged in unit-dose, unit-of-use, or other packaging format in which the manufacturer's original package is designed and intended to be dispensed to patients without repackaging." (Id.) If FDA ultimately determines that unit-dose packaging is necessary to ensure the identity, strength, quality, and purity of iron- containing drug products, the agency would consider such products that are dispensed to consumers in other than unit-dose packaging to be adulterated and misbranded. Products marketed by the manufacturer in unit-dose packaging would remain exempt from the requirement for repackaging instructions because FDA expects that pharmacists will not compromise such packaging systems.

FDA has, in certain cases in the past, prohibited pharmacists from repackaging products because the original manufacturer's packaging was necessary to ensure the product's identity, strength, quality, and purity. In 1972, FDA concluded that improper packaging of nitroglycerin preparations was causing substantial loss of potency of the drug. Commonly used plastic containers and strip packaging failed to prevent appreciable evaporation of nitroglycerin from nitroglycerin tablets. FDA determined that it was necessary to require that these products be packaged and dispensed in glass containers to ensure the potency of the product ((37 FR 15859, August 5, 1972); 21 CFR 250.300 (1973)). In addition, manufacturers were required to include a statement directed to pharmacists that the product should be dispensed only in

the original, unopened container (21 CFR 250.300(b)(1973)).

FDA revoked the nitroglycerin packaging and labeling requirements in 1985 because action taken by FDA and the United States Pharmacopeial Convention, Inc., after publication of the requirements, had made them unnecessary and duplicative (50 FR 7584, February 25, 1985). When it proposed to revoke the regulation, FDA observed that the U.S.P. monograph for sublingual nitroglycerin tablets duplicated most of the packaging and labeling requirements that initially had been set forth in the rule (49 FR 24031, June 11, 1984). In addition, FDA found that the suitability of any packaging not in conformance with the rule or the monograph under CGMP regulations would have to be shown to FDA by adequate data (id.).

Like the nitroglycerin regulation, this proposed regulation regarding iron-containing products is intended to address a public health problem that, FDA has tentatively concluded, can be alleviated by requiring specific packaging. As was the case with nitroglycerin before FDA required specific packaging, iron- containing products are not safe as currently packaged. FDA has tentatively determined that it is necessary to prohibit repackaging by pharmacists in order to protect product integrity and to provide the greatest assurance that iron-containing products will be used safely and as intended.

FDA recognizes that pregnant women can receive their iron supplements by way of third-party reimbursement, which generally requires that a health care professional prescribe the supplements. These women present their prescriptions to pharmacists who, often, repackage iron dietary supplements in pharmacy vials.

FDA recognizes the vital importance of iron supplements to prenatal health care and emphasizes that the proposed rule should not diminish the availability of iron tablets to pregnant women or to any other patient population. FDA expects that pharmacists will dispense the tablets in their original unit-dose packaging. Under the proposed rule, pharmacists would be free to dispense iron-containing products in the manufacturer's box, or in any other outer container, as long as the original unit-dose packaging remained intact.

FDA does not believe that the proposed mandatory packaging and labeling regulation will encroach upon the practice of pharmacy. Under the proposed requirement, products will reach the pharmacy in unit-dose packaging with a warning statement printed directly on the immediate wrapping or container. FDA tentatively concludes that such a requirement, rather than representing an encroachment on the practice of pharmacy, is necessary to ensure that consumers receive adequate warning about the serious dangers associated with the use of iron-containing drugs.

## IV. Other Issues

### *A. Formulation and Appearance of Iron-Containing Products*

The AG petition recommended that FDA prohibit the manufacture and sale of adult formulations of iron-containing products that look like candy or contain a sweet outer coating. The AAPCC petition asked FDA to urge the industry to voluntarily reformulate iron-containing products containing 30 mg or more of iron per dosage unit to be in less attractive dosage units, specifically avoiding resemblance to popular candies.

NDMA asked FDA to reject the recommendation from the AG petition for several reasons. First, NDMA stated that "candy can be—and is—made to look like just about any other consumable product. Once a supplement manufacturer decides on a shape, size, color—of which there are limited selections—for a supplement product, a candy manufacturer could choose independently to introduce a candy that looks like that dietary supplement." Second, NDMA stated that it is not known what a pill looks like to a very young child. "A very young child puts everything into his or her mouth, and in fact there are no hard data to say that candy-like appearance is why a very young child chooses to investigate a consumable consumer product. It is quite likely that it may be even more important that the very young child sees his or her mother take that pill every day." Third, NDMA asserted that candy-like appearance is in the eye of the beholder and is simply too subjective a standard. It would be impossible to have an objective measure of candy-like appearance. Thus, NDMA stated that any provision for "no candy-like appearance" would not be practical and would be difficult to administer because of the subjective nature of assessing candy-like appearance.

The agency does not have data or other information specific to the question of how a candy-like appearance may contribute to the potential for an iron-containing supplement product to constitute a hazard to a young child. FDA's tentative view, however, is that it may not be possible to objectively measure the candy-like appearance of iron-containing products. Therefore, FDA requests comments on the use of "candy" and "colorful" coatings on iron-containing drugs and dietary supplements and information on whether these types of coatings make iron-containing products hazardous to infants and young children because of their apparent attractiveness. If the information received presents an objective basis for additional steps that FDA could take to limit the appeal of iron-containing products to young children, FDA will consider action in this regard.

### *B. Forms of Iron That May Be Less Toxic*

NAS has reported that, during the period from 1970 to 1987, food manufacturers increased their use of elemental iron (i.e., finely divided metallic iron) by 120-fold and decreased their use of ferrous sulfate by 30 percent (Ref. 30). The increase in the use of elemental iron in conventional food may be attributed to its low cost and minimal reactivity in food. FDA is not aware of any reports of accidental ingestions or adverse reactions associated with the few commercially available iron-containing dietary supplements and drug products that incorporate elemental iron instead of an iron salt.

Three basic types of elemental iron powders are marketed for use in foods. The three types are reduced iron, electrolytic iron, and carbonyl iron. The term "carbonyl" refers to the production process, not the composition of the product. The bioavailability of these various elemental iron sources is dependent primarily on their physical characteristics, which in turn depend on the manufacturing method. For example, higher relative bioavailabilities of elemental iron are obtained with smaller particle sizes.

Some evidence suggests that carbonyl iron may be a useful substitute for the more commonly used chemical compounds of iron in reducing risk of accidental iron poisonings. Data from studies in animals suggest that carbonyl iron may be only 1/100th as toxic as ferrous sulfate in single doses, i.e., the $LD_{50}$ (lethal dose for 50 percent of the test group) of ferrous sulfate is approximately 0.30 g Fe/kg (Ref. 32) and the $LD_{50}$ for carbonyl iron is approximately 30.0 g Fe/kg body weight (Ref. 31). Thus, carbonyl iron, in comparison with ferrous sulfate, appears to have a much larger margin of safety between the level that would provide adequate iron nutrition and the level that causes acute toxicity. Consequently, carbonyl iron may be

inherently safer to use. At the same time, data from human subjects indicates that the overall bioavailability of carbonyl iron in supporting the nutritional functions of iron is about 70 percent that of ferrous sulfate (Ref. 31). Thus carbonyl iron is reasonably as effective in providing iron in the amounts needed to achieve the nutritive effects of iron. Its use may help to reduce the risk of iron poisoning in children.

FDA specifically requests comments on the appropriateness of elemental iron as a source of iron in drugs and dietary supplements, focusing on whether its use in iron-containing products would decrease the risk of pediatric poisonings while providing desirable iron nutrition to those who need iron supplementation. The agency is interested in receiving data on the potential of elemental iron for acute toxicity in humans and particularly in children.

FDA will carefully consider any information it receives on this subject. If the information is persuasive in establishing that the use of elemental iron would substantially decrease the risk of pediatric poisoning while allowing for effective dietary iron supplementation, FDA will consider exempting iron-containing products that incorporate elemental iron from any regulations that result from this rulemaking.

*C. Educational Efforts*

1. Review of Consumer Education Issues in Citizen Petitions

Two of the three petitions submitted discussed the benefits of educational efforts for the public and health professionals, focusing on the prevention of accidental pediatric iron poisoning. The AAPCC petition and the NDMA petition advocated educational efforts and outlined specific actions as described herein.

a. *The AAPCC petition.* The AAPCC petition called for the initiation of an FDA educational campaign for four different segments of the population. The four target segments are: (1) Parents, babysitters, daycare providers, and other consumers; (2) pediatricians; (3) obstetricians; and (4) other health professionals such as physicians, others who can prescribe iron, and pharmacists. The petition suggested that pediatricians discuss the dangers of an iron overdose with parents at the 6-month checkup, and that obstetricians inform mothers at the final postpartum checkup.

b. *The NDMA petition.* In the fall of 1993, NDMA in cooperation with CPSC, developed and launched a national consumer education campaign to be carried out in conjunction with the voluntary labeling and packaging measures (described above in section I.D. of this document) that were undertaken by the members of NDMA and NNFA. The purpose of the campaign, as stated in the petition, is to inform adults about how to protect children from accidental iron poisoning. The three major themes of the educational campaign mirror some of the messages in NDMA's and NNFA's voluntary warning statements for iron-containing products and are as follows:

(1) Adult awareness of the dangers to children if iron is accidentally swallowed in excess,

(2) Reclose the child-resistant package after every use, and,

(3) Keep iron-containing products out of the reach of children.

NDMA and CPSC began the educational campaign by distributing video and print news releases, radio news releases in English and Spanish, and public service announcements emphasizing the three-pronged message. The public service announcements are also being sent to consumer, health, and women's magazines.

2. Agency Response

FDA agrees with the petitioners that the public needs to be informed of the dangers of pediatric iron poisoning through public education efforts. Such efforts can be one important element in combating a cause of injury and deaths that has affected thousands of children over the last approximately 10 years. Thus, FDA commends NDMA and CPSC for their joint efforts in developing and distributing a national educational campaign targeting accidental iron poisoning, to coincide with the voluntary packaging and labeling measures for iron-containing products that have been undertaken by the members of NDMA and NNFA. FDA believes that the themes of this campaign are appropriate and are responsive to a fundamental need that exists for more awareness among adults of the dangers of pediatric iron poisoning and of the means to prevent these poisonings. Because of the seriousness of the problem, i.e., accidental iron ingestion is the leading cause of poisoning deaths among children, FDA intends to contribute to educating the public.

Accordingly, FDA is developing materials for a public information campaign that would address AAPCC's request and complement NDMA and CPSC's educational efforts by emphasizing the same awareness and prevention elements as the NDMA/CPSC campaign, as follows:

(1) Iron-containing products can seriously injure or even kill young children who accidentally swallow them.

(2) Reclose the child-resistant package completely and every time iron-containing products are opened.

(3) Keep all containers of iron-containing products out of reach of children *all the time.*

FDA's campaign will also address steps that should be taken by adults if an accidental ingestion of iron occurs:

(4) When children accidentally ingest iron-containing products, the attending person should quickly call a poison control center and follow their instructions, or take the child to an emergency room.

(5) Although the first symptoms, vomiting and diarrhea, may occur within 30 minutes, and these symptoms may be followed by an appearance of recovery, the child may still be in danger. Therefore, immediate professional consultation is critical.

The FDA materials will include print pieces available for distribution to different audiences, such as a backgrounder, a flyer, an *FDA Consumer* magazine article, and camera-ready newspaper columns. The *FDA Medical Bulletin*, which has 1,000,000 physician subscribers, is another vehicle that can be used to publicize this message.

The diversity of the audiences to be targeted by FDA's information campaign will include the AAPCC's suggested target populations. The FDA backgrounder will be a detailed handout for health professionals and consumer organizations. The flyer will be a short piece conveying the elements of FDA's message in a simple and concise manner for use in the home by parents, grandparents, and babysitters. The *FDA Consumer* article will reach the 23,000 subscribers to the magazine, a group that includes physicians and other health professionals, educators, reporters, and consumers. The camera-ready newspaper columns will be distributed to 10,000 smaller-circulation newspapers nationwide. In addition, FDA intends to provide information to consumer newsletter editors and consumers through "Dear Editor" letters and "Dear Consumer" letters about the efforts to prevent accidental pediatric iron poisoning.

Different offices in FDA, such as the Office of Public Affairs and the Office of Consumer Affairs, and offices of the Department of Health and Human Services will assist with the distribution of these materials. FDA intends to utilize its staff of public affairs

specialists to distribute these materials to the widely varied constituencies with whom these specialists frequently interact, such as other government agencies at the Federal, State, and local levels, advocacy organizations, trade associations, consumer groups, health professional organizations, and other interested groups.

## V. Environmental Impact

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.

## VI. Analysis of Impacts

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

### *A. Description of the Industry*

There are approximately 300 iron-containing products that may be affected by these proposed actions, of which approximately one-half contain 30 mg or more iron per dosage unit. The types of iron-containing products that have been associated with poisonings of young children are products offered in solid oral dosage form as multi-vitamin/mineral supplements, products intended for use as iron supplements, and drug products. Typically, multi-vitamin/mineral supplements provide less than 30 mg of iron per dosage unit. Iron supplements and drug products typically contain 30 mg or more iron per dosage unit. The proposed action to require warning statements would affect all iron-containing products. On the other hand, FDA is proposing to require unit-dose packaging for products containing 30 mg or more iron per dosage unit. Therefore, most multi-vitamin/mineral supplements would be subject to the warning statement requirements but not to the packaging requirements. Most iron supplements and iron-containing drug products would be subject to both proposed requirements.

Iron-containing products may be purchased by consumers on their own initiative as dietary supplements, or they may be prescribed by physicians. The information available to the industry suggests that the overwhelming majority of iron- containing products are currently packaged in bottles (Ref. 33). Additional information suggests that iron-containing products administered in hospitals are commonly packaged in unit-dose packaging (Ref. 34). Unit-dose packaging is preferred by hospitals because with this type of packaging, each dosage unit has an identification and an expiration date, and the hospital can continue to use unit-dose packaged drugs rather than having to discard a bottle opened for a specific patient after that patient is discharged. Based on this information, FDA assumes that iron-containing products dispensed in hospitals are currently packaged in unit-dose packaging.

According to the National Center for Health Statistics, of the approximately 169 million persons of age 18 or older, 19.7 percent consume iron-containing products (Ref. 35). If it is assumed that each individual consumes one dosage unit per day,there are approximately 12 billion dosage units of iron- containing products consumed annually in the United States. The agency does not have complete information on the number of dosage units of iron-containing products that contain 30 mg or more iron. However, because only pregnant women require 30 mg/day, FDA assumes that the portion of higher-dosage iron-containing products can be estimated by the number of pregnant women in the United States. In 1991, the most recent year for which data are available, there were 4.1 million live births (Ref. 36). FDA is assuming a one-to-one correspondence between the number of live births and the number of pregnancies in concluding that there are about 4.1 million pregnant women on any one day in the United States. The number of live births may overestimate the number of pregnant women because multiple births by one woman are ignored. Also, the number of live births ignores pregnancies not resulting in a live birth, which may result in an underestimate of the number of pregnant women. If it is assumed that the number of live births is an estimate of the number of dosage units of products containing 30 mg or more iron, then the number of dosage units per year can be estimated at 4.1 million times 365 days per year or about 1.5 billion.

### *B. Regulatory Options*

There are many possible regulatory alternatives available that may reduce the number of cases of pediatric poisonings from the accidental ingestion of iron-containing products. The options include packaging, warning statements, product reformulation, and educational efforts.

#### 1. Packaging

One regulatory option available to FDA is to require that products containing iron be packaged in unit-dose containers. Because of the CPSC regulations, most iron-containing products currently must be packaged in CRC's. Therefore, the effect of this option would be to require child resistant unit-dose packaging for most of these products. FDA could require unit-dose packaging for all products or for only higher dosage products. For comparison, FDA will consider potencies of 30 mg, 40 mg, and 60 mg as the minimum potencies per dosage unit of iron that would trigger unit-dosage packaging.

a. *Costs.* There are four types of costs associated with a mandated packaging change: Equipment, materials, transportation, and administrative costs. If this option is selected, many packagers of iron-containing products will be required to purchase new packaging equipment. The cost of equipment used in packaging blisters, one common form of unit-dose packaging, is between $50,000 and $250,000, or on average $132,500. New equipment will not be purchased for each product sold because some manufacturers already possess unit-dose packaging equipment.

The cost of child-resistant bottles, currently the most common form of packaging, is approximately $7 per 1,000 dosage units. Child-resistant blisters cost approximately $9 per 1,000 dosage units, a difference of $2 per 1,000 dosage units.

FDA does not have information to estimate additional transportation costs caused by unit-dose packaging requirements and requests comments on increased transportation costs.

Additionally, firms are expected to incur administrative costs of approximately $500 per product in the first year. Administrative costs are the dollar value of the incremental

administrative effort expended in order to comply with a regulation. Administrative activities include, but are not limited to, identifying the underlying policy of the regulation, interpreting that policy relative to the firm's products, establishing a corporate position, formulating a method for compliance, and managing the compliance effort.

If FDA were to require unit-dose packaging for all iron- containing products irrespective of their potency per dosage unit, the cost of equipment would be $39 million (300 products × $132,500). The annual materials cost would be $24 million ((12 billion dosage units/1,000) × $2.00), or $260 million over the next 20 years (discounted at 7 percent). Administrative costs would be $150,000. Total costs associated with requiring unit- dose packaging for all iron-containing products would be $299 million over 20 years (discounted at seven percent).

If FDA were to require unit-dose packaging for products with 30 mg iron/dosage unit or higher, the cost of equipment would be $20 million (150 products × $132,500). The cost of materials would be $3 million per year or $32 million over 20 years (discounted at 7 percent). Administrative costs would be $75,000 (150 × $500). Total costs associated with requiring unit-dose packaging for products containing 30 mg or more per dosage unit would be $52 million over 20 years (discounted at 7 percent).

If FDA were to require unit-dose packaging for products with 40 mg iron/dosage unit or higher, the cost of equipment would be $13 million (100 products × $132,500). The cost of materials would be $2 million per year or $22 million over 20 years (discounted at 7 percent). Administrative costs would be $50,000 (100 × $500). Total costs associated with requiring unit-dose packaging for products containing 40 mg or more iron per dosage unit would be $35 million over 20 years (discounted at 7 percent).

If FDA were to require unit-dose packaging for products with 60 mg iron/dosage unit or higher, the cost of equipment would be $5 million (37 products × $132,500). The cost of materials would be $0.8 million per year or $8 million over 20 years (discounted at 7 percent). Administrative costs would be $19,000 (37 × $500). Total costs associated with requiring unit-dose packaging for products containing 60 mg or more iron per dosage unit would be $6 million over 20 years (discounted at 7 percent).

b. *Benefits.* In the past 7 years, there have been at least 37 cases of pediatric fatality from the accidental ingestion of iron-containing products, or a mean of 5.3 deaths per year. Data on the potency of the product consumed is available for 25 cases.

In all cases for which information is available, the product consumed contained at least 40 mg of iron. In the same 7-year period, there were nearly 190 poisonings reported that were life threatening or that resulted in permanent injury, and over 2,000 reported poisonings requiring some form of treatment. FDA believes that most, if not all, such deaths and some poisonings can be prevented by requiring that higher-potency iron-containing products be packaged in unit-dose packaging. Studies indicate that the child is less likely to consume the number of dosage units that may be fatal.

Although no studies have attempted to directly estimate the value of reducing the risk of death and illness to children in particular, many studies have attempted to estimate the value of reducing these risks to adults. Most of these estimates are based on wage differences between high and low risk jobs and, thus, are derived from the labor market decisions of middle-aged adults. Although these estimates cluster around a fairly small range, $2 million to $10 million, it is not clear that these estimates are valid when applied to children.

FDA has used estimates of the value of reducing risks to adults to a level that would avoid one statistical fatality between $1.5 million and $5 million in past rulemaking proceedings, including recent food labeling regulations and a current proposal to require domestic and foreign processors and importers of fish and fishery products to establish Hazard Analysis Critical Control Points (HAACP) controls to prevent the occurrence of hazards that could affect the safety of these seafood products (59 FR 4142, January 28, 1994). One method of estimating the value of reducing risks to children is to adjust the value of reducing risks to adults by accounting for the difference in the number of life-years saved. Under this approach, an often used estimate of the value of the risks to adults to a level that would avoid one statistical fatality is $5 million for a middle-aged adult. If this value does not vary with life years remaining (that is, if we assume that an infant is willing to pay the same amount to avoid risk of death as a 40-year old would be willing to pay and assuming the same distribution of wealth exists in both age groups), then $5 million is a reasonable estimate. If, however, this value does vary with life years remaining, then the corresponding value for reducing the risks to small children would be $11 million. FDA will use these figures ($5 to 11 million) to provide a range of estimates. Although FDA is using these values in this analysis, FDA stresses the tentative nature of these estimates and requests comments on an appropriate method of estimating the value of reducing risks to children.

The number of fatalities prevented by requiring unit-dose packaging for iron-containing products at any potency level less than 60 mg iron/dosage unit will not be significantly different. Because all fatalities for which FDA has information resulted from ingestion of dosage units of at least 40 mg iron potency, all three of these options (all products, 30 mg and above, and 40 mg and above) would result in benefits of reducing an average of 5.3 deaths per year, valued at between $280 million and $618 million over 20 years (discounted at 7 percent).

If, however, FDA were to select the option of requiring unit-dose packaging for all iron-containing products of potencies of 60 mg iron per dosage unit and above, an average of 5 deaths would be prevented per year leading to total discounted benefits of preventing fatalities over 20 years of between $265 million and $583 million.

Requiring unit-dosage packaging for iron-containing products will also reduce the number of nonfatal cases of pediatric iron poisoning. FDA has obtained from CPSC case reports for 78 iron ingestions necessitating emergency room treatment reported over 7 years, or an average of 11 illnesses per year. The potency of the product consumed was reported for 12 cases. In five of those cases, the potency reported was under 30 mg iron/dosage unit. In seven cases, the potency reported was over 60 mg iron/dosage unit. AAPCC data shows that from 1986 through 1992 there were nearly 190 reported poisonings that were life threatening or that resulted in permanent injury, and over 2,000 reported poisonings requiring some form of treatment as a result of accidental ingestion of adult and pediatric iron-containing products, or an average of 286 per year. FDA is unable to predict the percentage of these nonfatal poisonings which would be prevented by substituting unit-dose packaging for bottles. It is possible that not all nonfatal poisonings will be prevented because a child can still gain access to the product. However, he or she will gain access to fewer dosage units than if the product is in a bottle. FDA requests comments on this issue.

Using a methodology developed previously for FDA to value morbidity risks, FDA is able to estimate the value of reduced risk of nonfatal poisoning. By comparing similar symptoms and medical interventions, the agency has derived an estimate of the value of preventing a nonfatal pediatric iron poisoning of $20,000 per case. (Ref. 37) As stated previously, 7 out of 12 cases of nonfatal poisonings were a result of ingestion of products of potencies over 60 mg iron per dosage unit. If this proportion can be extrapolated to the remaining cases for which information is unknown, and if unit-dose packaging will prevent all nonfatal cases (at least 2,000 cases in 7 years), then requiring unit-dose packaging for products of 60 mg or more iron per dosage unit will add approximately $35 million to the benefits over the next 20 years (discounted at seven percent). Because no nonfatal cases for which information is known were a result of ingesting products with potencies between 30 mg and 60 mg iron per dosage unit, the options of requiring unit-dose packaging for products with potencies of 40 mg and 30 mg iron per dosage unit will not add more to the benefits than the previous option. Still assuming that all nonfatal cases can be prevented by unit-dose packaging, requiring packaging changes for all products would result in reduced morbidity valued at $61 million over the next 20 years.

The total value of the benefits of unit-dose packaging options is the sum of the value of reducing both mortality and morbidity risks. The selected option, requiring unit-dose packaging for all products containing 30 mg or more iron per dosage unit, would result in benefits of reducing mortality risks of between $280 million and $618 million and reduced morbidity valued at $61 million. Therefore, total discounted benefits of this option are between $315 million and $618 million. Table 7 summarizes the costs and benefits of the packaging options.

TABLE 10.—COSTS AND BENEFITS OF UNIT-DOSE PACKAGING OPTIONS

[In millions of dollars]

| Trigger level | Total costs | Total benefits | Net benefits |
|---|---|---|---|
| All products | $299 | $341 to 679 | $42 to 380 |
| >30 mg | 52 | 315 to 653 | 263 to 601 |
| >40 mg | 35 | 315 to 653 | 280 to 618 |
| >60 mg | 6 | 300 to 618 | 294 to 612 |

2. Warning Labels

a. *Costs.* Every petition submitted to FDA requested that the agency require that iron-containing product labels contain warning statements about the potentially fatal effects of pediatric poisonings from accidental ingestion of iron-containing products. The cost associated with warning statements are the cost of redesigning the label, disposing of old labels, and administrative costs. In January, 1994, FDA published final rules regarding nutrition labeling of dietary supplements in accordance with the Nutrition Labeling and Education Act of 1990 (NLEA) and the Dietary Supplement Act of 1992. In its analysis of those rules (59 FR 352), FDA determined that the incremental cost of label changes for dietary supplement manufacturers is approximately $1,500 per label. FDA is proposing that the label warning statement be printed directly on the immediate container of the product, i.e., the container that holds the tablet or capsule, and on the principal display panel of the retail package, if such package is not the immediate container. If a product is sold in unit-dose packaging, the product would be required to bear the warning directly on each unit-dose package or on a strip of unit-dose packages in such a way that separating the unit-dose packages would not destroy the warning labeling. Manufacturers of all 300 iron-containing products will be required to change their labels on both the product container and the retail package to incorporate warning statements. However, because manufacturers of iron-containing products with 30 mg or more per dosage unit will also be required to change their packaging, they will not incur any incremental cost in adding a warning statement to the product container. Therefore, the labeling costs will be incurred by all 300 products for the retail package and for 150 products for the product container. The total cost would be a one-time cost of $675,000 (300 × 1.5 × $1,500).

An additional cost of this regulation may be an increase in iron deficiency anemia if susceptible adults react inappropriately to a warning label targeted for children. According to NHANES II, approximately 7.2 percent of females age 15 to 19 and 6.3 percent of females age 20 to 44 are iron-deficient but less than one-fourth of these women had anemia associated with the deficiency. In addition, males had a prevalence of less than 1 percent. FDA requests comments on this issue.

*b. Benefits.* Warning statements will only prevent pediatric iron poisonings to the extent that they lead to changes in the behavior of the adult controlling the use of the product (presumably the parent). Whether the warning messages prescribed in this proposed rule will cause a change in behavior will depend on a number of factors, including the degree to which the statement is noticed, read, and understood.

There is some evidence that warning statements can change behavior. For example, research indicates that rate of increase of sales of diet soft drinks declined after saccharin warnings were put on the labels of these products (Ref. 38). FDA is unable to predict exactly how many cases of pediatric iron poisoning will be prevented as a result of warning statements. To the extent that warning statements will cause adults to take proper care in handling iron-containing products, and to the extent that such care is not taken in the absence of warning statements, some cases of pediatric iron poisoning will be prevented.

If the agency requires unit-dose packaging, and this measure is 100 percent effective in preventing both fatal and nonfatal cases, then there are no benefits from warning labels on these products. However, for those products still packaged in bottles, warning labels may have an impact. If each nonfatal case of iron poisoning is valued at $20,000 and the one-time cost of warning statements is $675,000, then benefits of requiring warning statements will exceed costs if warning statements prevent at least three nonfatal cases every year for the next 20 years (discounted at 7 percent).

3. Product Reformulation—Appearance

Two petitions recommended product reformulation as a preventive measure. The petitions suggested that some adult formulations of iron-containing products look and taste like candy and thus are more appealing to children. The petitions stated that if the product were less appealing to children, the incidence of accidental ingestion would be reduced. The petition from NDMA urged FDA to reject reformulation for several reasons, including a lack of knowledge about what a pill looks like to a very young child, and about why the child is motivated to consume the product. The agency does not have information to determine either the costs or the benefits of reformulating the appearance of iron-containing products. Because reformulation costs are highly dependent on the individual decisions of firms, they are very difficult to estimate. Also, because there are currently no objective measures of the candy-like appearance of iron-containing products, the benefits are also difficult to determine.

4. Product Reformulation—Taste

Another possibility is to add a bitter substance to products containing iron which would discourage multiple ingestions. Such substances have been used in the past on products which discourage thumbsucking and nailbiting. It is highly likely that such a substance will not add significantly to the cost of producing iron-containing products. FDA requests information on a policy option that would require altering the taste of iron-containing products. Such information would include the potential substances that would make the pills bitter and data on their safety and whether this approach would be effective in preventing acute overdose of iron-containing products by children. FDA notes, however, that such an option may have the unintended side effect of causing persons who need iron supplementation to avoid the product. FDA requests information on both the costs and benefits of this option.

5. Forms of Iron that May be Less Toxic

As previously discussed in this document, some evidence suggests that carbonyl iron, an elemental iron powder, seems to be effective in the prevention or treatment of iron deficiency, and that it might be significantly less toxic than other forms of iron commonly used in iron-containing products. The agency requested data on the acute toxicity in humans, and particularly in children, of elemental iron. FDA stated that, if information is received that is persuasive that the use of elemental iron will substantially decrease the risk of pediatric poisoning while allowing for effective dietary iron supplementation, it will consider exempting iron-containing products that incorporate reduced iron from any regulations that result from this rulemaking. FDA does not have any information regarding the availability of such forms of iron for use in iron-containing products. Nor does FDA possess any information that would allow it to determine how many products would be reformulated with less toxic forms of iron in order to take advantage of such an exemption. FDA requests comment on the economic impact of exempting products containing less toxic forms of iron.

6. Consumer Education Campaign

Two of the three petitions that FDA received advocated educational efforts for the public and health professionals. FDA agrees that the public needs to be informed of the dangers of pediatric iron poisoning. The fact that in 7 years over 2,000 poisonings have occurred that have required some kind of treatment indicates that the public is not aware of the potential for serious harm or death in young children from accidental ingestion of iron-containing products. FDA is developing materials for a public information campaign utilizing the channels available to the agency.

7. Effective Dates

The agency is proposing to make any final rule that may issue based upon this proposal become effective 180 days after its publication in the **Federal Register**. FDA is requesting comments on this effective date. In general, costs of compliance for labeling and other requirements are less if longer compliance periods are provided because firms can incorporate mandatory changes to product, labeling, and packaging with regularly scheduled changes. FDA requests information on the ability of manufacturers of products that contain 30 mg or more iron per dosage unit to convert their packaging within the suggested compliance period.

*C. Regulatory Flexibility*

The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses when possible. FDA is not aware that any small businesses will be affected by this proposed rule. Therefore, FDA tentatively concludes that this proposed rule will not result in a significant burden on small businesses. FDA requests comments on any potential adverse effect on small businesses.

*D. Summary*

FDA has examined the impact of the proposed rule in accordance with Executive Order 12866 and has determined that it is not an economically significant rule. The rule will result in total costs of approximately $53 million and discounted benefits of between $315 million and $653 million over the next 20 years (discounted at 7 percent).

FDA has also examined the impact of this proposed rule on small businesses in accordance with the Regulatory Flexibility Act. FDA is unaware of any iron-containing products manufactured by small businesses. Therefore, FDA has determined that this rule will not result in a significant burden on small businesses.

**VII. Effective Date**

The agency is proposing to make any final rule that may issue based upon this proposal became effective 180 days after its publication in the **Federal Register**. The agency is requesting comments on the proposed effective date. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

**VIII. Comments**

The agency's intention in proposing this action is to reduce the incidence of pediatric iron poisonings from ingestion of iron-containing supplements and drug products. FDA has examined all relevant information available to the agency. The agency requests comments on this proposed action and is particularly interested in receiving comments that bear on the effectiveness of the proposed action to reduce the incidence of pediatric iron poisoning.

Interested persons may, on or before December 20, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

**IX. 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. U.S. Consumer Product Safety Commission, "Pediatric Iron Poisonings and Fatalities," p. 3, May 1994.

2. "Assessment of the Iron Nutritional Status of the U.S. Population Based on Data Collected in the Second National Health and Nutrition Examination Survey, 1976–1980," Federation of American Societies for Experimental Biology, Life Sciences Research Office, Bethesda, MD (under contract to FDA, Contract No. 223–83–2384, August 1984).

3. Subcommittee on the 10th Edition of the RDA's, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th Ed." Washington, DC, National Academy Press, pp. 195–205, 1989.

4. Dawson, E. B., W. J. McGanity, "Protection of Maternal Iron Stores in Pregnancy," *The Journal of Reproductive Medicine*, 32:478–487, 1987.

5. Committee on the Prevention, Detection, and Management of Iron Deficiency Anemia Among U.S. Children and Women of Childbearing Age, Food and Nutrition Board, Institute of Medicine, "Iron Deficiency Anemia: Recommended Guidelines for the Prevention, Detection, and Management Among U.S. Children and Women of Childbearing Age," by Earl R. and C. E. Woteki, (editors) National Academy Press, Washington, DC, pp. 17–18, 1993.

6. "Iron," in *Rudolph's Pediatrics*, A. Rudolph, J.I.E. Hoffman, C. D. Rudolph, editors; Appleton & Lange, Norwalk, CT, 19th ed., p. 806, 1991.

7. "Iron," in *Nelson Textbook of Pediatrics*, by R. E. Behrman, R. M. Kliegman, W. E. Nelson, and V. C. Vaughan (editors), W.B. Saunders Co., Philadelphia, PA, 14th ed., pp. 1780–1781, 1992.

8. "Iron," in *Manual of Toxicology Emergencies*, Noji, K. (editor), by Year Book Medical Publishers, Inc., pp. 496–506, 1989.

9. "Hematopoietic Agents: Growth Factors, Minerals, and Vitamins," in *The Pharmacological Basis of Therapeutics*, edited by A. G. Gilman, T. W. Rall, A. S. Nies, P. Taylor (editors), Pergamon Press, Elmsford, New York, 8th ed., pp. 1291, 1990.

10. Troendle, G., FDA memorandum, July 12, 1994.

11. Temeck, J., FDA memorandum, August 10, 1994.

12. American Association of Poison Control Center, Inc., petition to FDA, 91P–0186/CP1, 1991.

13. Attorneys General Petition to FDA, 93P–0306/CP1, 1993.

14. Litovitz, T.L., T.G. Martin, B. Schmitz, "1986 Annual Report of the American Association of Poison Control Centers National Data Collection System," *American Journal of Emergency Medicine*, 5:405–445, 1987.

15. Litovitz, T. L., B. Schmitz, N. Matyunas, T. G. Martin, "1987 Annual Report of the American Association of Poison Control Centers National Data Collection System," *American Journal of Emergency Medicine*, 6:479–515, 1988.

16. Litovitz, T. L., B. Schmitz, K. C. Holm, "1988 Annual Report of the American Association of Poison Control Centers National Data Collection System," *American Journal of Emergency Medicine*, 7:495–545, 1989.

17. Litovitz, T. L., B. Schmitz, K. M. Bailey, "1989 Annual Report of the American Association of Poison Control Centers National Data Collection System," *American Journal of Emergency Medicine*, 8:394–442, 1990.

18. Litovitz, T. L., K. M. Bailey, B. Schmitz, K. C. Holm, W. Klein-Schwartz, "1990 Annual Report of the American Association of Poison Control Centers National Data Collection System," *American Journal of Emergency Medicine*, 9:461–509, 1991.

19. Litovitz, T. L., K. C. Holm, K. M. Bailey, B. F. Schmitz, "1991 Annual Report of the American Association of Poison Control Centers National Data Collection System," American Journal of Emergency Medicine, 10:452–505, 1992.

20. Litovitz, T. L., K. C. Holm, C. Clancy, B. F. Schmitz, L. R. Clark, G. M. Oderda, "1992 Annual Report of the American Association of Poison Control Centers National Data Collection System," *American Journal of Emergency Medicine*, 11:494–555, 1993.

21. U.S. Consumer Product Safety Commission iron fatality case reports.

22. U.S. Consumer Product Safety Commission iron poisoning emergency room followup case reports.

23. Nonprescription Drug Manufacturers Association Petition to FDA, 93P–0306/CP2.

24. Stewart, D. W. and I. M. Martin, "Intended and Unintended Consequences of Warning Messages: A Review and Synthesis of Empirical Research," *Journal of Public Policy and Marketing*, 13(1):1–19, 1994.

25. Breault, H. J. "Five Years with 5 Million Child-Resistant Containers," *Clinical Toxicology*, 7(1):91–95, 1974.

26. Wilbur, C. J., "Child Resistant Effectiveness Conventional Pouch Packaging (Non-Child Resistant)," U.S. Consumer Product Safety Commission, C–805–9864, 1978.

27. Wilbur, C. J., "Child Resistant Effectiveness Conventional Blister Card Packaging (Non-Child Resistant," U.S. Consumer Product Safety Commission, E–850–3006, 1978.

28. Wilbur, C. J., "Closure Testing Equipment (CTE) Studies Non-Child Resistant (NCR) Snap Type Packaging, U.S. Consumer Product Safety Commission, 1990.

29. Wilbur, C. J., "Closure Testing Equipment (CTE) Studies Non-Child Resistant (NCR) Continuous Threaded Type Packaging," U.S. Consumer Product Safety Commission, 1990.

30. Whittaker, P., V. C. Dunkel, "Iron, Magnesium and Zinc Fortification of Food," in *Handbook on Metal-Ligand Interactions of Biological Fluids: Metal-Ligand Interactions in Human Biology and Medicine*, vol. 2, by G. Berthon (editor), Marcel Dekker, Inc., New York, New York, pp. 1–12, 1994.

31. Devasthali, S. D., V. R. Gordeuk, G. M. Brittenham, J. R. Bravo, M. A. Hughes, and L. J. Keating, "Bioavailability of Carbonyl Iron: A Randomized, Double-Blind Study," *European Journal of Haematolgy*, 46:272–278, 1991.

32. The Merck Index, "An Encyclopedia of Chemicals, Drugs, and Biologicals," S. Budavari, M. J. O'Neil, A. Smith, and P. E. Heckelman (editors), Merck and Co., Inc., Rahway, New Jersey, 11th ed., pp. 635, 1989.

33. Memoranda of telephone conversations between Peter Mayberry, Health Care Compliance Packaging Council, and Elizabeth Ann Cox, FDA, dated May 31 and June 8, 1994.

34. Memoranda of telephone conversations between Tom McGinnis, Office of Health Affairs, FDA and Elizabeth Ann Cox, FDA, dated August 3 and 15, 1994.

35. National Center for Health Statistics, "Use of Vitamin and Mineral Supplements in the United States: Current Usere, Types of Products, and Nutrients." U.S. Department of Health and Human Services, 174:1–19, 1989.

36. U.S. Bureau of the Census, 1993, Statistical Abstract of the United States: 1993 (113th Ed.), page 73; Government Printing Office, Washington, DC 20402.

37. RTI, "Estimating the Value of Consumers' Loss from Foods Violating the FD&C Act," FDA Contract No. 233–86–2097, Project Officer—Richard A. Williams, Jr., Research Triangle Park, NC, September 1988.

38. Orwin, R. G., R. E. Schucker, and R. C. Stokes, "Evaluating the Life Cycle of a Product Warning: Saccharin and Diet Soft Drinks, *Evaluation Review*, 8 (6), 801–822, 1984.

### List of Subjects

*21 CFR Part 101*

Food labeling, Nutrition, Reporting and recordkeeping requirements.

*21 CFR Part 170*

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

*21 CFR Part 310*

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

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 parts 101, 170, and 310 be amended as follows:

## PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.17 is amended by adding a new paragraph (e) to read as follows:

**§ 101.17 Food labeling warning and notice statements.**

* * * * *

*(e) Dietary supplements containing iron or iron salts.* (1) The labeling of any dietary supplement in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an

iron source shall bear the following statement:

(i) If the product is packaged in unit-dose packaging as defined in § 170.55 of this chapter:

WARNING—Keep away from children. Keep in original package until each use. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(ii) If the product contains less than 30 milligrams of iron per dosage unit and is packaged by the manufacturer in other than unit-dose packaging as defined in § 170.55 of this chapter, e.g., a container with a child-resistant closure, its label shall bear the following statement:

WARNING—Close tightly and keep away from children. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(2) The statement required by paragraph (e)(1)(i) of this section shall appear prominently and conspicuously on the immediate container labeling in such a way that the warning is intact until all of the dosage units to which it applies are used. The statement required by paragraph (e)(1)(ii) of this section shall appear prominently and conspicuously on the immediate container labeling. In all cases where the immediate container is not the retail package, the warning statement shall also appear prominently and conspicuously on the principal display panel of the retail package. In addition, the warning statement shall appear on any labeling that contains warnings.

## PART 170—FOOD ADDITIVES

3. The authority citation for 21 CFR part 170 continues to read as follows:

**Authority:** Secs. 201, 401, 402, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 346a, 348, 371).

4. New § 170.55 is added to subpart C to read as follows:

### § 170.55 Iron and iron salts in dietary supplements not in conventional food form.

The use of iron and iron salts as iron sources in dietary supplements is safe, or generally recognized as safe, only when the package in which the supplements are sold is labeled in accordance with § 101.17(e) of this chapter and, if the dietary supplements are offered in solid oral dosage form (e.g., tablets or capsules) and contain 30 milligrams or more of iron per dosage unit, when such supplements are packaged in unit-dose packaging. "Unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term "dosage unit" means the individual physical unit of the product, e.g., tablets or capsules.

## PART 310—NEW DRUGS

5. The authority citation for 21 CFR part 310 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

6. New § 310.518 is added to subpart E to read as follows:

### § 310.518 Drug products containing iron or iron salts.

Drug products containing elemental iron or iron salts as an active ingredient in solid oral dosage form, e.g., tablets or capsule shall meet the following requirements:

(a) *Packaging.* If the product contains 30 milligrams or more of iron per dosage unit, it shall be packaged in unit-dose packaging. "Unit-dose packaging" means a method of packaging a product into a nonreusable container designed to hold a single dosage unit intended for administration directly from that container, irrespective of whether the recommended dose is one or more than one of these units. The term "dosage unit" means the individual physical unit of the product (e.g., tablets or capsules).

(b) *Labeling.* (1) If the product is packaged by the manufacturer in unit-dose packaging, its label shall bear the following statement:

WARNING—Keep away from children. Keep in original package until each use. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(2) If the product contains less than 30 milligrams of iron and is packaged by the manufacturer in other than unit-dose packaging, e.g., a container with a child-resistant closure, its label shall bear the following statement:

WARNING—Close tightly and keep away from children. Contains iron, which can harm or cause death to a child. If a child accidentally swallows this product, call a doctor or poison control center immediately.

(3) The statement required by paragraph (b)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in such a way that the warning is intact until all of the dosage units to which it applies are used. The statement required by paragraph (b)(2) of this section shall appear prominently and conspicuously on the immediate container labeling. In all cases where the immediate container is not the retail package, the warning statement shall also appear prominently and conspicuously on the principal display panel of the retail package. In addition, the warning statement shall appear on any labeling that contains warnings.

Dated: September 28, 1994.

**David A. Kessler,**

*Commissioner of Food and Drugs.*

[FR Doc. 94–24476 Filed 10–4–94; 4:30pm]

BILLING CODE 4160–01–P

federal register

Thursday
October 6, 1994

Part V

# Department of Transportation

## Federal Highway Administration

## Truck Size and Weight; Vehicle Size and Weight Limits in Metric Units; Notice

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. 94–20]

### Truck Size and Weight; Vehicle Size and Weight Limits in Metric Units

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of interpretation; opportunity for comments.

**SUMMARY:** The FHWA has initiated a phased 5-year plan to convert its activities and business operations to the Metric System of Measurements as required by the 1988 amendments to the Metric Conversion Act of 1975. Details of the FHWA metric conversion policy and plan were published in the **Federal Register** on June 11, 1992 (57 FR 24843). The plan calls for the conversion to be completed by September 30, 1996. FHWA regulations currently specify vehicle size and weight limits and certain distances in English units. This notice converts the most commonly used of these units to their metric equivalents and provides guidance for the public to make similar conversions.

**DATES:** Comments on this interpretation should be submitted by January 4, 1995.

**ADDRESSES:** Submit written, signed comments to the FHWA Docket No. 94–20, Room 4232, HCC–10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Klimek, Office of Motor Carrier Information Management, (202) 366–2212 or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The English unit values for Federal size (length and width) and weight limits are set by law (49 U.S.C. app. 2311, 2316 and 23 U.S.C. 127, respectively). The conversion of these values to metric equivalents is not intended to change the law. However, public acceptance of the metric system will be considerably delayed unless regulatory limits are reasonably easy to use, remember, and enforce.

The Congress enacted the current single-axle, tandem-axle, and gross weight limits—20,000, 34,000, and 80,000 pounds, respectively—for economic and engineering reasons, but it obviously chose round numbers to promote compliance and ease of enforcement. That policy is also embodied in the Bridge Formula, where calculated weights must be rounded to the nearest 500 pounds [23 U.S.C. 127(a)], producing a weight table with increments of exactly 500 or 1,000 pounds. In other words, the legal limit could be nearly 250 pounds higher or lower than the figure generated by the formula. The Congress balanced its interest in establishing precise and accurate weight limits with the need to make a complex proposal more workable. Similarly, the FHWA believes that some compromises are necessary to reconcile the statutory mandates to enforce size and weight limits denominated in English units with the goal to promote conversion of all measurements to the metric system.

Consider, for example, the maximum weight for a tandem axle, 34,000 pounds. The precise metric equivalent is 15,422.4 kilograms. Converting to a fractional value is obviously impractical, and the nearest whole kilogram is an awkward number also. One kilogram represents 65 ten-thousandths of 1 percent (.0065 percent) of 15,422 kilograms. In an industry where scales are considered acceptable if they are accurate to within 0.2 percent, 1 kilogram has little meaning. Similarly, a 48-foot trailer is 14.6304 meters long. Enforcement officers are not in a position to measure ten-thousandths of a meter, but all Metric devices for measuring length are calibrated in hundredths of a meter.

With this in mind, the FHWA has decided, for purposes of enforcing Federal weight law, to allow the rounding of weight values up or down to the nearest whole number of kilograms evenly divisible by 10; this gives a margin of error of about 5 kilograms. In the example above, the 15,422.4 kilogram tandem-axle limit would, therefore, be rounded down to 15,420 kilograms. Five kilograms, just over 11 pounds, are well within the 0.1 percent margin of error allowed by the National Institute of Standards and Technology for a new certified truck scale. Such a scale could have a margin of error of 20 pounds when weighing a 20,000-pound single axle, 34 pounds when weighing a 34,000-pound tandem axle, and proportionally more for heavier loads. The FHWA believes that this conversion standard will ease the transition to the metric system while ensuring that the weight standards established by the Congress are enforced. We anticipate that implementation of this conversion standard will have no effect on current loading and enforcement practices, as no change in current weight regulations is intended.

The FHWA also will allow the measurement of dimensional values to the nearest one-hundreth of a meter. A 48-foot trailer, therefore, would be 14.63 meters long. Since dimensions do not fluctuate like vehicle weights, the FHWA anticipates fewer problems in enforcing these limits. The rule establishing a vehicle width of 2.6 meters as the legal equivalent of 102 inches, 23 CFR 658.15(a) remains unchanged.

The metric weight table (appendix A) yields values more precise than those resulting from the rounding method described in this notice. For example, the table shows that a three-axle vehicle with a 32-foot (or 9.75 meter) wheelbase has a gross weight limit of 27,216 kilograms; States may round this figure to 27,220 kilograms. The values in the table have not been rounded, however, because the FHWA will not require States to further round Federal weight standards if they choose not to do so. The metric values in the table represent the conversion of English units which have already been rounded one time as discussed earlier.

This notice supersedes the FHWA's previous policy. In a May 16, 1994, letter to the Florida Department of Transportation, which was transmitted to the other States, the Associate Administrator for Motor Carriers announced that the Agency intended "to use as precise conversions as possible to determine the metric equivalent to the English unit." After further consideration, the FHWA has determined that the rounding methods described above are consistent with the requirements of Federal law and will reduce the difficulties inherent in switching from English to metric units.

With regard to terminology, the FHWA is aware that the correct technical equivalent for an English "weight" limit would be a metric "mass" limit. However, because of its historic and widespread use, the term "weight limits," when referring to commercial motor vehicles, will be retained for the present time.

The FHWA will use the following conversion factors, as established by the American Society for Testing and Materials (ASTM) in its Standard ASTM E380, "Standard Practice for Use of the

SI International System of Units," to arrive at metric equivalent measurements:

| Weight | Distance and dimensions |
|---|---|
| 1 pound = 0.4536 kilograms. | 1 mile = 1.609 kilometers. |
| 1 Metric ton = 2,205 pounds. | 1 foot = 0.3048 meters. |
| 1 Metric ton = 1,000 kilograms. | 1 inch = 25.4 millimeters. |

**Conversion and Rounding**

When converting mixed size or weight units, e.g., feet and inches, to the metric equivalent, reduce the measurement to the smaller unit before converting to metric and rounding. For example, 10 feet, 3 inches equals 123 inches; 123 inches multiplied by 25.4 millimeter/inch equals 3,124.2 millimeters; round to 3120 millimeters or 3.12 meters.

**Converting Part 658 to Metric Measurements**

The metric equivalent of every English unit of measurement which is used in 23 CFR part 658 and which applies in all States is provided in the following table:

CONVERSIONS OF WEIGHT QUANTITIES

| Quantity | Metric equivalent |
|---|---|
| 1 lb | 0.4536 kg. |
| 1,000 lbs | 450 kg. |
| 20,000 lbs | 9,070 kg. |
| 34,000 lbs | 15,420 kg. |
| 80,000 lbs | 36,290 kg. |

CONVERSIONS OF DIMENSIONAL QUANTITIES

| Quantity | Metric equivalent |
|---|---|
| 3 inches | 76 millimeters. |
| 27 inches | 0.69 meters. |
| 3 feet | 0.91 meters. |
| 40 inches | 1.02 meters. |
| 4 feet | 1.22 meters. |
| 96 inches | 2.44 meters. |
| 102 inches | 2.6 meters.* |
| 108 inches | 2.74 meters. |
| 12 feet | 3.66 meters. |
| 28 feet | 8.53 meters. |
| 28.5 feet | 8.69 meters. |
| 34 feet | 10.36 meters. |
| 36 feet | 10.97 meters. |
| 41 feet | 12.5 meters. |
| 45 feet | 13.72 meters. |
| 48 feet | 14.63 meters. |
| 60 feet | 18.29 meters. |
| 65 feet | 19.81 meters. |
| 75 feet | 22.86 meters. |

*An exception to the standard conversion process established by 23 CFR 658.15(a).

OTHER CONVERSIONS

| Quantity | Metric equivalent |
|---|---|
| 1 mile | 1.61 km. |
| 500 pounds per inch | 8930 kg/m. |

**Metric Equivalent of the Federal Bridge Formula**

The Federal Bridge Formula found in 23 U.S.C. 127 is an integral part of the limits placed on vehicle weight. The Bridge Formula in English units is as follows:

$$W = 500\left[\frac{LN}{N-1} + 12N + 36\right]$$

W=The maximum weight in pounds that can be carried on a group of two or more axles to the nearest 500 pounds.

L=The distance in feet between the outer axles of any two or more consecutive axles.

N=The number of axles being considered.

Because the statute requires the use of English units to calculate Bridge Formula limits, a metric formula is not really possible. However, appendix A reproduces in English and the equivalent metric units the weight table generated by the Bridge Formula. The values in this table reflect the FHWA's policy of rounding down when calculated weights fall exactly halfway between 500-pound increments. Because the Bridge Formula is designed to protect the highway infrastructure, the agency has determined that this conservative policy is consistent with the statutory mandate.

Congress decided to adopt the metric system nearly 20 years ago. A notice of proposed rulemaking would serve no purpose since conversion to that standard is the policy of the United States. There may be errors in the data published in this notice, however, and the FHWA has therefore established a docket to receive technical comments on these provisions. The interpretations will be corrected as necessary, and in case of omissions, consideration will be given to additional interpretations.

(Sec. 123, Pub. L. 95–599, 92 Stat. 2701; 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111–31114; and 49 CFR 1.48.

Issued on: September 30, 1994.

**Rodney E. Slater,**

*Federal Highway Administrator.*

Based on weight formula $W = 500\left[\frac{LN}{N-1} + 12N + 36\right]$

APPENDIX A—PERMISSIBLE GROSS LOADS FOR VEHICLES IN REGULAR OPERATION [1]

| Distance in feet (L) (column 1) and meters (m) (column 2) between extremes of any group of 2 or more consecutive axles | | Maximum load in pounds (lb) and kilograms (kg) carried on any group of 2 or more consecutive axles [2] | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Column 1 | Column 2 | Axles | | 3 Axles | | 4 Axles | | 5 Axles | |
| | | lb | kg | lb | kg | lb | kg | lb | kg |
| 4 | 1.22 | 34,000 | 15,422 | ..... | ..... | ..... | ..... | ..... | ..... |
| 5 | 1.52 | 34,000 | 15,422 | ..... | ..... | ..... | ..... | ..... | ..... |
| 6 | 1.83 | 34,000 | 15,422 | ..... | ..... | ..... | ..... | ..... | ..... |
| 7 | 2.13 | 34,000 | 15,422 | ..... | ..... | ..... | ..... | ..... | ..... |
| 8 | 2.44 | 34,000 | 15,422 | 34,000 | 15,422 | ..... | ..... | ..... | ..... |
| 8.01 | 2.44 | 38,000 | 17,237 | 42,000 | 19,051 | ..... | ..... | ..... | ..... |
| 9 | 2.74 | 39,000 | 17,690 | 42,500 | 19,278 | ..... | ..... | ..... | ..... |
| 10 | 3.05 | 40,000 | 18,144 | 43,500 | 19,732 | ..... | ..... | ..... | ..... |
| 11 | 3.35 | ..... | ..... | 44,000 | 19,958 | ..... | ..... | ..... | ..... |
| 12 | 3.66 | ..... | ..... | 45,000 | 20,412 | 50,000 | 22,680 | ..... | ..... |

| Column 1 | Column 2 | Axles | | 3 Axles | | 4 Axles | | 5 Axles | |
|---|---|---|---|---|---|---|---|---|---|
| | | lb | kg | lb | kg | lb | kg | lb | kg |
| 13 | 3.96 | ..... | ..... | 45,500 | 20,639 | 50,500 | 22,907 | ..... | ..... |
| 14 | 4.27 | ..... | ..... | 46,500 | 21,092 | 51,500 | 23,360 | ..... | ..... |
| 15 | 4.57 | ..... | ..... | 47,000 | 21,319 | 52,000 | 23,587 | ..... | ..... |
| 16 | 4.88 | ..... | ..... | 48,000 | 21,773 | 52,500 | 23,814 | 58,000 | 26,309 |
| 17 | 5.18 | ..... | ..... | 48,500 | 22,000 | 53,500 | 24,268 | 58,500 | 26,536 |
| 18 | 5.49 | ..... | ..... | 49,500 | 22,453 | 54,000 | 24,494 | 59,000 | 26,762 |
| 19 | 5.79 | ..... | ..... | 50,000 | 22,680 | 54,500 | 24,721 | 60,000 | 27,216 |
| 20 | 6.10 | ..... | ..... | 51,000 | 23,134 | 55,500 | 25,175 | 60,500 | 27,443 |
| 21 | 6.40 | ..... | ..... | 51,500 | 23,360 | 56,000 | 25,402 | 61,000 | 27,670 |
| 22 | 6.71 | ..... | ..... | 52,500 | 23,814 | 56,500 | 25,628 | 61,500 | 27,896 |
| 23 | 7.01 | ..... | ..... | 53,000 | 24,041 | 57,500 | 26,082 | 62,500 | 28,350 |
| 24 | 7.32 | ..... | ..... | 54,000 | 24,494 | 58,000 | 26,309 | 63,000 | 28,577 |
| 25 | 7.62 | ..... | ..... | 54,500 | 24,721 | 58,500 | 26,536 | 63,500 | 28,804 |
| 26 | 7.92 | ..... | ..... | 55,500 | 25,175 | 59,500 | 26,989 | 64,000 | 29,030 |
| 27 | 8.23 | ..... | ..... | 56,000 | 25,402 | 60,000 | 27,216 | 65,000 | 29,484 |
| 28 | 8.53 | ..... | ..... | 57,000 | 25,855 | 60,500 | 27,443 | 65,500 | 29,711 |
| 29 | 8.84 | ..... | ..... | 57,500 | 26,082 | 61,500 | 27,896 | 66,000 | 29,938 |
| 30 | 9.14 | ..... | ..... | 58,500 | 26,536 | 62,000 | 28,123 | 66,500 | 30,164 |
| 31 | 9.45 | ..... | ..... | 59,000 | 26,762 | 62,500 | 28,350 | 67,500 | 30,618 |
| 32 | 9.75 | ..... | ..... | 60,000 | 27,216 | 63,500 | 28,804 | 68,000 | 30,845 |
| 33 | 10.06 | ..... | ..... | ..... | ..... | 64,000 | 29,030 | 68,500 | 31,072 |
| 34 | 10.36 | ..... | ..... | ..... | ..... | 64,500 | 29,257 | 69,000 | 31,298 |
| 35 | 10.67 | ..... | ..... | ..... | ..... | 65,500 | 29,711 | 70,000 | 31,752 |
| 36 | 10.97 | ..... | ..... | ..... | ..... | 66,000 | 29,938 | 70,500 | 31,979 |
| 37 | 11.28 | ..... | ..... | ..... | ..... | 66,500 | 30,164 | 71,000 | 32,206 |
| 38 | 11.58 | ..... | ..... | ..... | ..... | 67,500 | 30,618 | 71,500 | 32,432 |
| 39 | 11.89 | ..... | ..... | ..... | ..... | 68,000 | 30,845 | 72,500 | 32,886 |
| 40 | 12.19 | ..... | ..... | ..... | ..... | 68,500 | 31,072 | 73,000 | 33,113 |
| 41 | 12.50 | ..... | ..... | ..... | ..... | 69,500 | 31,525 | 73,500 | 33,340 |
| 42 | 12.80 | ..... | ..... | ..... | ..... | 70,000 | 31,752 | 74,000 | 33,566 |
| 43 | 13.11 | ..... | ..... | ..... | ..... | 70,500 | 31,979 | 75,000 | 34,020 |
| 44 | 13.41 | ..... | ..... | ..... | ..... | 71,500 | 32,432 | 75,500 | 34,247 |
| 45 | 13.72 | ..... | ..... | ..... | ..... | 72,000 | 32,659 | 76,000 | 34,474 |
| 46 | 14.02 | ..... | ..... | ..... | ..... | 72,500 | 32,886 | 76,500 | 34,700 |
| 47 | 14.33 | ..... | ..... | ..... | ..... | 73,500 | 33,340 | 77,500 | 35,154 |
| 48 | 14.63 | ..... | ..... | ..... | ..... | 74,000 | 33,566 | 78,000 | 35,381 |
| 49 | 14.94 | ..... | ..... | ..... | ..... | 74,500 | 33,793 | 78,500 | 35,608 |
| 50 | 15.24 | ..... | ..... | ..... | ..... | 75,500 | 34,247 | 79,000 | 35,834 |
| 51 | 15.54 | ..... | ..... | ..... | ..... | 76,000 | 34,474 | 80,000 | 36,288 |
| 52 | 15.85 | ..... | ..... | ..... | ..... | 76,500 | 34,700 | 80,500 | 36,515 |
| 53 | 16.15 | ..... | ..... | ..... | ..... | 77,500 | 35,154 | 81,000 | 36,742 |
| 54 | 16.46 | ..... | ..... | ..... | ..... | 78,000 | 35,381 | 81,500 | 36,968 |
| 55 | 16.76 | ..... | ..... | ..... | ..... | 78,500 | 35,608 | 82,500 | 37,422 |
| 56 | 17.07 | ..... | ..... | ..... | ..... | 79,500 | 36,061 | 83,000 | 37,649 |
| 57 | 17.37 | ..... | ..... | ..... | ..... | 80,000 | 36,288 | 83,500 | 37,876 |
| 58 | 17.68 | ..... | ..... | ..... | ..... | ..... | ..... | 84,000 | 38,102 |
| 59 | 17.98 | ..... | ..... | ..... | ..... | ..... | ..... | 85,000 | 38,556 |
| 60 | 18.29 | ..... | ..... | ..... | ..... | ..... | ..... | 85,500 | 38,783 |

| Column 1 | Column 2 | 6 Axles | | 7 Axles | | 8 Axles | | 9 Axles | |
|---|---|---|---|---|---|---|---|---|---|
| | | lb | kg | lb | kg | lb | kg | lb | kg |
| 61 | 18.59 | 90,500 | 41,051 | 95,500 | 43,319 | 101,000 | 45,814 | 106,500 | 48,308 |
| 62 | 18.90 | 91,000 | 41,278 | 96,000 | 43,546 | 101,500 | 46,040 | 107,000 | 48,535 |
| 63 | 19.20 | 92,000 | 41,731 | 96,500 | 43,772 | 102,000 | 46,267 | 107,500 | 48,762 |
| 64 | 19.51 | 92,500 | 41,958 | 97,500 | 44,226 | 102,500 | 46,494 | 108,000 | 48,989 |
| 65 | 19.81 | 93,000 | 42,185 | 98,000 | 44,453 | 103,000 | 46,721 | 108,500 | 49,216 |
| 66 | 20.12 | 93,500 | 42,412 | 98,500 | 44,680 | 103,500 | 46,948 | 109,000 | 49,442 |
| 67 | 20.42 | 94,000 | 42,638 | 99,000 | 44,906 | 104,500 | 47,401 | 109,500 | 49,669 |
| 68 | 20.73 | 95,000 | 43,092 | 99,500 | 45,133 | 105,000 | 47,628 | 110,000 | 49,896 |
| 69 | 21.03 | 95,500 | 43,319 | 100,000 | 45,360 | 105,500 | 47,855 | 111,000 | 50,350 |
| 70 | 21.34 | 96,000 | 43,546 | 101,000 | 45,814 | 106,000 | 48,082 | 111,500 | 50,576 |
| 71 | 21.64 | 96,500 | 43,772 | 101,500 | 46,040 | 106,500 | 48,308 | 112,000 | 50,803 |
| 72 | 21.95 | 97,000 | 43,999 | 102,000 | 46,267 | 107,000 | 48,535 | 112,500 | 51,030 |
| 73 | 22.25 | 98,000 | 44,453 | 102,500 | 46,494 | 107,500 | 48,762 | 113,000 | 51,257 |
| 74 | 22.56 | 98,500 | 44,680 | 103,000 | 46,721 | 108,500 | 49,216 | 113,500 | 51,484 |
| 75 | 22.86 | 99,000 | 44,906 | 103,500 | 46,948 | 109,000 | 49,442 | 114,000 | 51,710 |
| 76 | 23.16 | 99,500 | 45,133 | 104,500 | 47,401 | 109,500 | 49,669 | 114,500 | 51,937 |
| 77 | 23.47 | 100,000 | 45,360 | 105,000 | 47,628 | 110,000 | 49,896 | 115,500 | 52,391 |
| 78 | 23.77 | 101,000 | 45,814 | 105,500 | 47,855 | 110,500 | 50,123 | 116,000 | 52,618 |
| 79 | 24.08 | 101,500 | 46,040 | 106,000 | 48,082 | 111,000 | 50,350 | 116,500 | 52,844 |
| 80 | 24.38 | 102,000 | 46,267 | 106,500 | 48,308 | 111,500 | 50,576 | 117,000 | 53,071 |

| Column 1 | Column 2 | 6 Axles | | 7 Axles | | 8 Axles | | 9 Axles | |
|---|---|---|---|---|---|---|---|---|---|
| | | lb | kg | lb | kg | lb | kg | lb | kg |
| 81 | 24.69 | 102,500 | 46,494 | 107,000 | 48,535 | 112,500 | 51,030 | 117,500 | 53,298 |
| 82 | 24.99 | 103,000 | 46,721 | 108,000 | 48,989 | 113,000 | 51,257 | 118,000 | 53,525 |
| 83 | 25.30 | 104,000 | 47,174 | 108,500 | 49,216 | 113,500 | 51,484 | 118,500 | 53,752 |
| 84 | 25.60 | 104,500 | 47,401 | 109,000 | 49,442 | 114,000 | 51,710 | 119,000 | 53,978 |
| 85 | 25.91 | 105,000 | 47,628 | 109,500 | 49,669 | 114,500 | 51,937 | 120,000 | 54,432 |
| 86 | 26.21 | 105,500 | 47,855 | 110,000 | 49,896 | 115,000 | 52,164 | 120,500 | 54,659 |
| 87 | 26.52 | 106,000 | 48,082 | 110,500 | 50,123 | 115,500 | 52,391 | 121,000 | 54,886 |
| 88 | 26.82 | 107,000 | 48,535 | 111,500 | 50,576 | 116,500 | 52,844 | 121,500 | 55,112 |
| 89 | 27.13 | 107,500 | 48,762 | 112,000 | 50,803 | 117,000 | 53,071 | 122,000 | 55,339 |
| 90 | 27.43 | 108,000 | 48,989 | 112,500 | 51,030 | 117,500 | 53,298 | 122,500 | 55,566 |
| 91 | 27.74 | 108,500 | 49,216 | 113,000 | 51,257 | 118,000 | 53,525 | 123,000 | 55,793 |
| 92 | 28.04 | 109,000 | 49,442 | 113,500 | 51,484 | 118,500 | 53,752 | 123,500 | 56,020 |
| 93 | 28.35 | 110,000 | 49,896 | 114,000 | 51,710 | 119,000 | 53,978 | 124,500 | 56,473 |
| 94 | 28.65 | 110,500 | 50,123 | 115,000 | 52,164 | 119,500 | 54,205 | 125,000 | 56,700 |
| 95 | 28.96 | 111,000 | 50,350 | 115,500 | 52,391 | 120,500 | 54,659 | 125,500 | 56,927 |
| 96 | 29.26 | 111,500 | 50,576 | 116,000 | 52,617 | 121,000 | 54,886 | 126,000 | 57,154 |
| 97 | 29.57 | 112,000 | 50,803 | 116,500 | 52,844 | 121,500 | 55,112 | 126,500 | 57,380 |
| 98 | 29.87 | 113,000 | 51,257 | 117,000 | 53,071 | 122,000 | 55,339 | 127,000 | 57,607 |
| 99 | 30.18 | 113,500 | 51,484 | 117,500 | 53,298 | 122,500 | 55,566 | 127,500 | 57,834 |
| 100 | 30.48 | 114,000 | 51,710 | 118,500 | 53,752 | 123,000 | 55,793 | 128,000 | 58,061 |
| 101 | 30.78 | 114,500 | 51,937 | 119,000 | 53,978 | 123,500 | 56,020 | 129,000 | 58,514 |
| 102 | 31.09 | 115,000 | 52,164 | 119,500 | 54,205 | 124,500 | 56,473 | 129,500 | 58,741 |
| 103 | 31.39 | 116,000 | 52,618 | 120,000 | 54,432 | 125,000 | 56,700 | 130,000 | 58,968 |
| 104 | 31.70 | 116,500 | 52,844 | 120,500 | 54,659 | 125,500 | 56,927 | 130,500 | 59,195 |
| 105 | 32.00 | 117,000 | 53,071 | 121,000 | 54,886 | 126,000 | 57,154 | 131,000 | 59,422 |
| 106 | 32.31 | 117,500 | 53,298 | 122,000 | 55,339 | 126,500 | 57,380 | 131,500 | 59,648 |
| 107 | 32.61 | 118,000 | 53,525 | 122,500 | 55,566 | 127,000 | 57,607 | 132,000 | 59,875 |
| 108 | 32.92 | 119,000 | 53,978 | 123,000 | 55,793 | 127,500 | 57,834 | 132,500 | 60,102 |
| 109 | 33.22 | 119,500 | 54,205 | 123,500 | 56,020 | 128,500 | 58,288 | 133,500 | 60,556 |
| 110 | 33.53 | 120,000 | 54,432 | 124,000 | 56,246 | 129,000 | 58,514 | 134,000 | 60,782 |
| 111 | 33.83 | 120,500 | 54,659 | 124,500 | 56,473 | 129,500 | 58,741 | 134,500 | 61,009 |
| 112 | 34.14 | 121,000 | 54,886 | 125,500 | 56,927 | 130,000 | 58,968 | 135,000 | 61,236 |
| 113 | 34.44 | 122,000 | 55,339 | 126,000 | 57,154 | 130,500 | 59,195 | 135,500 | 61,463 |
| 114 | 34.75 | 122,500 | 55,566 | 126,500 | 57,380 | 131,000 | 59,422 | 136,000 | 61,690 |
| 115 | 35.05 | 123,000 | 55,793 | 127,000 | 57,607 | 131,500 | 59,648 | 136,500 | 61,916 |
| 116 | 35.36 | 123,500 | 56,020 | 127,500 | 57,834 | 132,500 | 60,102 | 137,000 | 62,143 |
| 117 | 35.66 | 124,000 | 56,246 | 128,000 | 58,061 | 133,000 | 60,329 | 138,000 | 62,597 |
| 118 | 35.97 | 125,000 | 56,700 | 129,000 | 58,514 | 133,500 | 60,556 | 138,500 | 62,824 |
| 119 | 36.27 | 125,500 | 56,927 | 129,500 | 58,741 | 134,000 | 60,782 | 139,000 | 63,050 |
| 120 | 36.58 | 126,000 | 57,154 | 130,000 | 58,968 | 134,500 | 61,009 | 139,500 | 63,277 |

[1] The permissible loads are computed to the nearest 500 pounds as required by statute.

[2] The following loaded vehicle must not operate over H15–44 bridges: 3–S2 (5-axle) with wheelbase less than 38 feet (11.58 meters); 2–S1–2 (5-axle) with wheelbase less than 45 feet (13.72 meters); 3–3 (6-axle) with wheelbase less than 45 feet; and 7-, 8-, and 9-axle vehicles regardless of wheelbase.

[FR Doc. 94–24747 Filed 10–5–94; 8:45 am]

BILLING CODE 4910–22–P

federal register

Thursday
October 6, 1994

Part VI

# Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 580
Haitian Transactions Regulations; Suspension of Unilateral Sanctions; Final Rule

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### 31 CFR Part 580

### Haitian Transactions Regulations; Suspension of Unilateral Sanctions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendments.

**SUMMARY:** In light of the pending restoration of the democratically-elected government of Haiti, the Treasury Department is amending the Haitian Transactions Regulations to suspend unilateral U.S. sanctions with respect to Haiti, including unblocking the property of most Haitian nationals resident in Haiti, terminating the prohibition on most financial transfers between Haiti and the United States, and terminating a ban on the entry of certain vessels into U.S. ports. The amendment further generally authorizes exports to Haiti of food and food products, and announces the availability of specific licenses for certain humanitarian, journalistic, and other transactions in conformity with United Nations sanctions.

**EFFECTIVE DATE:** October 5, 1994.

**FOR FURTHER INFORMATION CONTACT:** John T. Roth, Chief of Policy Planning and Program Management (tel.: 202/622-2500), Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of the publication in the **Federal Register**. By modem dial 202/512-1387 or call 202/515-1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

#### Background

On March 31, 1992, the Department of the Treasury promulgated the Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), in consultation with the Department of State, to implement the President's Executive Orders No. 12775 of October 4, 1991, declaring a national emergency with respect to Haiti and ordering specified measures against Haiti, and No. 12779 of October 28, 1991, ordering a trade embargo against Haiti. Since the Regulations were published, the President has issued 6 additional Executive orders: Executive Orders No. 12853 of June 30, 1993, "Blocking Government of Haiti Property and Prohibiting Transactions With Haiti," No. 12872 of October 18, 1993, "Blocking Property of Persons Obstructing Democratization in Haiti," No. 12914 of May 7, 1994 "Prohibiting Certain Transactions With Respect to Haiti," No. 12917 of May 21, 1994 "Prohibiting Certain Transactions With Respect to Haiti," No. 12920 of June 10, 1994 "Prohibiting Certain Transactions with Respect to Haiti," and No. 12922 of June 21, 1994 "Blocking Property of Certain Haitian Nationals." The Regulations are being amended to modify sanctions imposed under these orders, although certain prohibitions set forth in the orders themselves are not reflected in the Regulations.

Section 580.211, prohibiting the entry into U.S. ports of vessels engaged in unauthorized trade with Haiti, is removed and reserved. Section 580.518 is added to the Regulations to generally authorize the exportation to Haiti of food and food products. Section 580.519 is added to generally authorize financial transfers to and from Haiti. A conforming amendment is made to § 580.516(a), which authorized certain food exports to Haiti now covered by § 580.518. No payments or transfers to the *de facto* regime in Haiti or to persons listed as Blocked Persons of Haiti in revised appendix A are permitted in connection with transactions authorized pursuant to § 580.518 or § 580.519. Section 580.520 is added to unblock the property of Haitian nationals resident in Haiti not listed in revised appendix A. It does not authorize new transactions with or unblock property of the Government of Haiti or persons listed as Blocked Persons of Haiti in appendix A to part 580.

Section 580.521 is added to inform the public that specific licenses are available on a case-by-case basis for the exportation to Haiti of fuel and equipment for electric power generation, telecommunications materials, media and educational supplies, agricultural supplies and construction and transportation supplies for humanitarian purposes. Section 580.522 is added to announce the availability of specific licenses for certain charter flights for the use of humanitarian organizations and journalists between the United States and Haiti. Such licenses will be issued in conformity with United Nations Security Council procedures with respect to mandatory sanctions against Haiti. Section 580.523 is added to generally license temporary exportation by journalists and broadcast media of equipment to Haiti needed for reporting, broadcasting, and documentary film making there, and for similar temporary importation into the United States of equipment for Haitian journalists and broadcast media.

Finally, appendix A to part 580 ("Blocked Persons of Haiti") is amended to reflect current information on persons whose property remains blocked by provisions contained in Executive Order No. 12775, 12779, 12853, 12872, 12914, 12917, 12920, or 12922. The names of persons whose property was blocked solely on the basis of their status as Haitian nationals resident in Haiti, pursuant to section 1(a) of Executive Order No. 12922, have been removed.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601-612, does not apply.

#### List of Subjects in 31 CFR Part 580

Administrative practice and procedure, Agricultural commodities, Banking and finance, Blocking of assets, Exports, Foods, Haiti, Imports.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as set forth below:

## PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 is revised to read as follows:

**Authority:** 50 U.S.C. 1701-1706; 50 U.S.C. 1601-1651; 22 U.S.C. 287c; 3 U.S.C. 301; E.O. 12775, 56 FR 50641, 3 CFR, 1991 Comp., p. 349; E.O. 12779, 56 FR 55975, 3 CFR, 1991 Comp., p. 367; E.O. 12853, 58 FR 35843, 3 CFR, 1993 Comp., p. 612; E.O. 12872, 58 FR 54029, 3 CFR 1993 Comp., p. 658; E.O. 12914, 59 FR 24339, May 10, 1994; E.O. 12917, 59 FR 26925, May 24, 1994; E.O. 12920, 59 FR 30501, June 14, 1994; E.O. 12922, 59 FR 32645, June 23, 1994.

### Subpart B—Prohibitions

#### § 580.211 [Removed]

2. Section 580.211 is removed and reserved.

### Subpart E—Licenses, Authorizations and Statements of Licensing Policy

3. The heading of § 580.516 is revised to read as follows, and the text is amended by deleting paragraph (a) and

deleting the paragraph designation "(b)" before the remaining text.

**§ 580.516 Exportation of propane.**

* * * * *

4. Section 580.518 is added to read as follows:

**§ 580.518 Exportation of food and food products.**

Exportation from the United States to Haiti of food and food products is authorized, provided that no payment or transfer in connection therewith may be made to, from, or through a person listed in appendix A to this part. The authorization contained in this section does not eliminate the need to comply with regulatory requirements governing exports and reexports administered by other federal agencies.

5. Section 580.519 is added to read as follows:

**§ 580.519 Financial transfers authorized.**

Payments and transfers of funds or other financial or investment assets or credits to Haiti from or through the United States, or to or through the United States from Haiti, otherwise prohibited under section 1 of Executive Order No. 12920, 59 FR 30501 (June 14, 1994), are authorized, provided that no payment or transfer may be made to, from, or through a person listed in appendix A to this part.

6. Section 580.520 is added to read as follows:

**§ 580.520 Certain Haitian nationals unblocked.**

Except with respect to the property and interests in property of persons listed in appendix A to this part, all property and interests in property of Haitian nationals resident in Haiti otherwise blocked pursuant to section 1(a) of Executive Order No. 12922, 59 FR 32645 (June 23, 1994), are unblocked.

7. Section 580.521 is added to read as follows:

**§ 580.521 Licensing of certain exports.**

Specific licenses may be issued on a case–by–case basis authorizing the exportation from the United States to Haiti of fuel and equipment for electric power generation, telecommunications materials, media and educational supplies, agricultural supplies, and construction and transportation supplies for humanitarian purposes. No payment or transfer to, from, or through a person listed in appendix A to this part will be authorized in connection with licenses issued under this section.

8. Section 580.522 is added to read as follows:

**§ 580.522 Licensing of certain charter flights.**

Specific licenses may be issued on a case–by–case basis authorizing charter flights between the United States and Haiti for use by humanitarian relief agencies to transport needed personnel and supplies, or for use by journalists covering events in Haiti. No payment or transfer to, from, or through a person listed in appendix A to this part will be authorized in connection with licenses issued under this section.

8. Section 580.523 is added to read as follows:

**§ 580.523 Temporary exports and imports of journalists' and broadcast media equipment.**

(a) Journalists and broadcast media may temporarily export from the United States to Haiti equipment needed for reporting and broadcasting from Haiti and for documentary film making in Haiti, provided that such equipment is removed from Haiti as soon as the specific reporting, filming, or broadcasting is completed, and provided that such equipment is not made available for the use of persons listed in appendix A to this part.

(b) Haitian journalists and broadcast media may temporarily import into the United States from Haiti equipment needed for reporting and broadcasting from outside Haiti and for documentary film making outside Haiti.

9. Appendix A to part 580 is revised to read as follows:

**APPENDIX A TO PART 580—BLOCKED PERSONS OF HAITI**

**Note:** Section I of appendix A lists the names of individuals whom the Director of the Office of Foreign Assets Control has determined are blocked individuals of Haiti, either because they are included within the definition of the "*de facto* regime in Haiti" as defined in Executive Order 12755, or because they meet criteria for blocking referred to in section 1(b) of Executive Order 12922. Section II of appendix A identifies entities of the *de facto* regime in Haiti whose assets are blocked. Property of these individuals and entities that is located in the United States or within the possession or control of U.S. persons, including their overseas branches, is blocked, and transactions with these individuals and entities are prohibited.

The information listed below is the most complete information now available to the Office of Foreign Assets Control. The absence of any particular person from appendix A is not to be construed as evidence that the person is not a part of, or owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the *de facto* regime in Haiti, or is not otherwise a blocked individual or entity of Haiti pursuant to the criteria referred to in section 1(b) of Executive Order 12922.

*I. Blocked Individuals of Haiti*

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| ACCLUCHE, Alberic L.; Lieutenant | Haitian Armed Forces | Haiti | 29 October 1944 |
| ADOLPHE, François J.; Lieutenant | Haitian Armed Forces | Haiti | 7 April 1947 |
| AIMABLE, Jacques Jean; Lieutenant | Haitian Armed Forces | Haiti | 21 January 1942 |
| ALCENAT, Jean–Dugas; Lieutenant | Haitian Armed Forces | Haiti | 25 June 1940 |
| ALCEUS, Raoul; Captain | Haitian Armed Forces | Haiti | 15 April 1953 |
| ALCIDE, Anthony; Major | Haitian Armed Forces | Haiti | 15 September 1944 |
| ALCY, Pierre–Antoine; Lieutenant | Haitian Armed Forces | Haiti | 15 August 1940 |
| ALEUS, Louisme; Lieutenant | Haitian Armed Forces | Haiti | 8 May 1956 |
| ALEXANDRE, Amos; Lieutenant | Haitian Armed Forces | Haiti | 24 July 1946 |
| ALEXANDRE, Carel Camille; Lieutenant | Haitian Armed Forces | Haiti | 19 July 1963 |
| ALEXANDRE, Dusner; Lieutenant | Haitian Armed Forces | Haiti | 27 July 1960 |
| ALEXANDRE, Jean Charlaime; Lieutenant | Haitian Armed Forces | Haiti | 1 February 1945 |
| ALEXANDRE, Johel; Lieutenant | Haitian Armed Forces | Haiti | 28 March 1954 |
| ALEXANDRE, Joseph Dieunor; Captain | Haitian Armed Forces | Haiti | 23 April 1958 |
| ALEXANDRE, Kebeau; Ensign | Haitian Armed Forces | Haiti | 30 December 1952 |
| ALEXANDRE, Paul François; Captain | Haitian Armed Forces | Haiti | 27 October 1945 |
| ALEXANDRE, Samuel; Captain | Haitian Armed Forces | Haiti | 5 October 1955 |
| ALEXIS, Dioget; Lieutenant | Haitian Armed Forces | Haiti | 10 July 1959 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| ALEXIS, Jean Carlo; Captain | Haitian Armed Forces | haiti | 19 January 1958 |
| ALEXIS, Joseph B.; Lieutenant Colonel | Haitian Armed Forces | Haiti | 16 January 1942 |
| ALEXIS, Roland; Lieutenant | Haitian Armed Forces | Haiti | 22 April 1961 |
| ALFRED, Joseph Brice; Lieutenant | Haitian Armed Forces | Haiti | 14 November 1946 |
| ALMONOR, Herard; Lieutenant | Haitian Armed Forces | Haiti | 12 August 1948 |
| ALTIDOR, Garie; Captain | Haitian Armed Forces | Haiti | 11 April 1958 |
| ALTIDOR, Rodrigue; Lieutenant | Haitian Armed Forces | Haiti | 30 November 1950 |
| ALZUPHAR, Aldof; Major | Haitian Armed Forces | Haiti | 16 December 1946 |
| ALZUPHAR, Jean-Marie B.; Lieutenant | Haitian Armed Forces | Haiti | 21 November 1960 |
| ANDOU, Adolphe; Captain | Haitian Armed Forces | Haiti | 24 May 1953 |
| ANDRÉ, Amos; Senator | Haitian Parliament | Haiti | 30 March 1957 |
| ANDRÉ, Charles Altenor; Commander | Haitian Armed Forces | Les Cayes, Haiti | 1 December 1953 |
| ANDRÉ, Louis-Frito; Lieutenant | Haitian Armed Forces | Haiti | 7 June 1948 |
| ANDRÉ, Ruguins; Lieutenant | Haitian Armed Forces | Haiti | 1 October 1964 |
| ANDRÉ, Voltaire; Lieutenant | Haitian Armed Forces | Haiti | 15 December 1950 |
| ANDRESOL, Mario; Lieutenant | Haitian Armed Forces | Haiti | 20 July 1960 |
| ANIS, Venus; Lieutenant | Haitian Armed Forces | Haiti | 29 April 1946 |
| ANTOINE, Jean Edouard M.; Lieutenant | Haitian Armed Forces | Haiti | 28 April 1940 |
| ANTOINE, Jonas; Lieutenant | Haitian Armed Forces | Haiti | 30 November 1942 |
| ANTOINE, Max | | Rue 9, Port-au-Prince, Haiti; Passport No. 318-85 (Haiti) | 28 December 1954 |
| ANTOINE, Raynald Fritz; Captain | Haitian Armed Forces | Haiti | 24 September 1961 |
| ASMATH, Luc Roger; Lieutenant | Haitian Armed Forces | Haiti | 4 June 1953 |
| ATOURISTE, Antoine; Colonel | Haitian Armed Forces | Delmas 31, Rue Verly 9, Port-au-Prince, Haiti; Passport No. 79-039396 | 3 July 1951 |
| ATOURISTE, Antoine, Jr. | | Son of Col. Antoine Atouriste; Haiti | 12 November 1976 |
| ATOURISTE, Vladimir Ahmed | | Son of Col. Antoine Atouriste; Haiti | 13 August 1984 |
| AUDATE, Frantz; Lieutenant | Haitian Armed Forces | Haiti | 16 June 1968 |
| AUGUSTIN, Anne Mario; Lieutenant | Haitian Armed Forces | Haiti | 10 July 1961 |
| AUGUSTIN, Edner; Captain | Haitian Armed Forces | Haiti | 19 May 1949 |
| AUGUSTIN, Gabriel | | Haiti | 1 February 1945 |
| AUGUSTIN, Henry Robert; Colonel | Haitian Armed Forces | Haiti | 21 June 1951 |
| AUGUSTIN, Jean-Christophe; Lieutenant | Haitian Armed Forces | Haiti | 6 May 1941 |
| AUGUSTIN, Michel; Lieutenant | Haitian Armed Forces | Haiti | 4 June 1937 |
| AVRIL, Buteau; Lieutenant | Haitian Armed Forces | Haiti | 19 October 1955 |
| BACKER, Jacques (a.k.a. BAKER, Jacques); former Minister | Ministry of Agriculture, National Resources and Rural Development | Lillavois Bon-Repos, Val de Abres 11, Haiti | 1 March 1940 |
| BACKER, Marie | | Wife of Jacques Backer; Lillavois Bon-Repos, Val de Abres 11, Haiti | 25 December 1949 |
| BAGUIDY, Joseph Dominique; former Deputy Chief | Haiti Police | Haiti | 20 April 1946 |
| BARTHELEMY, Joseph Luma; Lieutenant | Haitian Armed Forces | Haiti | 14 January 1954 |
| BARTHELUS, Joseph; Lieutenant | Haitian Armed Forces | Haiti | 28 October 1948 |
| BASTIEN, Baker; Lieutenant Colonel | Haitian Armed Forces | Haiti | 31 May 1946 |
| BASTIEN, Karl-Henry; Lieutenant | Haitian Armed Forces | Haiti | 13 December 1958 |
| BASTIEN, Ludwig; Lieutenant | Haitian Armed Forces | Haiti | 14 June 1963 |
| BASTIEN, Patrick Henri; Captain | Haitian Armed Forces | Haiti | 26 April 1958 |
| BAZARD, Louis Eric; Lieutenant | Haitian Armed Forces | Haiti | 4 April 1937 |
| BAZELAIS, Antoine; Major | Haitian Armed Forces | Haiti | 20 February 1940 |
| BAZILE, David; Major | Haitian Armed Forces | Haiti | 4 August 1955 |
| BAZILE, Franck; Lieutenant | Haitian Armed Forces | Haiti | 16 December 1958 |
| BAZILE, Serge; Lieutenant | Haitian Armed Forces | Haiti | 15 April 1950 |
| BAZIN, Marc L.; former Prime Minister | | Haiti | 6 March 1932 |
| BEAUBIEN, Fontane; Major | Haitian Armed Forces | Haiti | 20 August 1954 |
| BEAUBRUN, Mondesir; Colonel | Haitian Armed Forces | Delmas 75, Port-au-Prince, Haiti | 10 May 1949 |
| BEAUBRUN, Noël Sylvatt; Captain | Haitian Armed Forces | Haiti | 25 December 1938 |
| BEAUDOUIN, Louis Jacques; Major | Haitian Armed Forces | Haiti | 21 July 1948 |
| BEAUGE, Hugo; Lieutenant | Haitian Armed Forces | Haiti | 22 May 1961 |
| BELHOMME, Patrick; Lieutenant | Haitian Armed Forces | Haiti | 4 May 1959 |
| BELNEAU, Sylvio; Lieutenant | Haitian Armed Forces | Haiti | 18 August 1938 |
| BELZIR, Ecclesiaste; Lieutenant | Haitian Armed Forces | Haiti | 19 February 1954 |
| BENECHE, Ery; Lieutenant | Haitian Armed Forces | Haiti | 19 December 1949 |
| BENJAMIN, Dumas | Central Bank of Haiti | P.O. Box 2450, Port-au-Prince, Haiti | 1 September 1949 |
| BENOIT, Etienne; Lieutenant Colonel | Haitian Armed Forces | Haiti | 13 January 1935 |
| BENOIT, François; former Minister | Ministry of Foreign Affairs and Worship | Haiti | 2 May 1936 |
| BERNARD, Lesly; Lieutenant | Haitian Armed Forces | Haiti | 1 April 1968 |
| BERTIN, Mireille Durocher | | Legal Counsel to LTG Raoul Cedras; Rue Duncombe 31, Port-au-Prince, Haiti; Passport No. 79-16252 | 20 October 1959 |
| BERTRAND, Dezile; Major | Haitian Armed Forces | Haiti | 31 March 1951 |
| BERTRAND, Dominique; Lieutenant | Haitian Armed Forces | Haiti | 14 April 1953 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| BIAMBY, Philippe; Brigadier General | Haitian Armed Forces | Haiti | 21 September 1952 |
| BIJOUX, Frantz; Lieutenant | Haitian Armed Forces | Haiti | 20 May 1962 |
| BISSAINTHE, Gérard | | 25 Ruye Capoi, Port–au–Prince, Haiti | 16 December 1929 |
| BLAISE, Jean–Baptiste P.; Lieutenant | Haitian Armed Forces | Haiti | 16 March 1964 |
| BLANC, Andrée G.; Lieutenant | Haitian Armed Forces | Haiti | 21 September 1956 |
| BOISNORD, Lherisse; Lieutenant | Haitian Armed Forces | Haiti | 3 February 1948 |
| BOISROND, Jean, Dr.; Minister | Ministry of Public Health | Haiti | 2 December 1946 |
| BOSQUET, Charlemagne; Lieutenant | Haitian Armed Forces | Haiti | 12 January 1948 |
| BOUCARD, Arnoux | Government Industrial Park | Passport No. 86–312687 (Haiti); Haiti | 21 January 1935 |
| BOUCARD, Rosevald; Lieutenant | Haitian Armed Forces | Haiti | 18 October 1960 |
| BOUCHER, Edner; Major | Haitian Armed Forces | Haiti | 24 March 1956 |
| BOULIN, Marie–Carmelle; Captain | Haitian Armed Forces | Haiti | 15 July 1955 |
| BOURDEAU, Serge; Lieutenant Colonel | Haitian Armed Forces | Haiti | 29 August 1945 |
| BOYER, Christophe D.; Lieutenant | Haitian Armed Forces | Haiti | 19 September 1955 |
| BRICE, François; Lieutenant | Haitian Armed Forces | Haiti | 15 May 1953 |
| BROSSARD, Harry Alix; Lieutenant | Haitian Armed Forces | Haiti | 4 April 1950 |
| BRUNEAU, Jean–Rotchild; Captain | Haitian Armed Forces | Haiti | 5 June 1954 |
| BRUTUS, André; former Minister | Ministry of Social Affairs | Rue de Centre No. 134, Port–au–Prince, Haiti | 6 August 1943 |
| BRUTUS, Jean Emmanuel; Director | Télénationale d'Haïti | Delmas 60 No. 15, Port–au–Prince, Haiti; Passport No. 83–92060 (Haiti) | 20 October 1958 |
| BRUTUS, Patrick | | Delmas 40, National Shopping Center c/o Brutus Press Agency, Port–au–Prince, Haiti | 6 October 1952 |
| CADET, Ebrane; First Secretary | Executive Bureau of "January 18" Senate | Haiti, possible legal permanent resident of the United States | 1 June 1947 |
| CADET, Emmanuel; Captain | Haitian Armed Forces | Haiti | 5 February 1946 |
| CALIXTE, Alix Calice; Lieutenant | Haitian Armed Forces | Haiti | 25 August 1944 |
| CALIXTE, André; former Minister | Ministry of Information and Coordination | Haiti | 13 July 1940 |
| CALIXTE, Geriles; Captain | Haitian Armed Forces | Haiti | 4 March 1955 |
| CANTAVE, Jean–Rociny; Lieutenant | Haitian Armed Forces | Haiti | 16 May 1938 |
| CARRENARD, Philippe; Colonel | Haitian Armed Forces | Haiti | 14 May 1949 |
| CAZEAU, Jean–Lucien; Lieutenant Colonel | Haitian Armed Forces | Haiti | 4 January 1951 |
| CEDRAS, Christian | | Son of LTG Raoul Cedras; Haiti | 17 September 1984 |
| CEDRAS, Didier | | Imp. Sambour 126, Port–au–Prince, Haiti | January 1940 |
| CEDRAS, Michaelle | | Daughter of LTG Raoul Cedras; Haiti | 28 February 1980 |
| CEDRAS, Raoul; Lieutenant General | Haitian Armed Forces | Haiti | 9 July 1949 |
| CEDRAS, Raoul Olivier | | Son of LTG Raoul Cedras; Haiti | 18 August 1977 |
| CEDRAS, Yanick | | Wife of LTG Raoul Cedras; Haiti | 2 January 1954 |
| CELESTIN, Eddie (a.k.a. CELESTIN, Eddy) | Civil Aviation Authority | Haiti; Passport No. 79–2874 (Haiti) | 13 May 1940 |
| CELESTIN, Yves; Lieutenant Commander | Haitian Armed Forces | Haiti | 19 October 1954 |
| CELIN, Franck; Lieutenant Colonel | Haitian Armed Forces | Haiti | 10 September 1950 |
| CENAFILS, Castera; Captain | Haitian Armed Forces | Haiti | 22 October 1953 |
| CENEAC, Rony; Lieutenant | Haitian Armed Forces | Haiti | 18 January 1960 |
| CESAR, Abelar; Lieutenant | Haitian Armed Forces | Haiti | 8 January 1956 |
| CESAR, Jean–Kermichel; Lieutenant | Haitian Armed Forces | Haiti | 9 September 1943 |
| CETOUTE, Julis; Lieutenant | Haitian Armed Forces | Haiti | 4 March 1951 |
| CHAM, Julio, Lieutenant | Haitian Armed Forces | Haiti | 5 November 1947 |
| CHAMBLAIN, Louis Judel | Revolutionary Front for Advancement and Progress of Haiti (FRAPH) | Haiti | |
| CHAMPAGNE, Jean Yves Hancy; Captain | Haitian Armed Forces | Haiti | 6 February 1960 |
| CHAMPAGNE, Leisner, Lieutenant | Haitian Armed Forces | Haiti | 14 July 1959 |
| CHAPUSETTE, Marie Carline; Lieutenant | Haitian Armed Forces | Haiti | 24 January 1960 |
| CHARLES, Alexis Volcy L.; Ensign | Haitian Armed Forces | Haiti | 22 March 1966 |
| CHARLES, Astrel; Lieutenant | Haitian Armed Forces | Haiti | 25 December 1950 |
| CHARLES, Benoit; Lieutenant | Haitian Armed Forces | Haiti | 12 May 1959 |
| CHARLES, Faustin; Lieutenant | Haitian Armed Forces | Haiti | 20 August 1951 |
| CHARLES, Jean Clement; Lieutenant | Haitian Armed Forces | Haiti | 8 September 1948 |
| CHARLES, Josel; Major | Haitian Armed Forces | Haiti | 23 February 1951 |
| CHARLES, Joseph; Lieutenant | Haitian Armed Forces | Haiti | 6 March 1938 |
| CHARLES, Martin Laerte; Lieutenant | Haitian Armed Forces | Haiti | 27 July 1957 |
| CHARLES, Mercidieu; Lieutenant | Haitian Armed Forces | Haiti | 5 August 1953 |
| CHARLES, Pierre Gerald; Captain | Haitian Armed Forces | Haiti | 9 July 1959 |
| CHARLES, Pierre–Hemeric; Captain | Haitian Armed Forces | Haiti | 6 July 1957 |
| CHARLES, Soifaite; Lieutenant | Haitian Armed Forces | Haiti | 21 December 1936 |
| CHARLES, Webert; Lieutenant | Haitian Armed Forces | Haiti | 15 April 1957 |
| CHARLES–PIERRE, Jean–Marie; Lieutenant | Haitian Armed Forces | Haiti | 8 August 1959 |
| CHARLES–PIERRE, Lima J.; Captain | Haitian Armed Forces | Haiti | 2 December 1955 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| CHARLES–PIERRE, Sandry F.M.; Captain | Haitian Armed Forces | Haiti | 2 June 1961 |
| CHARLEUS, Joseph Rivaud; Lieutenant | Haitian Armed Forces | Haiti | 18 January 1940 |
| CHARLIER, Antony; Captain | Haitian Armed Forces | Haiti | 27 October 1958 |
| CHARLOTIN, Fritz; Lieutenant | Haitian Armed Forces | Haiti | 15 December 1953 |
| CHATELIN, Lucien A.; Captain | Haitian Armed Forces | Haiti | 6 June 1941 |
| CHERENEFANT, Tony; Lieutenant | Haitian Armed Forces | Haiti | 8 August 1937 |
| CHERFILS, Serge; Lieutenant | Haitian Armed Forces | Haiti | 10 March 1947 |
| CHERISKA, Eric; Lieutenant | Haitian Armed Forces | Haiti | 16 September 1962 |
| CHERY, Fritzner; Lieutenant | Haitian Armed Forces | Haiti | 11 October 1960 |
| CHERY, Georges Fils; Lieutenant | Haitian Armed Forces | Haiti | 30 May 1951 |
| CHERY, Pierre–André; Lieutenant | Haitian Armed Forces | Haiti | 9 July 1959 |
| CHERY, Victor Louis; Captain | Haitian Armed Forces | Haiti | 24 December 1938 |
| CINEAS, Alex (a.k.a. CINEAS, Alix) | | Delmas 31, Rue Coutard No. 7, Port–au–Prince, Haiti | 15 June 1932 |
| CINEAS, Charles R.E.; Major | Haitian Armed Forces | Haiti | 24 May 1951 |
| CINEAS, Victor; Lieutenant Colonel | Haitian Armed Forces | Haiti | 14 October 1942 |
| CINEUS, Auguste Ulrick; Lieutenant | Haitian Armed Forces | Haiti | 21 February 1962 |
| CINTELLUS, Antoine A.H.; Lieutenant | Haitian Armed Forces | Haiti | 14 October 1959 |
| CLEMENT, Antony; Captain | Haitian Armed Forces | Haiti | 7 May 1954 |
| CLEMENT, Jacques; Lieutenant | Haitian Armed Forces | Haiti | 27 January 1959 |
| CLERJEUNE, Adeline | | Wife of Col. Leopold Clerjeune; Haiti | 27 Jun 50 |
| CLERJEUNE, Christian | | Son of Col. Leopold Clerjeune; Haiti | 7 Dec 82 |
| CLERJEUNE, Leopold; Colonel | Haitian Armed Forces | Delmas 31, Rue E. Laforest, Port–au–Prince, Haiti; Passport No. 90678797 | 24 August 1950 |
| CLERJEUNE, Sethi | | Son of Col. Leopold Clerjeune; Haiti | 25 Feb 81 |
| CLERMONT, Jean–Roger; Captain | Haitian Armed Forces | Haiti | 24 October 1938 |
| COFFY, Gesner; Lieutenant | Haitian Armed Forces | Haiti | 20 August 1955 |
| CONSTANT, Emmanuel "Toto" | | Haiti | 27 December 1956 |
| CORENTIN, Willio; Lieutenant | Haitian Armed Forces | Haiti | 20 February 1953 |
| CORIDON, Clausel; Lieutenant | Haitian Armed Forces | Haiti | 29 September 1959 |
| CORVIL, Saint–Jean; Lieutenant | Haitian Armed Forces | Haiti | 8 February 1948 |
| COUTARD, Marie E.C.; Captain | Haitian Armed Forces | Haiti | 19 November 1954 |
| CREVECOEUR, Rodrigue; Lieutenant Colonel | Haitian Armed Forces | Haiti | 10 February 1955 |
| CYPRIEN, Jean Thomas; Lieutenant Colonel | Haitian Armed Forces | Haiti | 24 April 1958 |
| CYRILLE, Denis; Lieutenant Colonel | Haitian Armed Forces | Haiti | 18 November 1944 |
| DAGRIN, Pleno; Lieutenant | Haitian Armed Forces | Haiti | 12 August 1946 |
| DAVID, Charles; Minister | Ministry of Foreign Affairs and Worship | Haiti | 27 March 1941 |
| DE RONCERAY, Hubert | Mobilization for National Development | Haiti | 20 August 1932 |
| DEBROSSE, Neptune M.; Captain | Haitian Armed Forces | Haiti | 21 May 1944 |
| DEEB, Joel | | Haiti; U.S.A | 28 June 1954 |
| DEGRAFF, Claude Bernard (a.k.a. Bernard DESGRAFF); Director | Télénationale D'Haïti | Route Peguyville No. 1, Port–au–Prince, Haiti; Passport No. 79–015305 (Haiti) | 9 July 1959 |
| DEGRAFF, Jean Ernst; Lieutenant | Haitian Armed Forces | Haiti | 24 November 1943 |
| DELAUNAY, Joseph Gracien; Colonel | Haitian Armed Forces | Haiti | 21 January 1949 |
| DELILE, Jehova; Lieutenant | Haitian Armed Forces | Haiti | 14 July 1948 |
| DELSOIN, Jean Robert; Minister | Ministry of Commerce and Industry | Port–au–Prince, Haiti | 2 May 1944 |
| DELTOR, Pierre Camil; Lieutenant | Haitian Armed Forces | Haiti | 6 February 1961 |
| DELVA, Reginald; Lieutenant | Haitian Armed Forces | Haiti | 31 August 1967 |
| DENIS, Carl | | No. 38, Rue Chavannes, Port–au–Prince, Haiti | 20 April 1943 |
| DENIS, Jacques; Major | Haitian Armed Forces | Haiti | 9 March 1955 |
| DERVIL, Elie–Franc; Lieutenant | Haitian Armed Forces | Haiti | 10 September 1955 |
| DERVILUS, André Labanet; Lieutenant | Haitian Armed Forces | Haiti | 28 December 1940 |
| DESAMOURS, Antoinius; Lieutenant | Haitian Armed Forces | Haiti | 16 October 1948 |
| DESARMES, Louis; Lieutenant | Haitian Armed Forces | Haiti | 2 May 1938 |
| DESGRAFF, Bernard (a.k.a. Claude Bernard DEGRAFF); Director | Télénationale D'Haïti | Route Peguyville No. 1, Port–au–Prince, Haiti; Passport No. 79–015305 (Haiti) | 9 July 1959 |
| DESIR, Joseph; former Minister | National Education | Haiti | 18 Feb 48 |
| DESIR, Roland; Captain | Haitian Armed Forces | Haiti | 24 November 1955 |
| DESPLANTES, Serge; Major | Haitian Armed Forces | Haiti | 18 February 1955 |
| DESROSE, Jean–Philippe; Lieutenant | Haitian Armed Forces | Haiti | 7 January 1949 |
| DESROSIERS, Eddy; Lieutenant | Haitian Armed Forces | Haiti | 3 November 1961 |
| DESROSIERS, Jean–Guy; Lieutenant | Haitian Armed Forces | Haiti | 4 March 1946 |
| DESROSIERS, Joseph Hubert; Lieutenant | Haitian Armed Forces | Haiti | 12 November 1940 |
| DESSANT, Joseph Franck; Lieutenant | Haitian Armed Forces | Haiti | 7 June 1955 |
| DESSIN, Jean Baptiste C.; Captain | Haitian Armed Forces | Haiti | 15 January 1944 |
| DEUS, Damas; Lieutenant | Haitian Armed Forces | Haiti | 1 August 1939 |
| DEVILMA, Joseph M.; Lieutenant Colonel | Haitian Armed Forces | Haiti | 4 December 1948 |
| DIEUDONNE, Brutus M.; Colonel | Haitian Armed Forces | Haiti | 3 December 1938 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| DIEUDONNE, Louicin; Lieutenant | Haitian Armed Forces | Haiti | 25 September 1961 |
| DIMANCHE, Jean-Robert; Lieutenant | Haitian Armed Forces | Haiti | 4 August 1945 |
| DOLCINE, Jean-Marty; Captain | Haitian Armed Forces | Haiti | 26 October 1939 |
| DOMINIQUE, Jean Claude; Lieutenant | Haitian Armed Forces | Haiti | 2 September 1951 |
| DOMINIQUE, Ralph; Lieutenant | Haitian Armed Forces | Haiti | 11 February 1961 |
| DORCÉ, Saintalus; Lieutenant | Haitian Armed Forces | Haiti | 26 July 1953 |
| DORELIEN, Carl; Colonel | Haitian Armed Forces | Haiti; Passport No. 82-57899 | 24 January 1949 |
| DORELIEN, Didier Davis | | Son of Col. Carl Dorelien; Haiti | 4 December 1981 |
| DORELIEN, Giovanni Emmanuel | | Son of Col. Carl Dorelien; Haiti | 23 December 1980 |
| DORELIEN, Karl Steven | | Son of Col. Carl Dorelien; Haiti | 14 July 1979 |
| DORELIEN, Marie Carline | | Wife of Col. Carl Dorelien; Haiti | 12 December 1953 |
| DORGELUS, Ludovic; Lieutenant | Haitian Armed Forces | Haiti | 7 September 1940 |
| DORVAL, Ilertant; Lieutenant | Haitian Armed Forces | Haiti | 4 July 1943 |
| DORVAL, Paul; Major | Haitian Armed Forces | Haiti | 8 November 1949 |
| DORVELUS, Lionel; Lieutenant | Haitian Armed Forces | Haiti | 10 August 1945 |
| DORVIL, Roland; Lieutenant | Haitian Armed Forces | Haiti | 20 October 1953 |
| DORVILIER, Jean Christian; Lieutenant | Haitian Armed Forces | Haiti | 9 September 1939 |
| DORZIN, Abner; Ensign | Haitian Armed Forces | Haiti | 7 August 1950 |
| DOUBY, Camille | | Wife of Colonel Frantz Douby; Rue Cheriez 9, Rue 4 No. 8, Port-au-Prince, Haiti | 18 July 1955 |
| DOUBY, Frantz; Colonel | Haitian Armed Forces | Rue Cheriez 9, Rue 4 No. 8, Port-au-Prince, Haiti | 19 January 1948 |
| DOUILLON, Lamartine; Lieutenant Colonel | Haitian Armed Forces | Haiti | 22 July 1948 |
| DOURA, Stagne; Captain | Haitian Armed Forces | Haiti | 18 January 1958 |
| DUBIC, Joseph Raoul; Lieutenant | Haitian Armed Forces | Haiti | 8 February 1941 |
| DUBUCHE, Berrier; Captain | Haitian Armed Forces | Haiti | 18 May 1945 |
| DUCHEMIN, Guy; Colonel | Haitian Armed Forces | Haiti | 29 September 1931 |
| DUFRESNE, Jean Roland; Major | Haitian Armed Forces | Haiti | 11 June 1956 |
| DUMAS, Joseph Laurent; Major | Haitian Armed Forces | Haiti | 9 July 1947 |
| DUMERGEANT, Gilius J.; Captain | Haitian Armed Forces | Haiti | 17 January 1941 |
| DUMORIN, Ls. Maoari; Lieutenant | Haitian Armed Forces | Haiti | 25 January 1948 |
| DUMORNAY, Joseph Justin; Lieutenant | Haitian Armed Forces | Haiti | 31 March 1968 |
| DUPERVAL, Ana Siobhan | | Daughter of Maj. Gen. Jean Claude Duperval; Haiti | 27 May 1988 |
| DUPERVAL, Jean-Claude; Major General | Haitian Armed Forces | Haiti | 19 February 1947 |
| DUPLAN, Rigaud; Minister | Ministry of Economy and Finance | Haiti | 1 August 1941 |
| DUPOUX, Serge; Major | Haitian Armed Forces | Haiti | 22 January 1956 |
| DUTREUIL, Jean-Marie; Deputy Director | Office for Permanent Maintenance of Road Network | Boite Vertallis No. 1, Port-au-Prince, Haiti; Passport No. 80-70804 (Haiti) | 30 May 1950 |
| DUVERNE, Jean Emmanuel; Major | Haitian Armed Forces | Haiti | 22 November 1951 |
| DUVERSEAU, Jean-Robert; Lieutenant | Haitian Armed Forces | Haiti | 27 May 1954 |
| EDOUARD, Charles; Lieutenant | Haitian Armed Forces | Haiti | 12 January 1946 |
| EDOUARD, Eddy; Lieutenant | Haitian Armed Forces | Haiti | 19 November 1962 |
| EDOUARZIN, Jean Maurice; Captain | Haitian Armed Forces | Haiti | 25 October 1944 |
| ELIE, Jean-Nesly; Lieutenant | Haitian Armed Forces | Haiti | 2 December 1960 |
| ELIE, Ralph; Director | Conseil National des Télécommunications | Kilometer 11, Bon Repos, Haiti; Passport No. 82-46261 (Haiti) | 31 August 1952 |
| ELYSEE, Antoine Fenelon; Lieutenant | Haitian Armed Forces | Haiti | 13 June 1936 |
| ELYZEE, Yonel "SonSon" | | Route Jacquet No. 15, Delmas 95, Port-au-Prince, Haiti; Passport No. 92-011253 (Haiti) | 19 July 1951 |
| EMILE, Jean Abner; Captain | Haitian Armed Forces | Haiti | 29 January 1956 |
| EMILE, Saint-Louis; Lieutenant | Haitian Armed Forces | Haiti | 1 July 1940 |
| EMILIEN, Michel; Lieutenant | Haitian Armed Forces | Haiti | 12 June 1939 |
| EMMANUEL, Exaus; Lieutenant | Haitian Armed Forces | Haiti | 5 January 1940 |
| ESTIMABLE, Sedeine; Lieutenant | Haitian Armed Forces | Haiti | 7 March 1949 |
| ESTIME, Alexandre; Lieutenant | Haitian Armed Forces | Haiti | 11 September 1953 |
| ETIENNE, Ariste Harry; Lieutenant | Haitian Armed Forces | Haiti | 27 October 1958 |
| ETIENNE, Jean-Mary; Major | Haitian Armed Forces | Haiti | 21 September 1952 |
| ETIENNE, Joasilien; Lieutenant | Haitian Armed Forces | Haiti | 10 July 1954 |
| ETIENNE, Lord Warner; Major | Haitian Armed Forces | Haiti | 22 March 1952 |
| ETIENNE, Renan; Lieutenant | Haitian Armed Forces | Haiti | 17 August 1964 |
| EUGENE, Antoine; Lieutenant | Haitian Armed Forces | Haiti | 21 July 1942 |
| EUSTACHE, Wilson; Colonel | Haitian Armed Forces | Haiti | 20 November 1942 |
| EXCELLENT, Bertrand Ronald; Lieutenant | Haitian Armed Forces | Haiti | 24 May 1961 |
| EXCEUS, Rock; Lieutenant | Haitian Armed Forces | Haiti | 16 August 1961 |
| FAIETON, Dieudonne; Lieutenant | Haitian Armed Forces | Haiti | 31 December 1953 |
| FELIX, Jean-Daniel; Lieutenant | Haitian Armed Forces | Haiti | 13 May 1959 |
| FELIX, Jean-Rabel; Lieutenant | Haitian Armed Forces | Haiti | 15 February 1957 |
| FETIERE, Edmond; Captain | Haitian Armed Forces | Haiti | 9 March 1962 |
| FIDELE, Jean-Luckner; Lieutenant | Haitian Armed Forces | Haiti | 5 August 1960 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| FILS–AIMÉ, Gérard; Lieutenant | Haitian Armed Forces | Haiti | 2 October 1944 |
| FILS–AIMÉ, Hervé; Lieutenant | Haitian Armed Forces | Haiti | 10 January 1963 |
| FILTIDOR, Louis Jean; Lieutenant | Haitian Armed Forces | Haiti | 27 February 1946 |
| FLEURY, Antoine; Lieutenant | Haitian Armed Forces | Haiti | 27 July 1963 |
| FLOREAL, Marc; Lieutenant | Haitian Armed Forces | Haiti | 25 April 1942 |
| FLORESTANT, Joseph Lemoine; Colonel | Haitian Armed Forces | Haiti | 18 November 1949 |
| FLOREXIL, Edwin; Major | Haitian Armed Forces | Haiti | 4 February 1955 |
| FLORIVAL, Jean; Deputy Director | Ministry of Foreign Affairs and Worship | Haiti | 1 February 1930 |
| FORCANT, Carol; Captain | Haitian Armed Forces | Haiti | 26 January 1939 |
| FORD, Emmanuel; Minister | Ministry of Planning and External Cooperation | Haiti | 13 May 1933 |
| FORT, Wiener (a.k.a. FORT, Weiner) | Ministry of Economy and Finance | Haiti | 15 October 1941 |
| FOUCAND, Hervé (a.k.a. FOURCAND, Hervé) | | Rue Marcadie, Bourdon, Port–au–Prince, Haiti | 14 June 1964 |
| FRANCE, Pierre–Noël; Lieutenant | Haitian Armed Forces | Haiti | 18 December 1952 |
| FRANÇOIS, Evans Macfarland | | Haiti; Dominican Republic; Passport No. 466–91; Diplomatic Passport No. 92–012658 | 6 May 1952 |
| FRANÇOIS, Guy; former Deputy Minister | Ministry of Interior and National Defense | Haiti | 04 April 1953 |
| FRANÇOIS, Jean Hervay; Lieutenant | Haitian Armed Forces | Haiti | 9 November 1947 |
| FRANÇOIS, Jean–Pierre; Major | Haitian Armed Forces | Haiti | 18 March 1951 |
| FRANÇOIS, Jerome; Lieutenant | Haitian Armed Forces | Haiti | 4 April 1944 |
| FRANÇOIS, Joseph Michel; Lieutenant Colonel | Haitian Armed Forces | Route Aeroport, Rue Bergera, Imp. Beauchamp No. 2, Port–au–Prince, Haiti; Passport No. 81151112 | 8 May 1957 |
| FRANÇOIS, Paul Audmar; Lieutenant | Haitian Armed Forces | Haiti | 20 August 1962 |
| GABRIEL, Jean Robert; Colonel | Haitian Armed Forces | Haiti | 11 August 1953 or 1958 |
| GABRIEL, Yolette Cantave | | Route Car. 3è Mais. Après Tribunal, Port–au–Prince, Haiti | 1 June 1954 |
| GARCON, Alterme Maurice; Lieutenant | Haitian Armed Forces | Haiti | 26 July 1945 |
| GARCON, Denoit Ceracius; Lieutenant | Haitian Armed Forces | Haiti | 22 Oct 53 |
| GASSAN, Jean Necker; Lieutenant Colonel | Haitian Armed Forces | Haiti | 12 February 1942 |
| GAUBERT, Carlyle; Lieutenant | Haitian Armed Forces | Haiti | 9 March 1959 |
| GAY, Pierre Gerald; Ensign | Haitian Armed Forces | Haiti | 23 December 1963 |
| GEDEON, Jean Evans; Lieutenant–Colonel | Haitian Armed Forces | Haiti | 11 April 1944 |
| GEORGEON, Joseph Horres; Lieutenant | Haitian Armed Forces | Haiti | 14 January 1951 |
| GEORGES, François Arnold; Lieutenant | Haitian Armed Forces | Haiti | 4 September 1942 |
| GEORGES, Reynald | | Haiti; U.S.A | 16 October 1946 |
| GERMAIN, Anglade; Lieutenant | Haitian Armed Forces | Haiti | 13 July 1939 |
| GERMAIN, Destorel; Lieutenant | Haitian Armed Forces | Haiti | 4 September 1951 |
| GERMAIN, Henri P.; Lieutenant–Colonel | Haitian Armed Forces | Haiti | 6 September 1951 |
| GERMAIN, Petiel; Lieutenant | Haitian Armed Forces | Haiti | 9 January 1938 |
| GILLES, Joseph Harry; Lieutenant | Haitian Armed Forces | Haiti | 22 January 1962 |
| GIRAUD, Michel P. L.; Captain | Haitian Armed Forces | Haiti | 14 December 1940 |
| GOBY, Jean Brunel; Colonel | Haitian Armed Forces | Haiti | 28 September 1951 |
| GONEL, Bertrand; Lieutenant | Haitian Armed Forces | Haiti | 10 April 1961 |
| GRACIA, Diderot; Captain | Haitian Armed Forces | Haiti | 13 March 1954 |
| GREFFIN, Jean Gary; Captain | Haitian Armed Forces | Haiti | 6 December 1958 |
| GROSHOMME, Belony; Colonel | Haitian Armed Forces | Haiti; Passport No. 81–161845 | 12 February 1948 |
| GUERRIER, Derby; Lieutenant–Colonel | Haitian Armed Forces | Drouillard Sarthe Village, Port–au–Prince, Haiti; Passport No. 85–271932 | 14 October 1949 |
| GUERRIER, Jean Roger; Major | Haitian Armed Forces | Haiti | 20 April 1957 |
| GUILLAUME, Edouard Saint–Jean; Member | Chamber of Deputies of Haitian Parliament | Haiti | 19 February 1936 |
| GUILLAUME, Flobert; Lieutenant | Haitian Armed Forces | Haiti | 28 June 1961 |
| GUILLAUME, Luc–Claudin; Lieutenant | Haitian Armed Forces | Haiti | 30 September 1944 |
| GUILLAUME–SAM, Jusmide; Lieutenant | Haitian Armed Forces | Haiti | 24 July 1952 |
| GUILLAUMETTE, Antoine; Lieutenant | Haitian Armed Forces | Haiti | 8 November 1951 |
| GUSTAVE, Christian; Lieutenant | Haitian Armed Forces | Haiti | 3 February 1943 |
| GUSTAVE, Joaname; Lieutenant | Haitian Armed Forces | Haiti | 10 October 1952 |
| HAGE, Mona Isable; Captain | Haitian Armed Forces | Haiti | 29 May 1952 |
| HALLOUN, Romeo | | U.S. citizen; Passport No. Z5790133 | 18 January 1957 |
| HENRY, Jean–Mary Fritz; Major | Haitian Armed Forces | Haiti | 8 June 1951 |
| HENRY, Vemarie; Lieutenant | Haitian Armed Forces | Haiti | 10 April 1955 |
| HENRYS, Antoine Gracia; Lieutenant | Haitian Armed Forces | Haiti | 20 January 1944 |
| HERMANN, Michel–Ange; Lieutenant Colonel | Haitian Armed Forces | Haiti | 3 October 1952 |
| HEROLD, André; Lieutenant | Haitian Armed Forces | Haiti | 23 March 1959 |
| HILAIRE, Max; Captain | Haitian Armed Forces | Haiti | 3 July 1960 |
| HILMAIN, Adrien D.; Lieutenant | Haitian Armed Forces | Haiti | 7 February 1945 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| HONORAT, Jean–Jacques | Ministry of Foreign Affairs and Worship | Haiti | 1 April 1931 |
| IRA, Joseph Miracle; Major | Haitian Armed Forces | Haiti | 14 March 1951 |
| JACOB, Joseph Pierre; Colonel | Haitian Armed Forces | Haiti | 22 April 1940 |
| JACOT, Eristhene; Captain | Haitian Armed Forces | Haiti | 22 June 1951 |
| JACQUES, Antoine; Lieutenant | Haitian Armed Forces | Haiti | 24 November 1950 |
| JACQUES, Georges I.; Lieutenant | Haitian Armed Forces | Haiti | 28 December 1940 |
| JACQUES, Herard–Leblanc; Lieutenant | Haitian Armed Forces | Haiti | 16 October 1944 |
| JACQUES, Joseph Yvon; Lieutenant | Haitian Armed Forces | Haiti | 8 March 1947 |
| JACQUES, Josue; Lieutenant | Haitian Armed Forces | Haiti | 17 April 1945 |
| JACQUES–LOUIS, Max; Lieutenant | Haitian Armed Forces | Haiti | 4 June 1964 |
| JACQUET, Henrius; Captain | Haitian Armed Forces | Haiti | 18 September 1951 |
| JACQUITTE, Jean Wener; Lieutenant | Haitian Armed Forces | Haiti | 17 March 1967 |
| JANVIER, Jean–Jacques; Lieutenant | Haitian Armed Forces | Haiti | 18 March 1935 |
| JASMIN, Jacques–Guy; Lieutenant | Haitian Armed Forces | Haiti | 22 November 1945 |
| JEAN, Gracia | Ministry of Interior and National Defense | Haiti | 4 October 1937 |
| JEAN, Hasler A.; Lieutenant | Haitian Armed Forces | Haiti | 15 October 1950 |
| JEAN, Jonas; Colonel | Haitian Armed Forces | Haiti | 12 September 1951 |
| JEAN, Kenol | | Haiti | 1 July 1961 |
| JEAN, Phito; Captain | Haitian Armed Forces | Haiti | 2 April 1954 |
| JEAN, Rigaud; Lieutenant | Haitian Armed Forces | Haiti | 19 November 1942 |
| JEAN–BAPTISTE, Charles Eusebe; Colonel | Haitian Armed Forces | Haiti | 19 July 1942 |
| JEAN–BAPTISTE, Elysee; Lieutenant | Haitian Armed Forces | Haiti | 17 September 1946 |
| JEAN–BAPTISTE, James; Captain | Haitian Armed Forces | Haiti | 30 July 1959 |
| JEAN–BAPTISTE, Jean Occelus; Lieutenant | Haitian Armed Forces | Haiti | 16 April 1944 |
| JEAN–BAPTISTE, Lyonel; Captain | Haitian Armed Forces | Haiti | 1 March 1947 |
| JEAN–BAPTISTE, Michel–Ange; Lieutenant | Haitian Armed Forces | Haiti | 5 June 1960 |
| JEAN–BAPTISTE, Pierre–Jacques; Lieutenant | Haitian Armed Forces | Haiti | 12 September 1955 |
| JEAN–BAPTISTE, Rodiny; Captain | Haitian Armed Forces | Haiti | 5 October 1959 |
| JEAN–BART, Thomas Kerns; Captain | Haitian Armed Forces | Haiti | 7 March 1959 |
| JEAN–BRICE, Ralph Stanley; Lieutenant | Haitian Armed Forces | Haiti | 25 March 1968 |
| JEAN–CHARLES, Frantz S.; Captain | Haitian Armed Forces | Haiti | 17 December 1960 |
| JEAN–FRANÇOIS, Frantz; Lieutenant | Haitian Armed Forces | Haiti | 23 June 1960 |
| JEAN–FRANÇOIS, Serge; Lieutenant | Haitian Armed Forces | Haiti | 15 February 1950 |
| JEAN–GILLES, André M.; Colonel | Haitian Armed Forces | Haiti | 19 April 1931 |
| JEAN–JACQUES, Yvon; Captain | Haitian Armed Forces | Haiti | 25 November 1958 |
| JEAN–PAUL, Innocent J.–C; Lieutenant | Haitian Armed Forces | Haiti | 24 April 1949 |
| JEAN–PHILIPPE, Joseph Nevert; Lieutenant | Haitian Armed Forces | Haiti | 3 October 1950 |
| JEAN–PIERRE, Arinks; Member | Chamber of Deputies of Haitian Parliament | Haiti | 15 September 1947 |
| JEAN–PIERRE, Gannel; Lieutenant | Haitian Armed Forces | Haiti | 13 May 1961 |
| JEAN–PIERRE, Mignard; Lieutenant | Haitian Armed Forces | Haiti | 13 October 1968 |
| JEAN–PIERRE, Saint Surin; Lieutenant | Haitian Armed Forces | Haiti | 16 January 1941 |
| JEANNITE, Alfred; Lieutenant | Haitian Armed Forces | Haiti | 11 July 1946 |
| JEANTY, Vladimir | | Pontamara 27, No. 51, Port–au–Prince, Haiti | 15 January 1948 |
| JEROME, Auguste Raphael; Major | Haitian Armed Forces | Haiti | 8 September 1949 |
| JEUDY, Jean–Claude; Lieutenant Colonel | Haitian Armed Forces | Haiti | 28 March 1944 |
| JEVOUSAIME, Max; Lieutenant | Haitian Armed Forces | Haiti | 26 May 1946 |
| JOACHIM, Marie Gina; Lieutenant | Haitian Armed Forces | Haiti | 30 September 1960 |
| JOANIS, Jackson; Captain | Haitian Armed Forces | Ruelle Alix Roy, Imp. Telemaque No. 22, Port–au–Prince, Haiti | 25 October 1958 |
| JOANIS, Rachmany | | Daughter of Capt. Jackson Joanis; Haiti | 15 February, 1986 |
| JOAZILE, Jean–Rodolphe; Lieutenant | Haitian Armed Forces | Haiti | 15 September 1962 |
| JOCELYN, Fritz; Colonel | Haitian Armed Forces | Haiti | 12 November 1941 |
| JOLICOEUR, Olius; Lieutenant | Haitian Armed Forces | Haiti | 18 March 1949 |
| JONASSAINT, Émile, Illegal President | | Haiti | 20 May 1913 |
| JONASSAINT, Renold; Lieutenant | Haitian Armed Forces | Haiti | 6 February 1953 |
| JONQUIS, Antoine; Lieutenant | Haitian Armed Forces | Haiti | 19 June 1946 |
| JOSAPHAT, André Claudel; Lieutenant Colonel | Haitian Armed Forces | Haiti | 17 August 1956 |
| JOSÉ, Jean–Eugene; Colonel | Haitian Armed Forces | Haiti | 10 June 1952 |
| JOSEPH, Antoine Th.; Lieutenant | Haitian Armed Forces | Haiti | 2 July 1945 |
| JOSEPH, Claude; Captain | Haitian Armed Forces | Haiti | 12 August 1956 |
| JOSEPH, Claudy; Lieutenant | Haitian Armed Forces | Haiti | 14 September 1961 |
| JOSEPH, Demes G.; Lieutenant | Haitian Armed Forces | Haiti | 4 April 1943 |
| JOSEPH, Frantz; Director | Office for Permanent Maintenance of Road Network | Rue Nazon No. 21, Port–au–Prince, Haiti; Passport No. 80–58147 (Haiti) | 13 October 1954 |
| JOSEPH, Jean Beil; Lieutenant | Haitian Armed Forces | Haiti | 4 Dec 57 |
| JOSEPH, Jean Ronel; Captain | Haitian Armed Forces | Haiti | 15 March 1954 |
| JOSEPH, Jean Ulrique; Lieutenant | Haitian Armed Forces | Haiti | 23 September 1937 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| JOSEPH, Jethro; Lieutenant | Haitian Armed Forces | Haiti | 17 April 1946 |
| JOSEPH, Louisiane; Lieutenant | Haitian Armed Forces | Haiti | 26 May 1956 |
| JOSEPH, Milarion Odamus; Lieutenant | Haitian Armed Forces | Haiti | 29 April 1941 |
| JOSEPH, Raphael Attilio; Lieutenant | Haitian Armed Forces | Haiti | 20 May 1948 |
| JOSEPH, Ricot; Major | Haitian Armed Forces | Haiti | 30 October 1950 |
| JOSEPH, St–Fort; Lieutenant | Haitian Armed Forces | Haiti | 3 August 1943 |
| JULES, Jean Ader; Lieutenant | Haitian Armed Forces | Haiti | 15 October 1961 |
| JULISSE, Rosemond; Lieutenant | Haitian Armed Forces | Haiti | 7 March 1952 |
| JUSTAFORT, Coulange; Lieutenant Colonel | Haitian Armed Forces | Haiti | 18 April 1950 |
| JUSTAFORT, Serge; Major | Haitian Armed Forces | Haiti | 12 June 1955 |
| KERCY, Garry Michel; Captain | Haitian Armed Forces | Haiti | 21 September 1960 |
| KERNIZAN, Jean Marc | | Son of Maj. Marc Kernizan; Haiti | 1 July 1989 |
| KERNIZAN, Marc; Major | Haitian Armed Forces | Delmas 45, No. 8, Port–au–Prince, Haiti | 5 September 1955 |
| KERNIZAN, Marie Claire | | Wife of Maj. Marc Kernizan; Haiti | 9 October 1962 |
| KERNIZAN, Melissa | | Daughter of Maj. Marc Kernizan; Haiti | 9 September 1986 |
| KERSAINT, Esnaider; Major | Haitian Armed Forces | Haiti | 2 January 1953 |
| KHAWLY, Gerald | | Boutilier No. 8, Petionville, Haiti | 24 February 1940 |
| KHAWLY, Michel Jacques | | No. 80 Avenue Baranquilla, Jacmel, Haiti | 18 July 1937 |
| LAFOND, Jean–Dorcin; Lieutenant | Haitian Armed Forces | Haiti | 15 June 1945 |
| LAMANDE, René Raymond; Lieutenant | Haitian Armed Forces | Haiti | 20 May 1942 |
| LAMOUR, Phalange; Lieutenant | Haitian Armed Forces | Haiti | 18 November 1946 |
| LAROCHELLE, Gerald; Captain | Haitian Armed Forces | Haiti | 4 April 1958 |
| LAROQUE, Serge; Lieutenant | Haitian Armed Forces | Haiti | 17 December 1943 |
| LASSEGUE, Pierre Philippe | National Port Authority of Haiti | Haiti; U.S.A; port captain | |
| LATORTUE, Youri; Lieutenant | Haitian Armed Forces | Haiti | 13 November 1967 |
| LAURORE, Appolos; Colonel | Haitian Armed Forces | Haiti | 11 March 1954 |
| LAZARRE, Schubert; Lieutenant | Haitian Armed Forces | Haiti | 18 February 1950 |
| LEANDRE, Edrick; Captain | Haitian Armed Forces | Haiti | 29 September 1952 |
| LEMITHE, Felix; Lieutenant Colonel | Haitian Armed Forces | Haiti | 30 April 1943 |
| LENESCAT, Joseph Charlot; Lieutenant | Haitian Armed Forces | Haiti | 10 June 1949 |
| LEONARD, Franck; Senator | Haitian Parliament | Haiti | 6 November 1925 |
| LEONIDAS, Bernardo R.; Lieutenant–Colonel | Haitian Armed Forces | Rue Oscar No. 23, Port–au–Prince, Haiti | 28 February 1942 |
| LESSAGE, Jodel; Colonel | Haitian Armed Forces | Haiti | 19 February 1954 |
| LEVASSEUR, Iliovert; Lieutenant | Haitian Armed Forces | Haiti | 31 December 1954 |
| LOISEAU, Jenny | | Daughter of Maj. Joel Loiseau; Haiti | 17 December 1983 |
| LOISEAU, Joel; Major | Haitian Armed Forces | Haiti | 11 November 1954 |
| LOISEAU, Ketly | | Wife of Maj. Joel Loiseau; Haiti | 19 April 1961 |
| LOUIS, Cassinir; Major | Haitian Armed Forces | Haiti | 26 July 1952 |
| LOUIS, Dieuphene; Lieutenant | Haitian Armed Forces | Haiti | 1 February 1957 |
| LOUIS, Edy; Colonel | Haitian Armed Forces | Haiti | 21 June 1951 |
| LOUIS, Gérard E., Jr.; Lieutenant | Haitian Armed Forces | Haiti | 5 December 1964 |
| LOUIS, Jean Sagesse; Lieutenant | Haitian Armed Forces | Haiti | 27 August 1946 |
| LOUIS, Marc Albert; Major | Haitian Armed Forces | Haiti | 26 May 1952 |
| LOUIS, Max–Gabriel; Lieutenant | Haitian Armed Forces | Haiti | 6 March 1964 |
| LOUIS, Michel; Colonel | Haitian Armed Forces | Haiti | 28 September 1949 |
| LOUIS–JACQUES, Richelet S.; Major | Haitian Armed Forces | Haiti | 16 November 1950 |
| LOUISY, Franck; Lieutenant | Haitian Armed Forces | Haiti | 7 April 1951 |
| LUBIN, Emmanuel; Lieutenant | Haitian Armed Forces | Haiti | 25 December 1944 |
| LUBIN, Ernst J. M.; Major | Haitian Armed Forces | Haiti | 1 January 1955 |
| LUMAS, Jean Justin; Lieutenant | Haitian Armed Forces | Haiti | 29 September 1943 |
| MAHAUTIERE, Pierre Charles; Lieutenant | Haitian Armed Forces | Haiti | 31 August 1944 |
| MARC–CHARLES, Henry (Henri) Robert; Colonel | Haitian Armed Forces | Haiti | 5 January 1952 |
| MARC–CHARLES, Monique (Marie Florence) | | Wife of Col. Henry Robert Marc–Charles; Rue Rigaud No. 64, Port–au–Prince, Haiti | 1 February 1952 |
| MARCEL, Fritz Gerald; Lieutenant | Haitian Armed Forces | Haiti | 12 August 1964 |
| MARCELIN, Eddy; Captain | Haitian Armed Forces | Haiti | 20 May 1958 |
| MARIUS, Hyppolite; Lieutenant | Haitian Armed Forces | Haiti | 20 March 1957 |
| MARIUS, Mireille; Lieutenant | Haitian Armed Forces | Haiti | 5 May 1962 |
| MARS, Briere; Captain | Haitian Armed Forces | Haiti | 30 November 1954 |
| MASSENA, Somner; Captain | Haitian Armed Forces | Haiti | 7 June 1947 |
| MASSENART, Boniface E.; Lieutenant | Haitian Armed Forces | Haiti | 5 June 1957 |
| MATHURIN, Frerot; Lieutenant Colonel | Haitian Armed Forces | Haiti | 26 October 1950 |
| MATHURIN, Ginette Perodin; Director | Ministry of Health, Unit for Potable Water | Montagne Noir, Impasse Monsieur Lafontant, Haiti; Passport No. 79–24143 (Haiti) | 30 October 1953 |
| MAURICE, Joël; Major | Haitian Armed Forces | Haiti | 10 December 1953 |
| MAURICE, Joseph François; Lieutenant | Haitian Armed Forces | Haiti | 8 March 1946 |
| MAXIME, Jean Miguelite; Lieutenant | Haitian Armed Forces | Haiti | 28 October 1960 |
| MAYARD, Henry (Henri) Max, Brigadier General | Haitian Armed Forces | Haiti | 7 February 1947 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| MAYARD–PAUL, Constantin | | 4 Rue E. Pierre, Pegueyville, Haiti | 16 May 1930 |
| McNALLY, Marie Lina; Deputy Director | Office d'Assurance Maladie/Accident | Haiti | 6 March 1961 |
| MEDACIER, Appolin; Major | Haitian Armed Forces | Haiti | 4 October 1951 |
| MEHU, Irving; Lieutenant Colonel | Haitian Armed Forces | Haiti | 9 June 1954 |
| MENARD, Jean–Emmanuel; Captain | Haitian Armed Forces | Haiti | 26 April 1944 |
| MENELAS, Jean Gael; Lieutenant | Haitian Armed Forces | Haiti | 25 June 1960 |
| MERILUS, Exantus; Lieutenant | Haitian Armed Forces | Haiti | 15 February 1949 |
| METELLUS, Marc Antoine; Lieutenant Colonel | Haitian Armed Forces | Haiti | 18 November 1952 |
| METELLUS, Smith; Senator | Haitian Parliament | Haiti | 12 November 1933 |
| MICHAUD, Eugene Henry; Lieutenant | Haitian Armed Forces | Haiti | 4 November 1937 |
| MICHEL, Fils; Lieutenant | Haitian Armed Forces | Haiti | 31 May 1952 |
| MICHEL, Francis; Lieutenant | Haitian Armed Forces | Haiti | 25 December 1952 |
| MICHEL, Fritz; Lieutenant | Haitian Armed Forces | Haiti | 23 November 1960 |
| MICHEL, Jean–Fritz; Lieutenant | Haitian Armed Forces | Haiti | 9 October 1937 |
| MICHEL, Joseph; Captain | Haitian Armed Forces | Haiti | 15 October 1957 |
| MICHEL, Marie José | | Wife of Oriol Michel; Teina Village, P.O. Box 575–1, Port–au–Prince, Haiti | 23 April 1942 |
| MICHEL, Oriol; Director | Cement Company | Tecina Village, Cazeau, Port–au–Prince, Haiti; Passport No. 86–333255 (Haiti) | 5 October 1946 |
| MICHEL, Stanislas A.; Lieutenant | Haitian Armed Forces | Haiti | 13 November 1940 |
| MILORME, André; Lieutenant | Haitian Armed Forces | Haiti | 17 March 1952 |
| MINGOT, Marc; Lieutenant | Haitian Armed Forces | Haiti | 17 October 1939 |
| MINISTE, Yves Plaisimond; Lieutenant | Haitian Armed Forces | Haiti | 15 August 1956 |
| MITTON, Jacky; Captain | Haitian Armed Forces | Haiti | 2 November 1957 |
| MOMBES, Tessier; Lieutenant | Haitian Armed Forces | Haiti | 22 January 1956 |
| MOMPOINT, Fred Renaud; Lieutenant | Haitian Armed Forces | Haiti | 7 October 1967 |
| MOMPOINT, Herntz; Captain | Haitian Armed Forces | Haiti | 25 May 1959 |
| MONDELUS, Gilbert; Lieutenant | Haitian Armed Forces | Haiti | 19 November 1953 |
| MONDESIR, Brignol, Member | Chamber of Deputies of Haitian Parliament | Haiti | 18 November 1953 |
| MONFORT, Jean–Mathild; Lieutenant | Haitian Armed Forces | Haiti | 24 November 1946 |
| MONTHERVIL, Josue; Lieutenant | Haitian Armed Forces | Haiti | 5 March 1959 |
| MONUMA, Pradel J.; Major | Haitian Armed Forces | Haiti | 17 April 1950 |
| MOURRA, Jerry | | Delmas 67, Port–au–Prince, Haiti | 22 July 1959 |
| MUSSET, Odius; Lieutenant | Haitian Armed Forces | Haiti | 4 February 1950 |
| NARCISSE, Margareth I.; Lieutenant | Haitian Armed Forces | Haiti | 3 March 1962 |
| NARCISSE, Maurice; Lieutenant | Haitian Armed Forces | Haiti | 5 April 1952 |
| NASSAR, Marie Elva S.; Lieutenant | Haitian Armed Forces | Haiti | 10 October 1959 |
| NELSON, Jean Thomas; Captain | Haitian Armed Forces | Haiti | 1 June 1960 |
| NEPTUNE, Pierre E.C.; Captain | Haitian Armed Forces | Haiti | 25 May 1958 |
| NEY–PIERRE, Arnold | Office d'Assurance Maladie/Accident | Avenue Nord Alexis 36, Port–au–Prince, Haiti | 25 September 1929 |
| NICOLAS, Carl Michel, General (retired) | Ministry of Interior and National Defense | Haiti | 8 May 1937 |
| NICOLAS, Marie Greta; Lieutenant | Haitian Armed Forces | Haiti | 27 December 1949 |
| NOAILLES, Joseph Willio; Minister | Ministry of Interior and National Defense | Haiti | 4 December 1936 |
| NOËL, Pierre Edriss; Lieutenant | Haitian Armed Forces | Haiti | 22 March 1960 |
| NORVILUS, Louis Appollon | Ministry of Health, Unit for Potable Water | Canapé Vert, Rue Jean Baptiste No. 47, Port–au–Prince, Haiti; Passport No. 83–95852 (Haiti) | 6 May 1942 |
| NORVILUS, Marie | | Canapé Vert, Rue Jean Baptiste No. 47, Port–au–Prince, Haiti | 20 February 1950 |
| OCCENAD, Jean–Claude; Lieutenant Colonel | Haitian Armed Forces | Haiti | 2 October 1955 |
| OCCIL, Jean–Raymond; Lieutenant | Haitian Armed Forces | Haiti | 23 May 1963 |
| OLIVIER, Jean Wodchil; Lieutenant | Haitian Armed Forces | Haiti | 16 August 1948 |
| ORMILICE, Antoine O.P.; Lieutenant | Haitian Armed Forces | Haiti | 13 July 1942 |
| OVIL, Michel Jerome; Lieutenant | Haitian Armed Forces | Haiti | 29 September 1960 |
| OVILMAR, Sagesse; Lieutenant | Haitian Armed Forces | Haiti | 20 February 1963 |
| PASCAL, Jean Benes; Lieutenant | Haitian Armed Forces | Haiti | 15 January 1952 |
| PASCAL, José; Lieutenant | Haitian Armed Forces | Haiti | 20 April 1949 |
| PASCAL, Paul; Lieutenant | Haitian Armed Forces | Haiti | 30 June 1951 |
| PAUL, Benedict; Ensign | Haitian Armed Forces | Haiti | 23 April 1962 |
| PAUL, Mario; Lieutenant | Haitian Armed Forces | Haiti | 2 August 1953 |
| PAUL, Max; Director General | National Port Authority | Bourdon, Impasse Iginac No. 7, Haiti; La Saline Boulevard, P.O. Box 616, Port–au–Prince, Haiti; P.O. Box 1792, Port–au–Prince, Haiti; Passport No. 90–705113 (Haiti) | 17 May 1945 |
| PAUL, Normeus; Lieutenant | Haitian Armed Forces | Haiti | 13 July 1936 |
| PAUL, Patrick; Lieutenant | Haitian Armed Forces | Haiti | 20 February 1963 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| PAULEMON, Joseph Willy; Lieutenant | Haitian Armed Forces | Haiti | 11 March 1942 |
| PAULIN, Jean–Benito; Lieutenant | Haitian Armed Forces | Haiti | 18 August 1947 |
| PERMISSION, Jean Jacob; Lieutenant | Haitian Armed Forces | Haiti | 15 January 1932 |
| PETION, Mendes Lesly; Lieutenant | Haitian Armed Forces | Haiti | 20 July 1960 |
| PETIT–FRERE, Charles P.; Lieutenant | Haitian Armed Forces | Haiti | 25 May 1939 |
| PETIT–PHAT, Jean Marcel; Lieutenant | Haitian Armed Forces | Haiti | 12 January 1958 |
| PHILIPPE, Cruz Daniel; Colonel | Haitian Armed Forces | Haiti | 3 May 1933 |
| PHILIPPE, Jean–Luther; Lieutenant | Haitian Armed Forces | Haiti | 26 July 1953 |
| PHILIPPE, Leonard; Lieutenant | Haitian Armed Forces | Haiti | 21 October 1941 |
| PHILOGENE, Jacques Joseph; Major | Haitian Armed Forces | Haiti | 30 December 1945 |
| PIERRE, Bancks; Lieutenant | Haitian Armed Forces | Haiti | 21 June 1947 |
| PIERRE, Chevenel; Lieutenant | Haitian Armed Forces | Haiti | 6 January 1960 |
| PIERRE, Edward; Lieutenant | Haitian Armed Forces | Haiti | 15 February 1961 |
| PIERRE, Edwige; Captain | Haitian Armed Forces | Haiti | 5 November 1958 |
| PIERRE, Enelite; Lieutenant | Haitian Armed Forces | Haiti | 27 October 1959 |
| PIERRE, Jean Daniel; Captain | Haitian Armed Forces | Haiti | 5 June 1959 |
| PIERRE, Jean Palies; Lieutenant | Haitian Armed Forces | Haiti | 16 January 1949 |
| PIERRE, Jean Ulrick; Captain | Haitian Armed Forces | Haiti | 4 October 1958 |
| PIERRE, Jean Winel; Lieutenant | Haitian Armed Forces | Haiti | 13 December 1951 |
| PIERRE, Joachim; former Minister | Ministry of Social Affairs and Labor | Haiti | 1938 |
| PIERRE, Joseph Fils–Aimé; Lieutenant | Haitian Armed Forces | Haiti | 8 February 1937 |
| PIERRE, Joseph Reynold; Lieutenant | Haitian Armed Forces | Haiti | 14 June 1947 |
| PIERRE, Joseph Wistong; Lieutenant | Haitian Armed Forces | Haiti | 1 September 1940 |
| PIERRE, Luc; Lieutenant | Haitian Armed Forces | Haiti | 26 May 1959 |
| PIERRE, Marie Jessie; Lieutenant | Haitian Armed Forces | Haiti | 27 August 1951 |
| PIERRE, Patrick René; Captain | Haitian Armed Forces | Haiti | 9 April 1960 |
| PIERRE, Pierre Gérard; Major | Haitian Armed Forces | Haiti | 19 July 1948 |
| PIERRE, Raguel; Lieutenant | Haitian Armed Forces | Haiti | 7 November 1940 |
| PIERRE, Remy; Lieutenant Colonel | Haitian Armed Forces | Haiti | 17 May 1947 |
| PIERRE, René; Lieutenant | Haitian Armed Forces | Haiti | 23 January 1938 |
| PIERRE, Robert; Lieutenant | Haitian Armed Forces | Haiti | 5 January 1966 |
| PIERRE, Ulrick; Captain | Haitian Armed Forces | Haiti | 15 November 1942 |
| PIERRE–ANTOINE, Joseph; Colonel | Haitian Armed Forces | Haiti | 19 March 1951 |
| PIERRE–CHARLES, Frantz; Captain | Haitian Armed Forces | Haiti | 27 February 1958 |
| PIERRE–FILS, Aniceau; Lieutenant | Haitian Armed Forces | Haiti | 6 October 1944 |
| PIERRE–FILS, Israel; Lieutenant | Haitian Armed Forces | Haiti | 18 September 1937 |
| PIERRE–FRANÇOIS, Jean Dany; Captain | Haitian Armed Forces | Haiti | 5 May 1960 |
| PIERRE–FRANÇOIS, Marc–Henry; Captain | Haitian Armed Forces | Haiti | 30 June 1961 |
| PIERRE–JEROME, Gream Innocent; Lieutenant | Haitian Armed Forces | Haiti | 28 October 1965 |
| PIERRE–LOUIS, Claude A.J. Hervé (a.k.a. PIERRE–LOUIS, Jean Hervé) | Metropolitan Water Concern | Christ–Roi, Rue Mgr. Testard No. 6, Port–au–Prince, Haiti; Passport No. 81–159768 (Haiti) | 12 February 1958 |
| PIERRE–LOUIS, Hubert Michel; Captain | Haitian Armed Forces | Haiti | 24 December 1952 |
| PIERRE–PAUL, Edda; Lieutenant | Haitian Armed Forces | Haiti | 1 December 1958 |
| POISSON, Bernadin; Colonel | Haitian Armed Forces | Haiti | 16 February 1948 |
| POISSON, Bradley | | Son of Col. Bernardin Poisson; Haiti | 3 November 1976 |
| POISSON, David | | Son of Col. Bernardin Poisson; Haiti | 20 November 1985 |
| POISSON, Fabiola | | Daughter of Col. Bernardin Poisson; Haiti | 9 November 1980 |
| POISSON, Ketia | | Daughter of Col. Bernardin Poisson; Haiti | 2 March 1974 |
| POISSON, Marie Rose | | Wife of Col. Bernardin Poisson; Haiti | 7 March 1950 |
| POULARD, Duval; Lieutenant | Haitian Armed Forces | Haiti | 9 May 1957 |
| PRATO, Nicolas A.; Lieutenant | Haitian Armed Forces | Haiti | 4 July 1965 |
| PREVAL, Alland; Lieutenant | Haitian Armed Forces | Haiti | 3 September 1950 |
| PROPHETE, Gérard; Lieutenant | Haitian Armed Forces | Haiti | 21 December 1950 |
| PROVINCE, Toxy; Lieutenant | Haitian Armed Forces | Haiti | 26 July 1953 |
| PRUD'HOMME, Ernst; Colonel | Haitian Armed Forces | Haiti | 22 September 1954 |
| PYRAM, Jean Emery; Lieutenant | Haitian Armed Forces | Haiti | 14 June 1953 |
| QUALO, Reginald | Télécommunications d'Haïti | Delmas 75 Angle Rue Catalpa et Mimosa, Port–au–Prince, Haiti; Passport No. 80–65056 (Haiti) | 17 October 1953 |
| RAPHAEL, François; Lieutenant Colonel | Haitian Armed Forces | Haiti | 14 November 1943 |
| RAGALA, William (a.k.a. REGALA, Williams) | Ministry of Interior and National Defense | Haiti | 28 April 1937 |
| RAPHAEL, Rigo; Captain | Haitian Armed Forces | Haiti | 27 May 1941 |
| RAVILUS, Raymond M.; Captain | Haitian Armed Forces | Haiti | 17 March 1961 |
| RAYMOND, Claude; former Minister | Ministry of Interior and National Defense | Haiti | 14 April 1930 |
| RAYNALD, Paul; Lieutenant | Haitian Armed Forces | Haiti | 19 July 1938 |
| REGALA, Williams (a.k.a. William RAGALA) | Ministry of Interior and National Defense | Haiti | 28 April 1937 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| REMEUS, Daniel; Lieutenant | Haitian Armed Forces | Haiti | 2 December 1940 |
| REMY, Jean Sergo; Lieutenant | Haitian Armed Forces | Haiti | 11 April 1955 |
| REMY, Jean–Luc; Lieutenant | Haitian Armed Forces | Haiti | 6 June 1946 |
| REMY, Jean–Thomas; Lieutenant | Haitian Armed Forces | Haiti | 14 April 1948 |
| RENAUD, Lener; Major | Haitian Armed Forces | Haiti | 22 March 1956 |
| RENÉ, Jacques; Lieutenant | Haitian Armed Forces | Haiti | 8 March 1949 |
| RENÉ, Jean–Nissage; Captain | Haitian Armed Forces | Haiti | 29 December 1940 |
| RENÉ, Jean Robert; Lieutenant Colonel | Haitian Armed Forces | Haiti | 3 May 1953 |
| RENÉ, Jean Roosevelt; Lieutenant | Haitian Armed Forces | Haiti | 2 October 1966 |
| RENÉ, Marie Alix; Colonel | Haitian Armed Forces | Haiti | 28 July 1951 |
| RENÉ, Paul Mercier; Lieutenant | Haitian Armed Forces | Haiti | 12 September 1943 |
| RENÉ, Yolette M.; Lieutenant | Haitian Armed Forces | Haiti | 24 September 1952 |
| REYME, Emmanuel; Member | Chamber of Deputies of Haitian Parliament | Haiti | 12 June 1962 |
| RICHARD, Denis; Lieutenant | Haitian Armed Forces | Haiti | 2 March 1943 |
| RICHARD, Louis–Marie M.; Lieutenant | Haitian Armed Forces | Haiti | 15 June 1951 |
| RICOT, Myrtho; Major | Haitian Armed Forces | Haiti | 11 June 1937 |
| RIGAUD, Max | Flour Company | Haiti | 28 July 1921 |
| ROBERT, Jean–Edwige; Lieutenant | Haitian Armed Forces | Haiti | 15 August 1962 |
| RODNEY, François Dukene; Captain | Haitian Armed Forces | Haiti | 29 October 1958 |
| ROLAND, Louis–Charles; Captain | Haitian Armed Forces | Haiti | 18 September 1948 |
| ROLLAND, Jean–Clausel; Major | Haitian Armed Forces | Haiti | 23 April 1949 |
| ROMAIN, Charles Poisset; Minister | Ministry of Education, Youth and Sports | Haiti | 6 November 1940 |
| ROMAIN, Franck | | Haiti | 29 January 1936 |
| ROMAIN, Frank (François), Jr. | | Son of Franck Romain; Haiti | 11 September 1962 |
| ROMAIN, Marie Rose | | Wife of Franck Romain; Haiti | 1 October 1939 |
| ROMULUS, Dumarsais; Colonel | Haitian Armed Forces | Haiti | 16 or 18 August 1948 |
| ROMULUS, Jean Maceres; Captain | Haitian Armed Forces | Haiti | 23 August 1957 |
| ROMULUS, Martial P.; Colonel | Haitian Armed Forces | Haiti; 11903 Coronada Place, Kensington, MD 29895, U.S.A.; SSN 214–02–7585 | 26 February 1949 |
| ROSARION, Jean Romann; Lieutenant | Haitian Armed Forces | Haiti | 17 November 1967 |
| ROSEMBERG, Yves Marie R; Captain | Haitian Armed Forces | Haiti | 26 December 1955 |
| ROUSSEAU, Jacques; Minister | Ministry of Public Works, Transportation and Communications | Haiti | 10 November 1953 |
| ROUSSEAU, Yves; Senator | Haitian Parliament | Haiti | 2 October 1945 |
| ROY, Chiller; Lieutenant | Haitian Armed Forces | Haiti | 6 September 1964 |
| SAIDEL, Jean Fricot; Lieutenant | Haitian Armed Forces | Haiti | 14 May 1962 |
| SAINT–ELOI, Inereste; Lieutenant | Haitian Armed Forces | Haiti | 4 March 1945 |
| SAINT–FLEUR, Alix–Robert; Lieutenant | Haitian Armed Forces | Haiti | 12 May 1946 |
| SAINT–FLEUR, Aristhote; Captain | Haitian Armed Forces | Haiti | 22 May 1943 |
| SAINT–FLEUR, Erick; Lieutenant | Haitian Armed Forces | Haiti | 30 October 1960 |
| SAINT–FLEUR, Jean; Lieutenant | Haitian Armed Forces | Haiti | 28 June 1961 |
| SAINT–FLEUR, Michaud; Major | Haitian Armed Forces | Haiti | 1 December 1955 |
| SAINT GERMAIN, Rubens; Lieutenant | Haitian Armed Forces | Haiti | 2 May 63 |
| SAINT–JEAN, Jonique; Lieutenant | Haitian Armed Forces | Haiti | 3 October 1965 |
| SAINT–JOY, Jean Armand; Major | Haitian Armed Forces | Haiti | 7 November 1956 |
| SAINT–JUSTE, Joseph; Lieutenant | Haitian Armed Forces | Haiti | 10 March 1940 |
| SAINT–LOUIS, Hervé; Lieutenant | Haitian Armed Forces | Haiti | 10 July 1941 |
| SAINT–LOUIS, Jacques N.; Lieutenant | Haitian Armed Forces | Haiti | 5 December 1947 |
| SAINT–LOUIS, Jacques Stanley; Lieutenant | Haitian Armed Forces | Haiti | 7 March 1968 |
| SAINT–PHAT, Cetelus; Lieutenant | Haitian Armed Forces | Haiti | 20 April 1940 |
| SAINT–PIERRE, Jean Claude; Lieutenant | Haitian Armed Forces | Haiti | 28 October 1952 |
| SAINT–PIERRE, Reynald; Lieutenant | Haitian Armed Forces | Haiti | 29 August 1965 |
| SAINT–VIL, Jean Adzor; Lieutenant | Haitian Armed Forces | Haiti | 26 February 1949 |
| SAINTIL, Agnes; Lieutenant | Haitian Armed Forces | Haiti | 26 February 1945 |
| SAINTIL, Sadrac; Colonel | Haitian Armed Forces | Haiti | 29 January 1953 |
| SAINTILAIRE, Joseph Odes; Lieutenant Colonel | Haitian Armed Forces | Haiti | 4 February 1945 |
| SAINVIL, Ramus; Colonel | Haitian Armed Forces | Delmas 68, Rue C. Henry No. 2, Port–au–Prince, Haiti; Passport No. 84–161640 | 15 September 1952 |
| SALOMON, Gérard | | Haiti | 21 March 1954 |
| SALOMON, Richard; Lieutenant | Haitian Armed Forces | Haiti | 18 January 1960 |
| SANON, Anthony; Lieutenant | Haitian Armed Forces | Haiti | 18 June 1943 |
| SANON, Mercidieu; Captain | Haitian Armed Forces | Haiti | 27 June 1948 |
| SANSARICQ, Bernard; President | Illegal Senate Bureau | Haiti; possible legal permanent resident of the United States | 17 May 1944 |
| SANZ, Joseph Lesly; Major | Haitian Armed Forces | Haiti | 26 April 1953 |
| SCOTT, Emmanuel E.L.E.; Lieutenant | Haitian Armed Forces | Haiti | 3 March 1951 |
| SEIDE, Ambroise Lucien; Captain | Haitian Armed Forces | Haiti | 19 August 1952 |

| Name/Rank | Organization | Identifying Information | Date of Birth |
|---|---|---|---|
| SHOUTE, Jean Michelet; Lieutenant | Haitian Armed Forces | Haiti | 14 June 1960 |
| SIMEON, Jean–Claude; Lieutenant | Haitian Armed Forces | Haiti | 21 July 1943 |
| SIMILIEN, Frito; Lieutenant | Haitian Armed Forces | Haiti | 4 April 1947 |
| SIMON, Estimien; Lieutenant Colonel | Haitian Armed Forces | Haiti | 3 March 1941 |
| SIMONISE, Jean–Robert | Ministry of Foreign Affairs | 50 Rue Pacot, Port–au–Prince, Haiti | 20 July 1955 |
| SOUFFRANT, Yves Jean–Marie; Captain | Haitian Armed Forces | Haiti | 11 October 1957 |
| ST. DIC, Axel | Electricity Company | Rue Celcis No. 14, Canape Vert, Port–au–Prince, Haiti | 31 January 1949 |
| ST. FIRMIN, Jean | National Credit Bank | 126 Impasse H. Samsour, Delmas 105, Port–au–Prince, Haiti; Passport No. 86–302061 (Haiti) | 10 July 1934 |
| ST–FLEUR, Jean; Lieutenant | Haitian Armed Forces | Haiti | 28 June 1961 |
| ST–FLEUR, Martial Raynald; Major | Haitian Armed Forces | Haiti | 3 August 1948 |
| ST–JULIEN, Adrien; Lieutenant | Haitian Armed Forces | Haiti | 15 August 1937 |
| SUPRIEN, Jean–Fleurant; Lieutenant | Haitian Armed Forces | Haiti | 10 January 1953 |
| SURIN, Gérard; Captain | Haitian Armed Forces | Haiti | 1 February 1942 |
| SYDNEUS, Damaxe; Colonel | Haitian Armed Forces | Haiti | 10 April 1944 |
| SYLVAIN, André; Lieutenant | Haitian Armed Forces | Haiti | 4 October 1939 |
| SYLVAIN, Diderot Lyonel (Lionel); Colonel | Haitian Armed Forces | Haiti | 10 June 1950 |
| TACHOUTE, Livingsma; Lieutenant | Haitian Armed Forces | Haiti | 22 January 1953 |
| TAMAR, Tanael; Lieutenant | Haitian Armed Forces | Haiti | 4 January 1945 |
| TELFORT, Adrien; Lieutenant | Haitian Armed Forces | Haiti | 28 July 1949 |
| TELUSMA, Joseph; Lieutenant | Haitian Armed Forces | Haiti | 7 October 1954 |
| THELISMA, Mac Gregor; Lieutenant | Haitian Armed Forces | Haiti | 1 September 1968 |
| THERANUS, Mario; Lieutenant | Haitian Armed Forces | Haiti | 17 December 1966 |
| THERLONGE, Jean–Claude; Lieutenant | Haitian Armed Forces | Haiti | 15 December 1945 |
| THIBAUD, Emmanuel; Lieutenant | Haitian Armed Forces | Haiti | 15 June 1964 |
| THOMAS, Joseph Jacques; Major | Haitian Armed Forces | Haiti | 15 March 1955 |
| THYBULLE, Alix | | Haiti; U.S.A | 27 September 1949 |
| TIMO, Raynald; Captain | Haitian Armed Forces | Haiti | 9 August 1957 |
| TOUSSAINT, Henrio; Lieutenant | Haitian Armed Forces | Haiti | 11 March 1962 |
| TOUSSAINT, Ludovic P.; Lieutenant | Haitian Armed Forces | Haiti | 17 July 1942 |
| TOUSSAINT, Tacite; Lieutenant | Haitian Armed Forces | Haiti | 2 March 1964 |
| TRAVERSIERE, Jacques; Ensign | Haitian Armed Forces | Haiti | 6 June 1945 |
| TRECILE, Jean–Yonel; Lieutenant | Haitian Armed Forces | Haiti | 22 December 1961 |
| TUFFET, Jean–Victor; Lieutenant | Haitian Armed Forces | Haiti | 24 September 1942 |
| TURENNE, Jean Alfone; Lieutenant | Haitian Armed Forces | Haiti | 16 March 1944 |
| ULYSSE, Michaelle; Lieutenant | Haitian Armed Forces | Haiti | 21 September 1962 |
| VALET, Jean–Edmon, Leutenant | Haitian Armed Forces | Haiti | 3 November 1941 |
| VALET, Paul Ludovic; Lieutenant | Haitian Armed Forces | Haiti | 13 June 1943 |
| VALLES, Emmanuel A.M.J.; Captain | Haitian Armed Forces | Haiti | 30 March 1956 |
| VALME, Marc; Major | Haitian Armed Forces | Avenue Martin Luther King No. 152, Port–au–Prince, Haiti; Passport No. 81–142979 | 5 December 1953 |
| VALMOND, Hebert; Colonel | Haitian Armed Forces | Haiti | 17 May 1949 |
| VELIA, Guy Gérard; Lieutenant | Haitian Armed Forces | Haiti | 11 December 1949 |
| VICTOR, Jean André | Ministry of Planning and External Cooperation | Haiti | 10 September 1941 |
| VILLARD, Montfort; Lieutenant | Haitian Armed Forces | Haiti | 17 August 1948 |
| VILME, Abner; Lieutenant | Haitian Armed Forces | Haiti | 23 October 1964 |
| VILSON, Lineau; Captain | Haitian Armed Forces | Haiti | 24 March 1953 |
| VOLTAIRE, Anatin O.; Lieutenant | Haitian Armed Forces | Haiti | 15 September 1944 |
| WAGNAC, Joseph Jean M.; Ensign | Haitian Armed Forces | Haiti | 14 September 1962 |
| WESTERBANDT, Adrien (a.k.a. WESTERBAND, Adrien) | Ministry of Public Health | Haiti | 2 December 1924 |
| WILLIAM, Donald G.; Lieutenant | Haitian Armed Forces | Haiti | 18 January 1964 |
| WILLIAMS, Nixon; Lieutenant | Haitian Armed Forces | Haiti | 16 July 1964 |
| WILSON, Eustache; Colonel | Haitian Armed Forces | Haiti | 20 November 1942 |
| YVON, Jules; Captain | Haitian Armed Forces | Haiti | 16 March 1936 |
| ZAMOR, Claudel; Captain | Haitian Armed Forces | Haiti | 5 October 1960 |
| ZAMOR, Jean Denis; Lieutenant | Haitian Armed Forces | Haiti | 7 April 1962 |

*II. Blocked Entities of the De Facto Regime in Haiti:*

| Organization | Address(es) |
|---|---|
| 27TH COMPANY, FIRE DEPARTMENT (a.k.a. 27ÈME COMPAGNIE, CORPS POMPIER) | Haiti |
| ACCIDENT/INSURANCE OFFICE (a.k.a. OFFICE D'ASSURANCE MALADIE/ACCIDENT); (a.k.a. OFATMA); (a.k.a. WORKERS' COMPENSATION, SICKNESS AND MATERNITY INSURANCE AGENCY); (a.k.a. OFFICE D'ASSURANCE ACCIDENTS DU TRAVAIL, MALADIE ET MATERNITÉ) | Chancerelles – Cité Militaire, P.O. Box 1012, Port–au–Prince, Haiti. |
| BANK OF THE REPUBLIC OF HAITI (a.k.a. CENTRAL BANK OF HAITI); (a.k.a. BANQUE DE LA RÉPUBLIQUE D'HAÏTI); (a.k.a. BRH); (f.k.a. BANQUE NATIONALE DE LA RÉPUBLIQUE D'HAÏTI); | Angle rue du Magasin de l'État et rue des Miracles, BP 1570, Port–au–Prince, Haiti. |
| BANQUE POPULAIRE HAÏTIENNE (a.k.a. BPH) | Angle rues Eden et Quai, P.O. Box 1322, Port–au–Prince, Haiti |
| BUREAU OF THE INSPECTOR GENERAL SERVICE (a.k.a. BUREAU INSPECTEUR GÉNÉRALE, GRAND QUARTIER GÉNÉRALE (G.Q.G.)) | Haiti. |
| CEMENT COMPANY (a.k.a. LE CIMENT D'HAÏTI, SA); (a.k.a. CDH) | Office Cité de l'Exposition, Port–au–Prince, Haiti; Fond Mombin, Port–au–Prince, Haiti. |
| CONSEIL NATIONAL DES TÉLÉCOMMUNICATIONS (a.k.a. CONATEL, a.k.a. TELECOMMUNICATIONS AGENCY) | 16, Ave. Mie Jeanne, Cité de l'Exposition, P.O. Box 2002, Port–au–Prince, Haiti. |
| ELECTRICITY COMPANY (a.k.a. ÉLECTRICITÉ D'HAÏTI); (a.k.a. ELECTRICITY OF HAITI); (a.k.a. EDH) | Rue Dante Destouches, Port–au–Prince, Haiti; Boulevard Harry Truman, P.O. Box 1753, Port–au–Prince, Haiti. |
| FLOUR COMPANY (a.k.a. LA MINOTERIE D'HAÏTI); (a.k.a MDH) | Lafitteau, P.O. Box 404, Port–au–Prince, Haiti. |
| HAITIAN ARMED FORCES (a.k.a. FAD'H); (a.k.a. FORCE ARMÉE D'HAÏTI) | Haiti. |
| METROPOLITAN WATER CONCERN (a.k.a. WATER COMPANY); (a.k.a. CENTRALE AUTONOME MÉTROPOLITAINE D'EAU POTABLE); (a.k.a. CAMEP) | Paul VI Avenue 104, Port–au–Prince, Haiti. |
| MILITARY DEPARTMENT – ARTIBONITE REGION (a.k.a. DÉPARTEMENT MILITAIRE DE L'ARTIBONITE); | Haiti. |
| MILITARY DEPARTMENT OF THE METROPOLITAN ZONE (a.k.a. DÉPARTEMENT MILITAIRE DE LA ZONE MÉTROPOLITAINE); (a.k.a. COMET) | Haiti. |
| MINISTRY OF AGRICULTURE, NATURAL RESOURCES AND RURAL DEVELOPMENT (a.k.a. MINISTÈRE DE L'AGRICULTURE, DES RESSOURCES NATURELLES ET DU DÉVELOPPEMENT RURAL); (a.k.a. MARNDR) | Damien, Port–au–Prince, Haiti. |
| MINISTRY OF COMMERCE AND INDUSTRY | Rue Légitime, Champ de Mars, Port–au–Prince, Haiti. |
| MINISTRY OF ECONOMY AND FINANCE (a.k.a. MEF) | Palais des Ministères, Port–au–Prince, Haiti. |
| MINISTRY OF EDUCATION, YOUTH AND SPORTS (a.k.a. MENJS) | Boulevard Harry Truman, Cité de l'Exposition, Port–au–Prince, Haiti. |
| MINISTRY OF FOREIGN AFFAIRS AND WORSHIP | Boulevard Harry Truman, Cité de l'Exposition, Port–au–Prince, Haiti. |
| MINISTRY OF HEALTH, UNIT FOR POTABLE WATER (a.k.a. COMMUNITY HEALTH AND DRINKING WATER POSTS); (a.k.a. PROGRAMME DE SANTÉ DE L'EAU POTABLE); (a.k.a. POSTES COMMUNAUTAIRES D'HYGIÈNE ET D'EAU POTABLE); (a.k.a. POCHEP) | Petite Place Cazeau, P.O. Box 2580, Port–au–Prince, Haiti. |
| MINISTRY OF INFORMATION AND COORDINATION | 300 route de Delmas, Port–au–Prince, Haiti. |
| MINISTRY OF INTERIOR AND NATIONAL DEFENSE (a.k.a. MINISTÈRE DE L'INTÉRIEUR ET DÉFENSE NATIONALE) | Palais des Ministères, Port–au–Prince, Haiti. |
| MINISTRY OF JUSTICE | Boulevard Harry S Truman, Cité de l'Exposition, Port–au–Prince, Haiti. |
| MINISTRY OF PLANNING AND EXTERNAL COOPERATION (a.k.a. MINISTÈRE DE LA PLANIFICATION ET COOPÉRATION EXTERNELLE) | Palais des Ministères, Rue Monseigneur Guilloux, Port–au–Prince, Haiti. |
| MINISTRY OF PUBLIC HEALTH (a.k.a. SANTÉ PUBLIQUE); (a.k.a. MINISTRY OF PUBLIC HEALTH AND POPULATION); (a.k.a. MINISTÈRE DE LA SANTÉ PUBLIQUE ET DE LA POPULATION); (a.k.a. MINISTRY OF PUBLIC HEALTH AND HOUSING) | Palais des Ministères, Port–au–Prince, Haiti. |
| MINISTRY OF PUBLIC WORKS, TRANSPORT AND COMMUNICATIONS (a.k.a. MINISTÈRE DES TRAVAUX PUBLICS, TRANSPORT ET COMMUNICATIONS); (a.k.a. MTPTC) | Palais des Ministères, BP 2002, Port–au–Prince, Haiti. |
| MINISTRY OF SOCIAL AFFAIRS | Rue de la Révolution, Port–au–Prince, Haiti. |
| NATIONAL AVIATION OFFICE (a.k.a. CIVIL AVIATION AUTHORITY, a.k.a. L'OFFICE D'AVIATION CIVILLE, a.k.a. OFNAC) | P.O. Box 1346, Port–au–Prince, Haiti. |
| NATIONAL CREDIT BANK (a.k.a. BANQUE NATIONALE DE CRÉDIT); (a.k.a. BANQUE COMMERCIALE D'HAÏTI); (a.k.a. BNC) | Angle rue du Quai et rue des Miracles, BP 1320, Port–au–Prince, Haiti; Place des Héros 21 Rue P. Quant, Port–au–Prince, Haiti. |

| Organization | Address(es) |
|---|---|
| NATIONAL INSURANCE (a.k.a. OLD AGE INSURANCE); (a.k.a. OFFICE NATIONAL D'ASSURANCE VIEILLESSE); (a.k.a. ONA) | Champ de Mars, Port–au–Prince, Haiti. |
| NATIONAL OFFICE FOR INDUSTRIAL PARKS (a.k.a. NATIONAL INDUSTRIAL PARK COMPANY);(a.k.a. GOVERNMENT INDUSTRIAL PARK); (a.k.a. SOCIÉTÉ NATIONALE DES PARCS INDUSTRIELS); (a.k.a. SONAPI) | Industrial Park, P.O. Box 2345, Port–au–Prince, Haiti. |
| NATIONAL PORT AUTHORITY (a.k.a. AUTORITÉ PORTUAIRE NATIONALE); (a.k.a. PORT AUTHORITY); (a.k.a. AIRPORT); (a.k.a. APN) | La Saline Boulevard, P.O. Box 616, Port–au–Prince, Haiti; P.O. Box 1792, Port–au–Prince, Haiti. |
| NATIONAL WATER SERVICE (a.k.a. SERVICE NATIONAL D'EAU POTABLE); (a.k.a. SNEP) | Delmas 45 – Delmas Road, Port–au–Prince, Haiti. |
| OFFICE FOR PERMANENT MAINTENANCE OF ROAD NETWORK (a.k.a. SERVICE D'ENTRETIEN PERMANENT DU RÉSEAU ROUTIER NATIONAL); (a.k.a. SERVICE D'ENTRETIEN DU RÉSEAU ROUTIER NATIONAL); (a.k.a. SEPRRN); (a.k.a. OFFICE OF ROAD MAINTENANCE) | Varreux – National Road, 10 Varreux Road, Port–au–Prince, Haiti. |
| OFFICE OF CUSTOMS (a.k.a. ADMINISTRATION GÉNERALE DES DOUANES) | 161 Route de Delmas, Port–au–Prince, Haiti. |
| OFFICE OF MILITARY ATTACHES (a.k.a. BUREAU DES ATTACHÉS MILITAIRES) | Haiti. |
| TÉLÉNATIONALE D'HAÏTI (a.k.a. TÉLÉVISION NATIONALE D'HAÏTI) | Delmas 33, P.O. Box 13400, Port–au–Prince, Haiti. |
| TELEPHONE COMPANY (a.k.a. TÉLÉCOMMUNICATIONS D'HAÏTI, SAM); (a.k.a. TÉLÉCO) | J.J. Dessalines Boulevard, P.O. Box 814, Port–au–Prince, Haiti. |

Dated: October 4, 1994

**Steven I. Pinter,**

*Acting Director, Office of Foreign Assets Control.*

Approved: October 4, 1994

**R. Richard Newcomb,**

*Acting Deputy Assistant Secretary (Law Enforcement).*

[FR Doc. 94–25014 Filed 10–5–94; 10:28 am]

BILLING CODE 4810–25–F

# Reader Aids

**Federal Register**

Vol. 59, No. 193

Thursday, October 6, 1994

## INFORMATION AND ASSISTANCE

### Federal Register

| | |
|---|---|
| Index, finding aids & general information | 202–523–5227 |
| Public inspection announcement line | 523–5215 |
| Corrections to published documents | 523–5237 |
| Document drafting information | 523–3187 |
| Machine readable documents | 523–3447 |

### Code of Federal Regulations

| | |
|---|---|
| Index, finding aids & general information | 523–5227 |
| Printing schedules | 523–3419 |

### Laws

| | |
|---|---|
| Public Laws Update Service (numbers, dates, etc.) | 523–6641 |
| Additional information | 523–5230 |

### Presidential Documents

| | |
|---|---|
| Executive orders and proclamations | 523–5230 |
| Public Papers of the Presidents | 523–5230 |
| Weekly Compilation of Presidential Documents | 523–5230 |

### The United States Government Manual

| | |
|---|---|
| General information | 523–5230 |

### Other Services

| | |
|---|---|
| Data base and machine readable specifications | 523–3447 |
| Guide to Record Retention Requirements | 523–3187 |
| Legal staff | 523–4534 |
| Privacy Act Compilation | 523–3187 |
| Public Laws Update Service (PLUS) | 523–6641 |
| TDD for the hearing impaired | 523–5229 |

## ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

## FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

## FEDERAL REGISTER PAGES AND DATES, OCTOBER

50153–50480.....3
50481–50678.....4
50679–50812.....5
50813–51080.....6

## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 3 CFR

**Proclamations:**
6728.....50679
6729.....50681
6730.....50683
**Executive Orders:**
12775 (Continued by Notice of September 30, 1994).....50479
12784 (See EO 12929).....50473
12868 (Revoked by EO 12930).....50475
12929.....50473
12930.....50475
**Administrative Orders:**
Presidential Determinations:
No. 94–52 of September 29, 1994.....50477
Memorandums:
September 27, 1994.....50685
September 30, 1994.....50809
**Notices:**
September 30, 1994.....50479

### 5 CFR

213.....50813
316.....50813
846.....50687
1320.....50813
1633.....50816
Ch. LXXVI.....50816
**Proposed Rules:**
2604.....50171
843.....50705

### 7 CFR

246.....50518
272.....50153
273.....50173
906.....50824
945.....50793

### 9 CFR

**Proposed Rules:**
75.....50860
102.....50861

### 10 CFR

34.....50688
35.....50688
50.....50688
73.....50688
110.....50688
**Proposed Rules:**
2.....50706
50.....50513
150.....50706

### 11 CFR

**Proposed Rules:**
110.....50708
9003.....51006
9004.....51006
9006.....51006
9007.....51006
9033.....51006
9034.....51006
9037.....51006
9038.....51006

### 12 CFR

304.....50826
614.....50964
**Proposed Rules:**
327.....50710

### 13 CFR

121.....50964

### 14 CFR

27.....50380
29.....50380
39.....50481
101.....50390
**Proposed Rules:**
Ch. I.....50864
11.....50676
71.....50865

### 15 CFR

770.....50156
771.....50156
775.....50156

### 17 CFR

**Proposed Rules:**
240.....50866

### 19 CFR

101.....50689
**Proposed Rules:**
101.....50717
122.....50717

### 21 CFR

11.....50793
101.....50828
314.....50338
450.....50484
510.....50828
520.....50829
556.....50829
**Proposed Rules:**
101.....51030
170.....51030
310.....51030

### 24 CFR

200.....50456

203.....50456
204.....50456
206.....50456
267.....50456
791.....50158

**Proposed Rules:**
813.....50870
905.....50870
908.....50870
913.....50870

**26 CFR**

1.....50159, 50161, 50485
602.....50161

**28 CFR**

82.....50830

**Proposed Rules:**
542.....50179

**29 CFR**

1952.....50793

**31 CFR**

**Proposed Rules:**
334.....50874

**32 CFR**

806.....50834

**33 CFR**

117.....50166
165.....50489, 50490, 50491, 50492

**Proposed Rules:**
117.....50528, 50529, 50530, 50531
166.....50533
167.....50533

**36 CFR**

**Proposed Rules:**
800.....50395

**37 CFR**

**Proposed Rules:**
1.....50181

**39 CFR**

111.....50690

**40 CFR**

15.....50691
32.....50691
51.....50693
52.....50493, 50495, 50498, 50500, 50502, 50504, 50844
55.....50845
62.....50506
81.....50848

**Proposed Rules:**
51.....50718
52.....50211, 50533, 50536, 50884
62.....50536
70.....50214, 50537
300.....50884
721.....50537

**41 CFR**

101–17.....50507
101–45.....50696
101–46.....50696

**43 CFR**

**Public Land Orders:**
7091.....50698
7092.....50508

**45 CFR**

**Proposed Rules:**
1355.....50646
1356.....50646
1357.....50646

**46 CFR**

10.....50964
69.....50508

**Proposed Rules:**
Ch. I.....50537

**47 CFR**

0.....50167
24.....50509
73.....50168, 50169, 50850

**Proposed Rules:**
73.....50719, 50886, 50887
76.....50538

**48 CFR**

213.....50851
225.....50511
247.....50851

**Proposed Rules:**
242.....50539

**49 CFR**

219.....50699

**Proposed Rules:**
391.....50887

**50 CFR**

17.....50796, 50852
20.....50424
215.....50372
216.....50372
625.....50512
663.....50857
672.....50169, 50170, 50699
675.....50699, 50858

**Proposed Rules:**
17.....50540, 50550, 50557
675.....50893

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

**H.R. 4539/P.L. 103–329**

Treasury, Postal Service and General Government Appropriations Act, 1995 (Sept. 30, 1994; 108 Stat. 2382; 53 pages)

**H.R. 4554/P.L. 103–330**

Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995 (Sept. 30, 1994; 108 Stat. 2435; 36 pages)

**H.R. 4556/P.L. 103–331**

Department of Transportation and Related Agencies Appropriations Act, 1995 (Sept. 30, 1994; 108 Stat. 2471; 28 pages)

**H.R. 4602/P.L. 103–332**

Department of the Interior and Related Agencies Appropriations Act, 1995 (Sept. 30, 1994; 108 Stat. 2499; 40 pages)

**H.R. 4606/P.L. 103–333**

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1995 (Sept. 30, 1994; 108 Stat. 2539; 37 pages)

**H.R. 4649/P.L. 103–334**

Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes. (Sept. 30, 1994; 108 Stat. 2576; 23 pages)

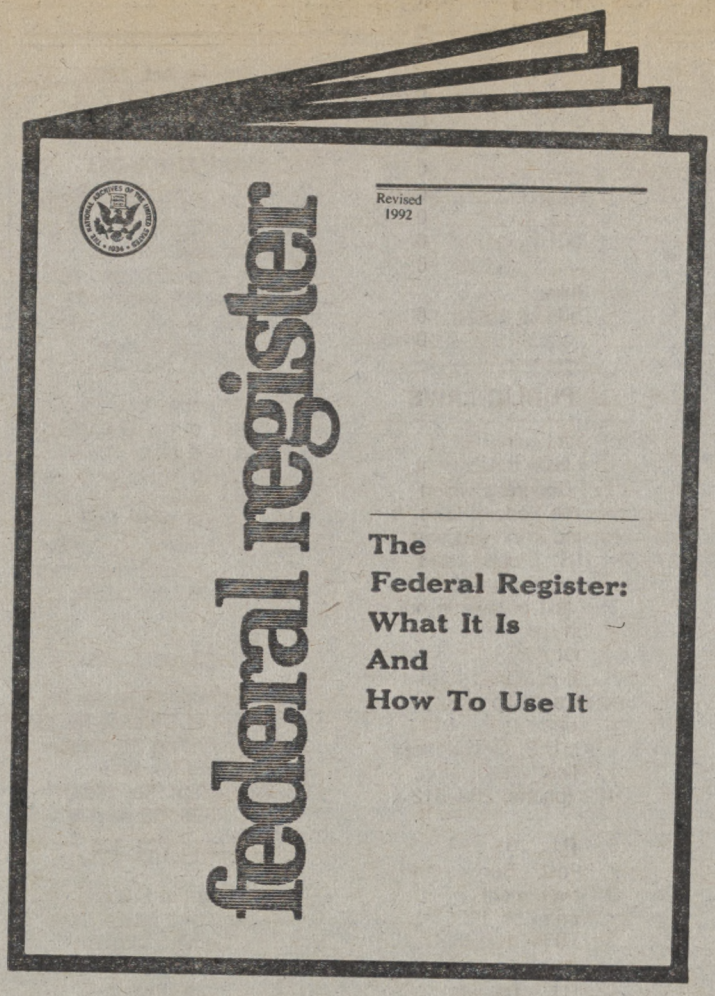
**H.R. 4650/P.L. 103–335**

Making appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes. (Sept. 30, 1994; 108 Stat. 2599; 62 pages)

**H.R. 4190/P.L. 103–336**

To designate the building located at 41-42 Norre Gade in Saint Thomas, Virgin Islands, for the period of time during which it houses operations of the United States Postal Service, as the Alvaro de Lugo Post Office; and to amend title 39, United States Code, to make applicable with respect to the United States Postal Service certain exclusionary authority relating to the treatment of reemployed annuitants under the civil service retirement laws, and for other purposes. (Oct. 3, 1994; 108 Stat. 2661; 2 pages)

**Last List October 3, 1994**




**Announcing the Latest Edition**

# The Federal Register: What It Is and How to Use It

**A Guide for the User of the Federal Register—Code of Federal Regulations System**

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

**Price $7.00**

---

Superintendent of Documents **Publications** Order Form

Order processing code:
*6173

P3

***Charge your order. It's Easy!***
**To fax your orders (202)-512-2250**

☐ **YES**, please send me the following:

_____ copies of **The Federal Register-What it is and How To Use it,** at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

**May we make your name/address available to other mailers?** YES ☐ NO ☐

**Please Choose Method of Payment:**

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

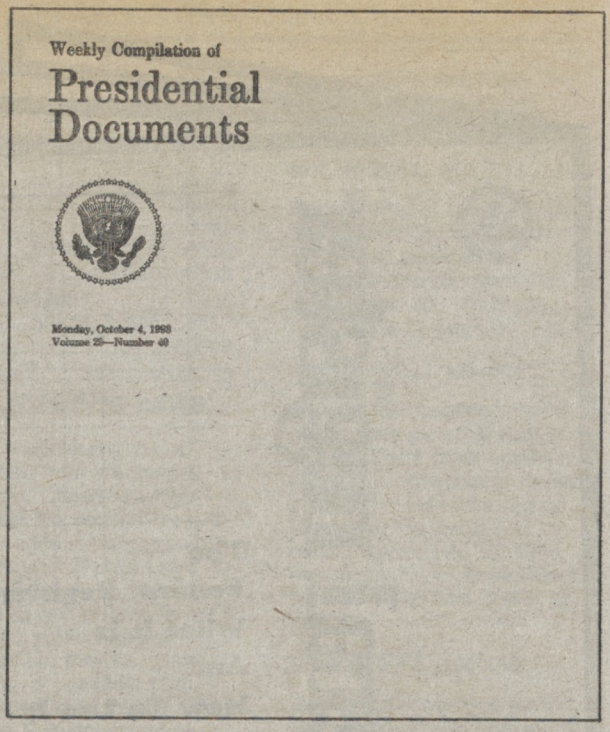
***Thank you for your order!***

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

The authentic text behind the news . . .

# The Weekly Compilation of **Presidential Documents**




This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

---

## Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

*Charge your order. It's easy!* MasterCard VISA

**To fax your orders (202) 512–2233**

☐ **YES,** please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

❑ $103 First Class Mail ❑ $65 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

**For privacy, check box below:**
❑ Do not make my name available to other mailers

**Check method of payment:**
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 1/94

*Thank you for your order!*

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper