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## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

[Amendment No. 331]

### 7 CFR Chapter II and Parts 271 and 278

### Food Stamp Program: Revision of the Definition of Insured Financial Institutions and Modification of Food Stamp Redemption Procedures

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends Food Stamp Program regulations relative to food stamp redemption and changes the definition of "insured financial institution". This change is necessary because of statutory revisions to the Federal bank insurance system. Financial institutions formerly insured by the Federal Savings and Loan Insurance Corporation (FSLIC) are now insured by the Savings Association Insurance Fund (SAIF), which is administered by the Federal Deposit Insurance Corporation (FDIC). This rule also modifies the procedures for financial institutions which deposit food stamps at Federal Reserve Banks in order to be consistent with changes in Federal Reserve requirements.

In addition, this rule amends 7 CFR chapter II to reflect the abolishment of the Food and Nutrition Service and the establishment of the Food and Consumer Service in the recent Department of Agriculture reorganization.

**DATES:** The amendments to parts 271 and 278 are effective December 22, 1994. The amendments to the heading of 7 CFR Chapter II and to the references in the chapter are effective November 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Fecteau, Chief, Coupon and Retailer Branch, Benefit Redemption Division, by telephone at (703) 305–2418.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This 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.

#### Executive Order 12372

The Food Stamp Program is listed in the *Catalog of Federal Domestic Assistance* under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983 or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). The Administrator of the Food and Consumer Service has certified that this action does not have a significant economic impact on a substantial number of small entities. The rule makes only slight technical changes to the Food Stamp Program coupon redemption procedures to improve system accountability, while also revising the definition of "insured financial institution".

#### Paperwork Reduction Act

The reporting requirements relating to the provisions on the redemption of food stamps at 7 CFR 278.5 have been approved under OMB number 0584–0085. The public reporting burden for this collection of information is estimated to average .020 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any burden, to the U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C., 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0584–0085), Washington, D.C., 20503.

#### 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 Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020 (e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

#### Background

Current regulations at 7 CFR part 278 contain requirements that firms authorized by the Food and Consumer Service to accept food stamps may redeem them only at financial institutions which are insured by the FDIC or the FSLIC; or at financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership (7 CFR 278.5). On August 9, 1989, the FSLIC, along with its parent organization, the Federal Home Loan Bank Board, ceased to exist. These institutions have been consolidated into the SAIF pursuant to sections 211(6) and 401 of the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183). The SAIF is administered by the FDIC. This rule amends the Food Stamp Program regulations to delete FSLIC wherever that reference appears.

The Department is also amending the regulations to be consistent with the Federal Reserve requirements that financial institutions submit only balanced deposits to the Federal Reserve and use Magnetic Ink Character Recognition (MICR) to encode on the Food Stamp Redemption Certificate the verified amount of coupons received from authorized firms. The redemption certificate is the deposit document that authorized firms use to deposit coupons with financial institutions for credit.

**Deposit Balancing Requirements**

In an effort to improve the accountability in the food coupon redemption process and reduce the likelihood of fraud, the Department enlisted the cooperation of the Federal Reserve to modify its depositing requirements for food coupons to facilitate reconciliation of coupons deposited with deposit documents and redemption certificates. Financial institutions are now required by the Federal Reserve to submit balanced deposits, which means that the face value of coupons deposited must match both the amount of coupons entered on the financial institution's deposit document and the total amount of coupons entered by authorized firms on the redemption certificates accompanying the deposit.

**MICR-Encoding Requirement**

Requiring financial institutions, or retailers with MICR-encoding capability, to MICR-encode the verified coupon amount on redemption certificates allows redemption data to be electronically captured at the Federal Reserve Banks and transmitted directly to the Department's computer processing center. It also allows the Federal Reserve Banks and the Department to achieve greater accuracy and accountability in the coupon deposit reconciliation system while using standard banking technology.

A proposed rule dealing with these requirements was published at 56 FR 13,601 on April 3, 1991 and provided the public with a 60-day period to submit comments on the proposed provisions. The Department received no public comments on the proposed rule and this rule is being finalized without change.

**Establishment of the Food and Consumer Service**

Pursuant to Pub. L. 103–354, The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, Reorganization of the Department of Agriculture, on October 20, 1994. SM 1010–1 orders the abolishment of the Food Nutrition Service (FNS), and the establishment of the Food and Consumer Service, which assumes the functions previously performed by FNS. This rule includes amendments to 7 CFR chapter II which are necessary to bring Agency regulations into alignment with the Departmental reorganization.

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*7 CFR Part 278*

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, general line—wholesaler, Penalties.

Accordingly, 7 CFR chapter II and parts 271 and 278 are amended as follows:

**Chapter II—Food and Consumer Service, Department of Agriculture**

1. The heading of 7 CFR chapter II is revised to read as set forth above.

**Chapter II [Amended]**

2. In 7 CFR chapter II (consisting of parts 210–299) all references to "Food and Nutrition Service" are revised to read "Food and Consumer Service", and all references to "FNS" are revised to read "FCS".

3. The authority citation for parts 271 and 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

## PART 271—GENERAL INFORMATION AND DEFINITIONS

**§ 271.2 [Amended]**

4. In § 271.2 the definition of *Insured financial institution* is amended by removing the words "or the Federal Savings and Loan Insurance Corporation (FSLIC)".

## PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

5. In § 278.5:

a. Paragraph (a)(1) is amended by removing the words "or the Federal Savings and Loan Insurance Corporation (FSLIC)" in the first sentence, and adding two new sentences to the end of the paragraph.

b. Paragraph (a)(2) is revised.

The revision and additions read as follows:

**§ 278.5 Participation of insured financial institutions.**

(a) *Accepting coupons.* (1) * * * All verified and encoded redemption certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the accompanying Food Coupon Deposit Document (Form FNS–521). In accordance with Federal Reserve requirements, the coupon deposit value entered on the Food Coupon Deposit Document must be equal to the actual value of coupons being deposited and to the total value of verified amounts encoded on the corresponding redemption certificates.

(2) An insured financial institution shall verify the amount of the coupons being redeemed and record the amount in the designated space on the redemption certificate. In order to conform with Federal Reserve requirements, the verified amount shall be recorded in the appropriate field on the redemption certificate using Magnetic Ink Character Recognition (MICR) encoding. Redemption certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the Food Coupon Deposit Document (Form FNS–521).

* * * * *

6. In § 278.9, a new paragraph (k) is added to read as follows:

**§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.**

* * * * *

(k) *Amendment No. 331.* The program changes made to §§ 271.2 and 278.5 by this amendment are effective December 22, 1994.

Dated: November 4, 1994.

**William E. Ludwig,**

*Administrator, Food and Consumer Service.*

[FR Doc. 94–28750 Filed 11–21–94; 8:45 am]

BILLING CODE 3410–30–U

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## Federal Crop Insurance Corporation

## 7 CFR Part 457

## Common Crop Insurance Regulations; Coarse Grains Crop Insurance Provisions; Correction

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

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to the final regulations for

coarse grains crop insurance which were published Tuesday, September 27, 1994 (59 FR 49157). The regulations relate to insurance contract requirements for insuring corn, grain sorghum, and soybeans under the Coarse Grains crop provisions of the Common Crop Insurance Policy.

**EFFECTIVE DATE:** October 27, 1994.

**FOR FURTHER INFORMATION CONTACT:** Diana Moslak, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 254–8314.

**SUPPLEMENTARY INFORMATION:** The final regulations that are the subject of these corrections superseded the crop insurance endorsements for insuring corn, grain sorghum, and soybeans beginning with the 1995 crop year under the provisions of the Federal Crop Insurance Act, as amended.

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Accordingly, the publication on September 27, 1994 of the final regulations at 59 FR 49157 is corrected as follows:

**§ 457.113 [Corrected]**

1. On page 49162 in the first column, paragraph (k), the words "United Standards" are corrected to read "United States Standards".

2. On page 49164 in the first column, section 10, the first sentence of paragraph (b), the words "replanting per" are corrected to read "replanting payment per".

3. On page 49165 in the second column, paragraph (f)(2), the words "prior to October 1," are corrected to read "after September 30 of the crop year,".

4. On page 49165 in the second column, section 13, the heading is corrected to read "Late Planting and Prevented Planting".

5. On page 49165 in the third column, paragraph (c), the heading is corrected to read "Late Planting".

6. On page 49166 in the second column, paragraph (d)(3)(iv) in the first phrase, the word "no" is corrected to read "not".

Done in Washington, DC, on November 17, 1994.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 94–28826 Filed 11–21–94; 8:45 am]

BILLING CODE 3410–08–M

## Agricultural Marketing Service

## 7 CFR Part 906

**[Docket No. FV94–906–1FIR]**

## Oranges and Grapefruit Grown in the Lower Rio Grande Valley of Texas; Expenses and Assessment Rate for the 1994–95 Fiscal Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Texas Valley Citrus Committee (TVCC) under Marketing Order No. 906 for the 1994–95 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** August 1, 1994, through July 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Brenda D. Hill, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833.

**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. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges and grapefruit grown in Texas are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable citrus fruit handled during the 1994–95 fiscal year, beginning August 1, 1994, through July 31, 1995. 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 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and 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 135 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 2,500 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.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable citrus fruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The

members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the TVCC's expected expenses.

The TVCC met on May 10, 1994, and unanimously recommended total expenses of $1,141,944 and an assessment rate of $0.16 per 7/10 bushel carton for the 1994–95 fiscal year. In comparison, the 1993–94 fiscal year expense amount was $984,319, which is $157,625 less than the recommended $1,141,944 for this season and the assessment rate was $0.15, which is $0.01 less than that recommended for the 1993–94 fiscal year.

Assessment income for the 1994–95 fiscal year is expected to amount to $960,000 based upon estimated fresh domestic shipments of 6 million cartons of oranges and grapefruit. This, in addition to a withdrawal of $181,944 from the TVCC's reserve fund, should be adequate to cover budgeted expenses. In comparison, the assessment income for the 1993–94 fiscal year was estimated at $825,000 based upon anticipated fresh domestic shipments of 5.5 million cartons of oranges and grapefruit.

Funds in the reserve at the end of the fiscal year, estimated at $276,468, will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the 1994–95 fiscal year include $132,444 for shared administrative expenses with the South Texas Onion and Melon Committees, $650,000 for advertising, compared to $723,425 for the 1993–94 fiscal year, and $174,000 for the Mexican Fruit Fly support program.

The expenses and assessment rates were authorized by an interim final rule issued on July 28, 1994, and published in the **Federal Register** [59 FR 39415, August 3, 1994]. A 30-day comment period was provided for interested persons. No comments were received.

The Committed met again on June 30, 1994, and unanimously recommended to increase expenses from $1,141,944 to 1,153,944, which is an increase of $12,000 from previously authorized amount. The increase is necessary for funding of one-third of the cost of a Texas Citrus Tree Inventory Survey. No change was recommended to the assessment rate.

The Committee met once again on October 11, 1994, unanimously recommended an additional increase in expenses of $7,300. The Committee recommended this additional increase to fund a post harvest project. This will bring the total recommended expenses for the 1994–95 fiscal year to $1,161,244. Once again no change in the assessment rate was recommended. The additional funding needed for these increases will be taken from the Committee's reserve fund.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing orders covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1994–95 fiscal year for the programs began on August 1, 1994. The marketing orders require that the rates of assessment for the fiscal year apply to all assessable oranges and grapefruit handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committees at public meetings and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action, with appropriate changes, as a final rule.

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

Grapefruit, Marketing agreements, 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. § 906.234 is revised to read as follows:

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

**§ 906.234 Expenses and assessment rate.**

Expenses of $1,161,244 by the Texas Valley Citrus Committee are authorized and an assessment rate of $0.16 per 7/10 carton on assessable oranges and grapefruit is established for the fiscal year ending July 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: November 16, 1994.

**Martha B. Ransom,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–28818 Filed 11–21–94; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 1097

[DA–93–05]

## Milk in the Memphis, TN, Marketing Area; Termination of Remaining Provisions of the Order

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

**ACTION:** Final rule.

**SUMMARY:** This rule terminates the remaining administrative provisions of the Memphis, Tennessee, Federal milk marketing order (Order 97), effective upon publication in the **Federal Register**. All of the monthly operating provisions were terminated as of midnight July 31, 1993, following a producer referendum in which the order, as amended, was not approved by at least two-thirds of the dairy farmers who voted.

**EFFECTIVE DATE:** November 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

*Advance Notice of Proposed Rulemaking:* Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

*Notice of Hearing:* Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

*Extension of Time for Filing Briefs and Reply Briefs:* Issued March 28,

1991; published April 3, 1991 (56 FR 13603).

*Recommended Decision:* Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

*Extension of Time for Filing Exceptions:* Issued December 24, 1991; published January 6, 1992 (57 FR 383).

*Final Decision:* Issued February 5, 1993; published March 5, 1993 (58 FR 12634).

*Proposed Termination of Order:* Issued April 20, 1993; published April 27, 1993 (58 FR 25576).

*Termination Order:* Issued June 25, 1993; published July 1, 1993 (58 FR 35359).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule terminates the remaining administrative provisions of the Memphis order.

The Department is issuing this rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 its 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 the date of the entry of the ruling.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Memphis, Tennessee, marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 27, 1993 (58 FR 25576), concerning a proposed termination of the remaining provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. Several comments were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that § 1097.1 of the order does not tend to effectuate the declared policy of the Act.

**Statement of Consideration**

This rule terminates the remaining administrative provisions of the Memphis, Tennessee, Federal milk order. A public hearing that considered proposed amendments to all Federal milk orders was held in September, October, and November 1990, pursuant to notice thereof issued July 11, 1990 (55 FR 29034). Following the issuance of a recommended decision and the opportunity for filing exceptions, the Acting Assistant Secretary for Marketing and Inspection Services on February 5, 1993, issued a final decision on the issues considered at the hearing. In a referendum held following the issuance of the final decision, the proposed amended Memphis order was not approved by at least two-thirds of the order's producers who voted. The Act requires that an order, as amended, be approved by at least two-thirds of the producers who voted in the referendum or by producers who, during the representative period, produced at least two-thirds of the volume of milk marketed.

On the basis of the record of the public hearing, the comments received in response to the proposed termination of Order 97, and the results of the producer referendum, the Department issued a termination order, effective midnight July 31, 1993. The order terminated the monthly operating provisions of the Memphis, Tennessee, order, but left intact certain administrative provisions that were embodied, by reference, in § 1097.1 of the order.

The market administrator, in his capacity as the order's liquidating agent, has completed the disbursement of all of the money remaining in the administrative, producer-settlement, and marketing service funds established under the order. Hence, the remaining provisions of the order should be terminated.

Therefore, the aforesaid provisions of § 1097.1 of the order are hereby terminated.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this termination.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1097**

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1097, are amended as follows:

## PART 1097—MILK IN THE MEMPHIS, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR Part 1097 continues to read as follows:

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

**§ 1097.1 [Amended]**

2. Section 1097.1 is removed.

Dated: November 16, 1994.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 94–28819 Filed 11–21–94; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Parts 100 and 103

[INS No. 1501–94]

RIN 1115–AD72

## Implementation of Internal Reorganization of the Immigration and Naturalization Service

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends existing Immigration and Naturalization Service (Service) regulations by revising the organizational structure of the Service to conform to the Service reorganization plan approved by Attorney General Reno. These regulations will allow for empowerment of Headquarters and field managers, and further enhance Service planning and communications capabilities.

**EFFECTIVE DATE:** November 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** Gary S. Messina, Acting Executive Associate Commissioner, Policy and Planning, Immigration and Naturalization Service, 425 I Street NW., Room 6042, Washington, DC 20536, telephone (202) 514–3242.

**SUPPLEMENTARY INFORMATION:** The reorganization of the Immigration and Naturalization Service was approved by Attorney General Reno on January 14, 1994. A copy of the organization chart, which graphically illustrates the approved structure, is published with this final regulation as Appendix A.

The reorganization will: (a) Create a clearer sense of mission by knitting together the Service's major functions and programs; (b) decentralize decision-making authority and delegate authority to persons geographically closer to the locations where work is being performed; (c) empower field operational units to improve the delivery of services to customers; (d) re-engineer major processes, such as those which develop and disseminate organizational policy and guidelines, and which are outdated approaches to handing records and information; and (e) develop a capability and commitment to plan for the future, set customer service standards, and establish quantitative performance measures to enable the Service to evaluate its programs and service delivery. To accomplish these goals, the reorganization creates several new components through the restructuring of some existing ones and the abolition of others. Some components retain their identity, but with revised duties and reporting relationships, while other components remain unchanged. This final regulation formalizes the new components, responsibilities, and reporting relationships.

**Synopsis of the changes**

| Former organizational structure | New organizational structure |
|---|---|
| Executive Associate Commissioner | Abolished, functions realigned to the Deputy Commissioner, and the four Executive Associate Commissioners (EACs). |
| Office of Professional Responsibility | Abolished, some functions absorbed by the Office of Internal Audit. |
| Office of Program Inspections | Abolished, some functions absorbed by the Office of Internal Audit. |
| Office of Congressional and Public Affairs | Functions redistributed to an Office of Public Affairs and an Office of Congressional Relations. |
| Office of Anti-Smuggling under the Office of Enforcement | Anti-Smuggling function absorbed into the Office of Investigations. |
| Associate Commissioner, Management | EAC, Management. |
| Office of Comptroller under the Office of Management | Office of Finance under the EAC, Management. |
| Office of Personnel and Training under the Office of Management | Office of Human Resources and Administration under the EAC, Management. |
| Office of Administration under the Office of Management | Administration functions absorbed into the Office of Human Resources and Administration under the EAC, Management. |
| Office of Equal Employment Opportunity under the Office of Management. | Reports to the EAC, Management. |
| Office of Plans and Analysis under the Executive Associate Commissioner. | EAC, Policy and Planning. |
| Office of Information Systems under the Executive Associate Commissioner. | Office of Information Resources Management under the EAC, Management. |
| Records Systems Division under the Office of Information Systems | Functions realigned to EAC, Management; EAC, Programs; EAC, Policy and Planning; and Director, Public Affairs. |
| Data Systems Division under the Office of Information Systems | Reports to the Office of Information Resources Management. |
| Office of Policy Directives and Instructions under the Office of Information Systems. | Policy Directives and Instructions Branch under the EAC, Policy and Planning. |
| Project Control and Integration Division under the Office of Information Systems. | Systems Integration Division under the Office of Information Resources Management. |
| Office of Examinations | Reports to the EAC, Programs. |
| Adjudication Division under the Office of Examinations | Adjudications and Nationality Division under the Office of Examinations. |
| Refugee, Asylum, and Parole Division under the Office of Examinations | Functions realigned to EAC, Field Operations to include an Asylum Division and a Refugees and Parole Division, both of which report to the Office of International Affairs. |
| Office of Outreach Program under the Office of Examinations | Absorbed into the Adjudications and Nationality Division under the Office of Examinations. |
| Administrative Appeals Unit under the Office of Examinations | Administrative Appeals Office under the Office of Examinations. |
| Legalization Division under the Office of Examinations | Abolished. |
| National Fines Office under the Office of Examinations | Absorbed into the Inspections Division under the Office of Examinations. |
| Four Regional Commissioners | Abolished and functional responsibilities realigned to three Regional Directors reporting to the EAC, Field Operations, and four Directors of Administrative Centers reporting to the EAC, Management. |

**Discussion of Changes**

*Deputy Commissioner*

The reorganization reaffirms the position of the Deputy Commissioner and specifically empowers the incumbent to serve as Chief Operating Officer for the Service. The Deputy Commissioner supervises the four newly established Executive Associate Commissioner (EAC) positions. The EACs are for Programs, Field Operations, Policy and Planning, and Management. The EAC for Field Operations supervises the Regional

Directors who, in turn, supervise the District Directors and Chief Patrol Agents. The other three EACS are staff to the Commissioner and Deputy Commissioner. The responsibility for reconciling field and Headquarters requirements lies with the Deputy Commissioner, freeing the Commissioner to set policy and represent the Service externally.

As noted, the reorganization abolished the position of Executive Associate Commissioner. With this change, authority and responsibility held by that office are realigned under the new positions of Executive Associate Commissioner, Programs; Executive Associate Commissioner, Field Operations; Executive Associate Commissioner, Policy and Planning; and Executive Associate Commissioner, Management, reporting to the Deputy Commissioner.

Finally, the Offices of Professional Responsibility, Program Inspection, and the position of Special Representative of the Commissioner are abolished.

*Executive Associate Commissioner for Programs*

The Executive Associate Commissioner for Programs is responsible for policy development, review and integration of the Service's enforcement and examinations programs, and supervision of the Associate Commissioners for Examinations and Enforcement. The Executive Associate Commissioner for Programs does not exercise line authority over district and sector operations.

*Office of Asset Forfeiture*

The Office of Asset Forfeiture is now delegated authority by the Associate Commissioner of Enforcement to adjudicate claims under section 274 (b) of the Act on behalf of the Commissioner of the Immigration and Naturalization Service.

*Executive Associate Commissioner for Field Operations*

The Executive Associate Commissioner for Field Operations responds to field office needs; implements policy; ensures consistency and program effectiveness in the work of Service districts and sectors, including the Service's foreign offices; and serves as a single point of contact and advocacy at the Headquarters level for field issues. The EAC for Field Operations supervises three Regional Director positions who are responsible for Eastern, Central, and Western Field Operations. Additionally, the EAC for Field Operations supervises the Director, International Affairs.

*Regional Directors*

The reorganization abolishes the four Regional Commissioner positions and replaces them with three Regional Directors for domestic activities. They are responsible for Eastern, Central, and Western Field Operations. These three domestic regions replace the old four-region configuration and provide an intermediate management level between dispersed, complex field activities and Headquarters. Each region includes a southern and a northern border. The regional alignment reflects an even, three-way distribution of Service workload and resources. The Regional Directors will also act as spokespersons in their respective geographic areas.

*Office of International Affairs*

The reorganization creates an Office of International Affairs and places it under the Executive Associate Commissioner for Field Operations. This office will assume responsibility for foreign operations and the centralized political asylum program. This action establishes the foreign districts as a mini-region, and allows them to function as an extension of domestic operations, discharging refugee and parole responsibilities.

*Executive Associate Commissioner for Policy and Planning*

The Office of Plans and Analysis is renamed Policy and Planning and moved under the new EAC for Policy and Planning. This organization serves as a clearinghouse for Service policy and is responsible for a wide spectrum of policy activities, including policy formulation, codification, and dissemination within the agency. To this end, the Office of Policy Directives and Instructions is absorbed by the new organization. Strategic planning, annual priorities development, statistics, research and development, and cross-program initiatives, all functions now performed in the Office of Plans and Analysis, are subsumed in the new organization.

*Executive Associate Commissioner for Management*

The Executive Associate Commissioner for Management will be responsible for the duties now extant in the Management and Information Systems components of the Service, and will exercise this responsibility through Headquarters Offices of Security, Equal Employment Opportunity, Files and Forms Management, Human Resources and Administration, Finance, Information Resources Management, and the four Administrative Centers (new position; see discussion below).

*Director, Administrative Center*

The reorganization further establishes four new Director of Administrative Center positions. The directors will be responsible for administrative services, program oversight, and liaison functions at their respective locations. Specifically, they will manage personnel, administrative, information systems, financial, security, and equal employment opportunity aspects of the offices in their respective geographical areas, subject to oversight and direction from Headquarters. The directors will report to the Executive Associate Commissioner for Management in the exercise of these responsibilities.

*Executive Staff Offices*

In addition, the reorganization consolidates existing functions and establishes new offices to oversee and supervise their operation. The Office of Internal Audit, the Office of Congressional Relations, and the Office of Public Affairs are such offices. They will be located in the Office of the Commissioner, and each will be headed by a Director.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This regulation deals with an internal reorganization within the Service, as discussed in the Supplemental section of this document.

**Executive Order 12866**

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review and has been approved by the Office of Management and Budget. As noted in the supplementary section of the rule, the Service has realigned functions and responsibilities to increase overall operational efficiency. The organizational realignments, decentralization and redelegation of specific programmatic responsibility and accountability, as well as empowerment of staff, are critical changes being implemented by the reorganization. These initiatives are deemed by the Service to be significant

actions which are in conformance with the Administration's priorities as outlined by the National Performance Review.

**Executive Order 12612**

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

**Executive Order 12606**

The Commissioner of the Immigration and Naturalization Service has reviewed this rule and, by signing it, certifies that she has assessed the rule in light of the criteria in Executive Order 12606 and has determined the regulation will have no bearing on family well-being.

**List of Subjects**

*8 CFR Part 100*

Organizations and functions (Government agencies).

*8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 8 U.S.C. 1103; 8 CFR part 2.

2. Section 100.2 is revised to read as follows:

**§ 100.2 Organization and functions.**

(a) *Office of the Commissioner.* The Attorney General has delegated to the Commissioner, the principal officer of the Immigration and Naturalization Service, authority to administer and enforce the Immigration and Nationality Act and all other laws relating to immigration, naturalization, and nationality as prescribed and limited by 28 CFR 0.105.

(1) *Office of the General Counsel.* Headed by the General Counsel, the office provides legal advice to the Commissioner, the Deputy Commissioner, and staff; prepares legislative reports; assists in litigation; prepares briefs and other legal memoranda when necessary; directs the activities of the regional counsel; oversees the professional activities of all Service attorneys assigned to field offices; and, makes recommendations on all personnel matters involving Service attorneys.

(2) *Office of Congressional Relations.* Headed by the Director of Congressional Relations, the office is responsible for establishing and maintaining effective liaison with the Congress, Department of Justice, and other agencies on such matters as bills, mark-ups, hearings, and Congressional inquiries.

(3) *Office of Public Affairs.* Headed by the Director of Public Affairs, the office is responsible for establishing and maintaining public affairs policy, serving as liaison with various constituent communities (intergovernmental, public, news organization, etc.) to communicate Service initiatives, such as naturalization and employer education, and producing public information products.

(4) *Office of Internal Audit.* Headed by the Director of Internal Audit, the office promotes economy, efficiency, and effectiveness within the Service by managing the Service's systems for resolving alleged mismanagement and misconduct by Service employees; reviewing and evaluating the efficiency and effectiveness of Service operations and programs; collecting and analyzing data to identify patterns of deficiencies or other weaknesses warranting investigative or audit follow-up; making recommendations on disciplinary policies and procedures of the Service; overseeing Service systems to eliminate fraud, waste, and abuse in the workplace; and acting as the Service's liaison with outside audit/inspection agencies. These duties are executed in coordination with other components of the Service and other Department of Justice components.

(b) *Office of the Deputy Commissioner.* Headed by the Deputy Commissioner, the office is authorized to exercise all power and authority of the Commissioner unless any such power or authority is required by law to be exercised by the Commissioner personally. The Deputy Commissioner advises and assists the Commissioner in formulating and implementing Service policies and programs, and provides supervision and direction to all organizational units of the Service. The Deputy Commissioner also performs such other duties as may be assigned from time-to-time by the Commissioner. In addition, the Deputy Commissioner supervises the four Executive Associate Commissioners for Programs, Field Operations, Policy and Planning, and Management.

(c) *Office of the Executive Associate Commissioner for Programs*—(1) *General.* (i) Headed by the Executive Associate Commissioner for Programs, the office is responsible for policy development and review as well as integration of the Service's enforcement and examinations programs. This office has primary responsibility for the planning, oversight, and advancement of programs engaged in interpretation of the immigration and nationality laws and the development of regulations to assist in activities, including:

(A) The granting of benefits and privileges to those qualified to receive them;

(B) Withholding of benefits from those ineligible;

(C) Control of the borders and prevention of illegal entry into the United States;

(D) Detection, apprehension, detention, and removal of illegal aliens; and

(E) Enforcement of employer sanctions and other provisions of immigration-related law.

(ii) In addition to overseeing enforcement and examination policy matters, the Office of Programs is also responsible for immigration records. The Executive Associate Commissioner for Programs promulgates policy, provides direction and supervises the activities of the Offices of Enforcement and Examinations.

(2) *Office of Enforcement.* Headed by the Associate Commissioner for Enforcement, the office is responsible for the planning, oversight, and advancement of enforcement programs engaged in interpretation of the immigration and nationality laws, and the development of Service policies to assist enforcement activities. The Associate Commissioner for Enforcement directly supervises the Headquarters:

(i) Border Patrol Division;

(ii) Investigations Division;

(iii) Detention and Deportation Division;

(iv) Intelligence Division; and

(v) Asset Forfeiture Office.

(3) *Office of Examinations.* Headed by the Associate Commissioner for Examinations, the office is responsible for the planning, oversight, and advancement of examinations programs engaged in interpretation of the immigration and nationality laws, and the development of Service policies to assist examinations activities. The

Office of Examinations is also responsible for all district and service center records and all records operations, except records policy. The Associate Commissioner for Examinations directly supervises the Headquarters:

(i) Adjudications and Nationality Division;

(ii) Inspections Division;

(iii) Service Center Operations Division;

(iv) Records Division; and

(v) Administrative Appeals Office.

(d) *Office of the Executive Associate Commissioner for Field Operations*—(1) *General.* (i) Headed by the Executive Associate Commissioner for Field Operations, the office is responsible for implementing policies related to the Service's field operations. This office has primary responsibility for oversight and coordination of all field operations relating to the administration of immigration law, including:

(A) The granting of benefits and privileges to those qualified to receive them;

(B) Withholding of benefits from those ineligible;

(C) Control of the borders and prevention of illegal entry into the United States;

(D) Detection, apprehension, detention, and removal of illegal aliens;

(E) Enforcement of employer sanctions and other provisions of immigration-related law; and

(F) Refugee processing, adjudication of relative applications/petitions filed by citizens and legal permanent residents, and overseas deterrence of alien smuggling and fraud activities.

(ii) The Executive Associate Commissioner for Field Operations provides direction to, and supervision of, the three Regional Directors (Eastern, Central, and Western), and the Director, International Affairs.

(2) *Offices of the Regional Directors.* (i) *General.* Headed by regional directors, these offices are responsible for directing all aspects of the Service's field operations within their assigned geographic areas of activity. The regional directors provide general guidance and supervision to:

(A) Service districts within their regions; and

(B) Border Patrol sectors within their regions.

(ii) *Service districts.* Headed by district directors, who may be assisted by deputy district directors, these offices are responsible for the administration and enforcement of the Act and all other laws relating to immigration and naturalization within their assigned geographic areas of activity, unless any such power and authority is either required to be exercised by higher authority or has been exclusively delegated to another immigration official or class of immigration officer. District directors are subject to the general supervision and direction of their respective regional director, except that district directors outside of the United States are subject to the general supervision and direction of the Director for International Affairs.

(iii) *Border Patrol Sectors.* Headed by chief patrol agents who may be assisted by deputy chief patrol agents, these offices are responsible for the enforcement of the Act and all other laws relating to immigration and naturalization within their assigned geographic areas of activity, unless any such power and authority is required to be exercised by higher authority or has been exclusively delegated to another immigration official or class of immigration officer. Chief patrol agents are subject to the general supervision and direction of their respective regional director.

(3) *Office of International Affairs.* Headed by a Director of International Affairs, the office is responsible for ensuring that the foreign affairs mission of the Service reflects a full partnership between the Service, the Executive Branch agencies, and the Congress, the administration of U.S. immigration law on foreign soil, and the U.S. domestic asylum program. The Director for International Affairs provides general guidance and supervision to:

(i) Foreign districts;

(ii) Asylum Division; and

(iii) Refugee and Parole Division.

(e) *Office of the Executive Associate Commissioner for Policy and Planning.* Headed by the Executive Associate Commissioner for Policy and Planning, the office is responsible for directing and coordinating Servicewide policy and planning activities, and conducting analysis of these as well as other issues which cross program lines or have national implications.

(f) *Office of the Executive Associate Commissioner for Management*—(1) *General.* Headed by the Executive Associate Commissioner for Management, the office is responsible for planning, developing, directing, coordinating, and reporting on Service management programs and activities. The Executive Associate Commissioner for Management promulgates Servicewide administrative policies and coordinates all financial, human resource, administrative, and information resources management functions. The Executive Associate Commissioner for Management provides direction to, and supervision of, the:

(i) Office of Security;

(ii) Office of Equal Employment Opportunity;

(iii) Office of Human Resources and Administration;

(iv) Office of Finance;

(v) Office of Information Resources Management;

(vi) Office of Files and Forms Management; and

(vii) Administrative Centers.

(2) *Office of Security.* Headed by the Director of Security, the office is responsible for all security programs of the Service, including those related to personnel, physical, information and documents, automated data processing, telecommunications, and emergency preparedness planning.

(3) *Office of Equal Employment Opportunity.* Headed by the Director of Equal Employment Opportunity, the office is responsible for developing, planning, directing, managing, and coordinating equal employment opportunity programs and evaluating programs relating to the civil rights of all employees and applicants to ensure compliance with the law. This office also coordinates the affirmative employment and discrimination complaints programs of the Service and those of the Department of Justice as they apply to the Service.

(4) *Office of Human Resources and Administration.* Headed by the Associate Commissioner for Human Resources and Administration, the office is responsible for planning, developing, directing, managing, and coordinating the personnel, career development, contracting, facilities, and administrative support programs of the Service. The Associate Commissioner for Human Resources and Administration directly supervises the:

(i) Human Resources and Development Division; and

(ii) Administration Division.

(5) *Office of Finance.* Headed by the Associate Commissioner for Finance, the office is responsible for planning, developing, directing, managing, coordinating, and reporting on, the budget, accounting, and resource management programs of the Service. The Associate Commissioner for Finance directly supervises the:

(i) Budget Division; and

(ii) Financial Management Division.

(6) *Office of Information Resources Management.* Headed by the Associate Commissioner for Information Resources Management, the office is responsible for planning, developing, directing, managing, coordinating, and reporting on Service information

management programs and activities including automated data processing, telecommunications, and radio communications. The Associate Commissioner for Information Resources Management directly supervises the:

(i) Data Systems Division; and

(ii) Systems Integration Division.

(7) *Office of Files and Forms Management.* Headed by the Director of Files and Forms Management, the office is responsible for the administration of records policy, and correspondence files. The Director of Files and Forms Management directly supervises the:

(i) National Records Center;

(ii) National Forms Center;

(iii) Systematic Alien Verification Entitlement (SAVE) Program; and

(iv) Centralized Freedom of Information Act and Privacy Act (FOIA/PA) program.

(8) *Office of the Administrative Center.* Headed by directors, these offices are responsible for administrative servicing, monitoring, and liaison functions within their respective geographic boundaries. The directors direct and supervise regional staff who administer human resources, administrative, information systems, security, and financial functions.

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

4. Section 103.1 is revised to read as follows:

### § 103.1 Delegations of authority.

(a) *Deputy Commissioner.* Without divesting the Commissioner of any of the powers, duties, and privileges delegated by the Attorney General, coextensive authority is delegated to the Deputy Commissioner. The Deputy Commissioner is delegated responsibility for providing overall supervision and direction to the four Executive Associate Commissioners of the Service.

(b) *General Counsel*—(1) *General.* Under the direction and supervision of the Commissioner, the General Counsel is delegated the authority to carry out the duties of the chief legal officer for the Service, and is assisted by the deputy general counsel(s) and staff. The General Counsel advises the Commissioner, the Deputy Commissioner, and staff on legal matters; prepares legislative reports; and assists in litigation. The General Counsel is delegated the authority to oversee the professional activities of all Service attorneys assigned to field offices and to make recommendations to the Department of Justice on all personnel matters involving Service attorneys, including attorney discipline which requires final action or approval by the Deputy Attorney General or other designated Department of Justice official. The General Counsel is delegated authority to perform the functions conferred upon the Commissioner with respect to production or disclosure of material in Federal and state proceedings as provided in 28 CFR 16.24(a).

(2) *Regional Counsel.* In addition to other legal activities performed under the direction and supervision of the General Counsel, Regional Counsel are delegated authority within their respective regional areas, concurrent with that of the General Counsel, to perform the functions conferred upon the Commissioner with respect to production or disclosure of material in Federal and state proceedings as provided in 28 CFR 16.24(a).

(c) *Director of Congressional Relations.* Under the direction and supervision of the Commissioner, the Director of Congressional Relations is delegated authority to respond to Congressional inquiries and advise the Commissioner and staff concerning legislative matters of the Service.

(d) *Director of Public Affairs.* Under the direction and supervision of the Commissioner, the Director of Public Affairs is delegated authority to direct and coordinate public affairs policy, public information, news releases, public liaison, and outreach; to advance public affairs and Service initiatives such as naturalization and employer education; and to produce information products.

(e) *Director of Internal Audit.* Under the direction and supervision of the Commissioner, the Director of the Office of Internal Audit is delegated authority to plan, direct, and coordinate the Service's internal audit program and compliance review program; to initiate and to conduct or direct the conduct of investigations of alleged mismanagement by Service employees; to initiate and to conduct or direct the conduct of investigations of alleged misconduct by Service employees, subject to agreements with the Department's Office of Professional Responsibility and Office of Inspector General (OIG); to exercise those powers and authorities necessary to investigate matters which are material and relevant to the administration of the Service, including the power and authority to administer oaths and to take and consider evidence; to collect information concerning the efficiency and effectiveness of Service operations and programs and Service systems to eliminate fraud, waste, and abuse in the workplace; and to act as the Service's liaison with outside audit/inspection agencies.

(f) *Executive Associate Commissioner for Programs*—(1) *General.* Under the direction and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Programs is delegated authority for policy development, review and integration of the Service's enforcement and examinations programs, and for providing general direction to, and supervision of, the Associate Commissioners for Enforcement and Examinations.

(2) *Associate Commissioner for Enforcement*—(i) *General.* Under the direction and supervision of the Executive Associate Commissioner for Programs, the Associate Commissioner for Enforcement is delegated authority and responsibility for program and policy planning, development, coordination, evaluation, and staff direction to the Border Patrol, Investigations, Detention and Deportation, Intelligence, and Asset Forfeiture programs, and to impose administrative fines, penalties, and forfeitures under sections 274, 274A and 274C of the Act. The Associate Commissioner for Enforcement is responsible for providing general direction and supervision to the:

(A) Assistant Commissioner for Border Patrol;

(B) Assistant Commissioner for Investigations;

(C) Assistant Commissioner for Detention and Deportation;

(D) Assistant Commissioner for Intelligence; and

(E) Director of Asset Forfeiture.

(ii) *Director of Asset Forfeiture.* Under the direction and supervision of the Associate Commissioner for Enforcement, the Director of Asset Forfeiture is delegated the authority to direct and coordinate the Service program under section 274(b) of the Act which provides for the seizure and forfeiture of conveyances used in violation of section 274(a) of the Act.

(3) *Associate Commissioner for Examinations.* (i) *General.* Under the direction and supervision of the Executive Associate Commissioner for Programs, the Associate Commissioner for Examinations is delegated authority

and responsibility for program and policy planning, development, coordination, evaluation, and staff direction to the Adjudications and Nationality, Inspections, Administrative Appeals, Service Center Operations, and Records programs, and to direct and supervise the:

(A) Assistant Commissioner for Adjudications and Nationality;
(B) Assistant Commissioner for Inspections;
(C) Assistant Commissioner for Service Center Operations;
(D) Assistant Commissioner for Records; and
(E) Director of Administrative Appeals.

(ii) *Administrative Fines.* The Associate Commissioner for Examinations is delegated the authority to impose administrative fines under provisions of the Act in any case which is transmitted to the National Fines Office by a district director.

(iii) *Appellate Authorities.* In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on;

(A) Breaching of bonds under § 103.6(e);

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act;

(C) Indochinese refugee applications for adjustment of status under § 245.2 (a)(4) and (e) of this chapter;

(D) Revoking approval of certain petitions under § 205.2 of this chapter.;

(E) Applications for permission to reapply for admission to the United States after deportation or removal under § 212.2 of this chapter;

(F) Applications for waiver of certain grounds of excludability under § 212.7(a) of this chapter;

(G) Applications for waiver of the two-year foreign residence requirement under § 212.7(c) of this chapter;

(H) Petitions for approval of schools under § 214.3 of this chapter;

(I) Decisions of district directors regarding withdrawal of approval of schools for attendance by foreign students under § 214.4 of this chapter;

(J) Petitions for temporary workers or trainees and fiancees or fiances of U.S. citizens under §§ 214.2 and 214.6 of this chapter;

(K) Applications for issuance of reentry permits under § 223.1 of this chapter;

(L) Applications for refugee travel documents under § 223a.4 of this chapter;

(M) Applications for benefits of section 13 of the Act of September 11, 1957, as amended, under § 245.3 of this chapter;

(N) Adjustment of status of certain resident aliens to nonimmigrants under § 247.12(b) of this chapter;

(O) Applications to preserve residence for naturalization purposes under § 316a.21(c) of this chapter;

(P) Applications for certificates of citizenship under § 341.6 of this chapter;

(Q) Administration cancellation of certificates, documents, and records under § 342.8 of this chapter;

(R) Applications for certificates of naturalization or repatriation under § 343.1 of this chapter;

(S) Applications for new naturalization or citizenship papers under § 343a.1(c) of this chapter;

(T) Applications for special certificates of naturalization under § 343b.11(b) of this chapter;

(U) Applications by organizations to be listed on the Service listing of free legal services program and removal therefrom under Part 292a of this chapter;

(V) Petitions to classify Amerasians under Public Law 97–359 as the children of United States citizens;

(W) Revoking approval of certain petitions, as provided in §§ 214.2 and 214.6 of this chapter;

(X) Orphan petitions under § 204.1(b) of this chapter;

(Y) Applications for advance process of orphan petitions under § 204.1(b)(3) of this chapter;

(Z) Invalidation of a temporary labor certification issued by the governor of Guam under § 214.2(h)(3)(v) of this chapter;

(AA) Application for status as temporary or permanent resident under §§ 245a.2 or 245a.3 of this chapter;

(BB) Application for status as temporary resident under § 210.2 of this chapter;

(CC) Termination of status as temporary resident under § 210.4 of this chapter;

(DD) Termination of status as temporary resident under § 245a.2 of this chapter;

(EE) Application for waiver of grounds of excludability under Parts 210, 210a, and 245a of this chapter;

(FF) Application for status as permanent resident under § 245.6 of this chapter;

(GG) Petition for temporary or permanent resident status as a Replenishment Agricultural Worker (RAW) under Part 210a of this chapter;

(HH) Application for Temporary Protected Status under part 240 of this chapter;

(II) Petitions for special immigrant juveniles under part 204 of this chapter;

(JJ) Applications for adjustment of status under part 245 of this title when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act;

(KK) Petition for Armed Forces Special Immigrant under § 204.9 of this chapter;

(LL) Request for participation as a regional center under § 204.6(m) of this chapter; and

(MM) Termination of participation of regional center under § 204.6(m) of this chapter.

(iv) *Director of the National Fines Office.* Under the direction of the Assistant Commissioner for Inspections, the Director of the National Fines Office has program, administrative, and supervisory responsibility for all personnel assigned to the National Fines Office. The Director of the National Fines Office is delegated the authority by the Associate Commissioner for Examinations to impose fines, penalties, and liquidated damages under sections 214, 231, 233, 237, 238, 239, 243, 251, 252, 253, 254, 255, 256, 257, 258, 271, 272, 273 and 274C of the Act.

(v) *Service Center directors.* Under the direction and supervision of the Assistant Commissioner for Service Center Operations, the service center directors are delegated the authority to control all activities conducted within their offices and supervisory responsibility for all personnel assigned to their offices. Center directors are delegated the authority to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers pursuant to part 208 and § 253.1(f) of this chapter, or exclusively delegated to district directors.

(g) *Executive Associate Commissioner for Field Operations*—(1) *General.* Under the direction and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Field Operations is delegated authority and responsibility for implementing policies of the Service's field operations, and for providing general direction to and supervision of the regional directors and the Director of International Affairs.

(2) *Regional directors*—(i) *General.* Under the direction and supervision of the Executive Associate Commissioner for Field Operations, the regional directors are delegated authority and responsibility for the Service's field operations within their respective geographical areas, and for providing direction to and supervision of the

district directors and chief patrol agents within their respective regions.

(ii) *District directors.* (A) District directors of offices located within the United States are under the direction and supervision of the regional director. District directors of foreign offices are under the direction and supervision of the Director of International Affairs. District directors are delegated authority to control all activities conducted within their offices and to supervise all personnel, except Service attorneys, assigned to their offices.

(B) District directors are delegated the authority to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers pursuant to part 208 and § 253.1(f) of this chapter, or exclusively delegated to service center directors, to initiate any authorized proceeding in their respective districts, and to exercise the authorities under §§ 242.1(a), 242.2(a) and 242.7 of this chapter without regard to geographical limitations. District directors are delegated authority to conduct the proceeding provided for in § 252.2 of this chapter.

(C) Applications filed for special agricultural worker or legalization status pursuant to sections 210 and 245a of the Act, respectively, may be approved by the district director having jurisdiction of the office where a second interview is required by the service center, if the alien in the second interview can establish eligibility for approval. District directors may deny applications for special agricultural worker or legalization status at offices under their jurisdiction.

(D) *Officers in charge—(1) General.* Under the direction and supervision of the district director, officers in charge are delegated authority to control all activities conducted within their offices and to supervise all personnel assigned to their office. Officers in charge direct inspection activities at ports-of-entry and the authorization of extensions of nonimmigrant admission periods and of voluntary departure prior to the commencement of deportation hearings. The Officers in charge in the places enumerated in § 212.1(i) of this chapter are delegated the authority to act on requests for waiver of visa and passport requirements under the provisions of section 212(d)(4)(A) of the Act.

(*2*) The offices located in Oranjestaad, Aruba; Calgary, Alberta, Canada; Edmonton, Alberta, Canada; Freeport, Bahamas; Hamilton, Bermuda; Nassau, Bahamas; Shannon, Ireland; Toronto, Ontario, Canada; Vancouver, British Columbia, Canada; Victoria, British Columbia, Canada; Winnipeg, Manitoba, Canada; Dublin, Ireland; and such other preinspection or preclearance sites as the Service may establish in the future, are delegated authority to perform the function of preinspection of passengers and crews on aircraft and surface vessels, as appropriate, which are departing directly to the United States mainland.

(*3*) The Officer in charge of the office in Montreal, Canada, is authorized to perform preinspection of passengers and crew of aircraft departing directly to the United States mainland and to authorize or deny waivers of grounds of excludability under section 212 (h) and (i) of the Act; also, to approve or deny applications for permission to reapply for admission to the United States after deportation or removal, when filed in conjunction with an application for waiver of grounds of excludability under section 212 (h) or (i) of the Act.

(iii) *Chief patrol agents.* Under the direction and supervision of a regional director, chief patrol agents are delegated authority to direct the Border Patrol activities of the Service within their respective sectors, including exercising the authority in section 242(b) of the Act to permit aliens to depart voluntarily from the United States prior to commencement of a hearing.

(3) *Director of International Affairs—* (i) *General.* Under the direction and supervision of the Executive Associate Commissioner for Field Operations, the Director of International Affairs is delegated authority to direct and supervise the foreign office district directors, to maintain the integrity and efficiency of the Service's international operations, and to administer programs related to refugee, asylum, and parole benefits. The Director of International Affairs is also responsible for the direction and supervision of overseas preinspection at sites, if any, for which the Commissioner has specifically delegated inspection authority to the Office of International Affairs. The Director serves as the principal liaison with foreign governments and other agencies of the United States in overseas locations.

(ii) *Asylum Officers.* Asylum officers serve under the supervision and direction of the Director of International Affairs, and shall be specially trained as required in § 208.1(b) of this chapter. Asylum officers are delegated the authority to hear and adjudicate applications for asylum and for withholding of deportation, as provided under part 208 and § 253.1(f) of this chapter.

(iii) *Officer in Charge.* The officers in charge of the offices located at Athens, Greece; Mexico City, Mexico; Ciudad Juarez, Mexico; Rome, Italy; Frankfurt, Germany; Moscow, Russia; Vienna, Austria; Tegucigalpa, Honduras; Bangkok, Thailand; Hong Kong, BCC; London, England; Manila, Philippines; Monterrey, Mexico; Nairobi, Kenya; New Delhi, India; Seoul, Korea; Singapore, Republic of Singapore; Tijuana, Mexico; Port-au-Prince, Haiti; Karachi, Pakistan; and such other overseas suboffices as the Service may establish in the future, are delegated authority to perform the following functions:

(A) Authorize waivers of grounds of excludability under sections 212 (h) and (i) of the Act;

(B) Adjudicate applications for permission to reapply for admission to the United States after deportation or removal, if filed by an applicant for an immigrant visa in conjunction with an application for waiver of grounds of excludability under section 212 (h) or (i) of the Act, or if filed by an applicant for a nonimmigrant visa under section 101(a)(15)(K) of the Act;

(C) Approve or deny visa petitions for any relative;

(D) Approve recommendations made by consular officers for waiver of grounds of excludability in behalf of nonimmigrant visa applicants under section 212(d)(3) of the Act and concur in proposed waivers by consular officers of the requirement of visa or passport by a nonimmigrant on the basis of unforeseen emergency in cases in which the Department of State had delegated recommending power to the consular officers;

(E) Exercise discretion to grant or deny applications for the benefits set forth in sections 211 and 212(c) of the Act;

(F) Process Form I–90 applications and deliver duplicate Forms I–551;

(G) Process Form N–565 applications and deliver certificates issued thereunder; and

(H) Grant or deny applications of aliens seeking classification as refugees under section 207 of the Act.

(h) *Executive Associate Commissioner for Policy and Planning.* Under the direction and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Policy and Planning is delegated the authority to oversee the development and coordination of long-range planning activities, and policy formulation, codification, and dissemination within the Agency. The Executive Associate Commissioner is also responsible for informing and advising the Commissioner and the Deputy Commissioner on other issues which cross program lines or bear inter-

agency implications. The Executive Associate Commissioner also serves as liaison with, and representative of, the Service to other organizations engaged in policy development in matters affecting the mission of the Service, research and statistics, and the exchange of statistical, scientific, technological data and research.

(i) *Executive Associate Commissioner for Management*—(1) *General.* Under the direction and supervision of the Deputy Commissioner, the Executive Associate Commissioner for Management is delegated authority to plan, direct, and manage all aspects of the administration of the Service. The delegation includes the authority to develop and promulgate administrative policies and programs for all financial, human resource, administrative, and information resource matters of the Service. The Executive Associate Commissioner for Management is delegated the authority to settle tort claims of $25,000 or less than 28 U.S.C. 2672, and to compromise, suspend, or terminate collection of claims of the United States not exceeding $100,000 (exclusive of interest) under 31 U.S.C. 3711. The Executive Associate Commissioner for Management supervises the Directors of Security, Equal Employment Opportunity, and Files and Forms Management, the Associate Commissioner for Human Resources and Administration, the Associate Commissioner for Finance, the Associate Commissioner for Information Resources Management, and the Directors, Administrative Centers.

(2) *Director of Security.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Director of the Office of Security is delegated authority to develop policy, plan, direct, and coordinate the Service's security program. The Security program includes the application of safeguards in program areas of personnel security, physical security, information and document security, automated data processing and telecommunications security, and contingency planning related to threat, loss, or other serious emergency in any of these areas.

(3) *Director of Equal Employment Opportunity.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Director of Equal Employment Opportunity is delegated authority to develop policies and to implement and direct the Service's programs relating to equal employment opportunity for all employees and applicants. The Director is responsible for the Service's efforts to comply with provisions of the Civil Rights Act of 1964 and Department of Justice programs and directives affecting discrimination in employment. The Director supervises, coordinates, directs, and evaluates the affirmative employment and discrimination complaint program of the Service.

(4) *Director of Files and Forms Management.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Director of Files and Forms Management is delegated authority to develop policies, plan, coordinate, evaluate, counsel, and direct the Service's National Records Center, Forms Center, SAVE Program, centralized FOIA/PA, records policy, and correspondence files programs.

(5) *Associate Commissioner for Human Resources and Administration.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Associate Commissioner for Human Resources and Administration is delegated authority to develop policies, plan, develop, coordinate, evaluate, counsel, and direct the personnel, career development, contracting, engineering, facility, and administrative programs of the Service. The Associate Commissioner for Human Resources and Administration provides direction to, and supervision of, the:

(i) Assistant Commissioner for Human Resources and Development; and

(ii) Assistant Commissioner for Administration.

(6) *Associate Commissioner for Finance.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Associate Commissioner for Finance is delegated authority to develop policies, plan, develop, coordinate, evaluate, counsel, and direct the Service's resource requirements and utilization. The Associate Commissioner for Finance is responsible for all aspects of financial management, including budgeting, reporting, internal controls, and analysis. The Associate Commissioner for Finance is responsible for the presentation of internal reports to management, the preparation of external reports and certifications required by statute or regulation, and the representation of the Service before the Congress, and agencies of the Executive Branch on matters related to financial activities. The Associate Commissioner for Finance is also delegated authority to settle claims of $10,000 or less under 28 U.S.C. 2672 and to compromise, suspend, or terminate collection of claims of the United States not exceeding $50,000 (exclusive of interest) under 31 U.S.C. 3711. The Associate Commissioner for Finance provides direction to, and supervision of, the:

(i) Associate Commissioner for Budget; and (ii) Assistant Commissioner for Financial Management.

(7) *Associate Commissioner for Information Resources Management.* Under the direction and supervision of the Executive Associate Commissioner for Management, the Associate Commissioner for Information Resources Management is delegated authority to develop policies, plan, develop, coordinate, evaluate, counsel, manage and direct the Service's Automated Data Processing, Telecommunication, Radio, and Electronic programs. The Associate Commissioner for Information Resources Management provides direction to, and supervision of, the:

(i) Assistant Commissioner for Data Systems; and

(ii) Assistant Commissioner for Systems Integration.

(8) *Directors of Administrative Centers.* Under the direction and supervision of the Executive Associate Commissioner for Management, the directors are delegated authority over the human resources, administrative, information resource, security, and financial activities of the Service within their respective area of responsibility. They are also delegated the authority to:

(i) Settle tort claims of $10,000 or less under 28 U.S.C. 2672; and

(ii) Compromise, suspend, or terminate collection of claims of the United States not exceeding $50,000 (exclusive of interest) under 31 U.S.C. 3711.

(j) *Immigration Officer.* Any immigration officer, immigration inspector, immigration examiner, adjudications officers, Border Patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention enforcement officer, detention guard, investigator, special agent, investigative assistant, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, chief legalization officer, supervisory legalization officer, legalization adjudicator, legalization officer and legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, or senior or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

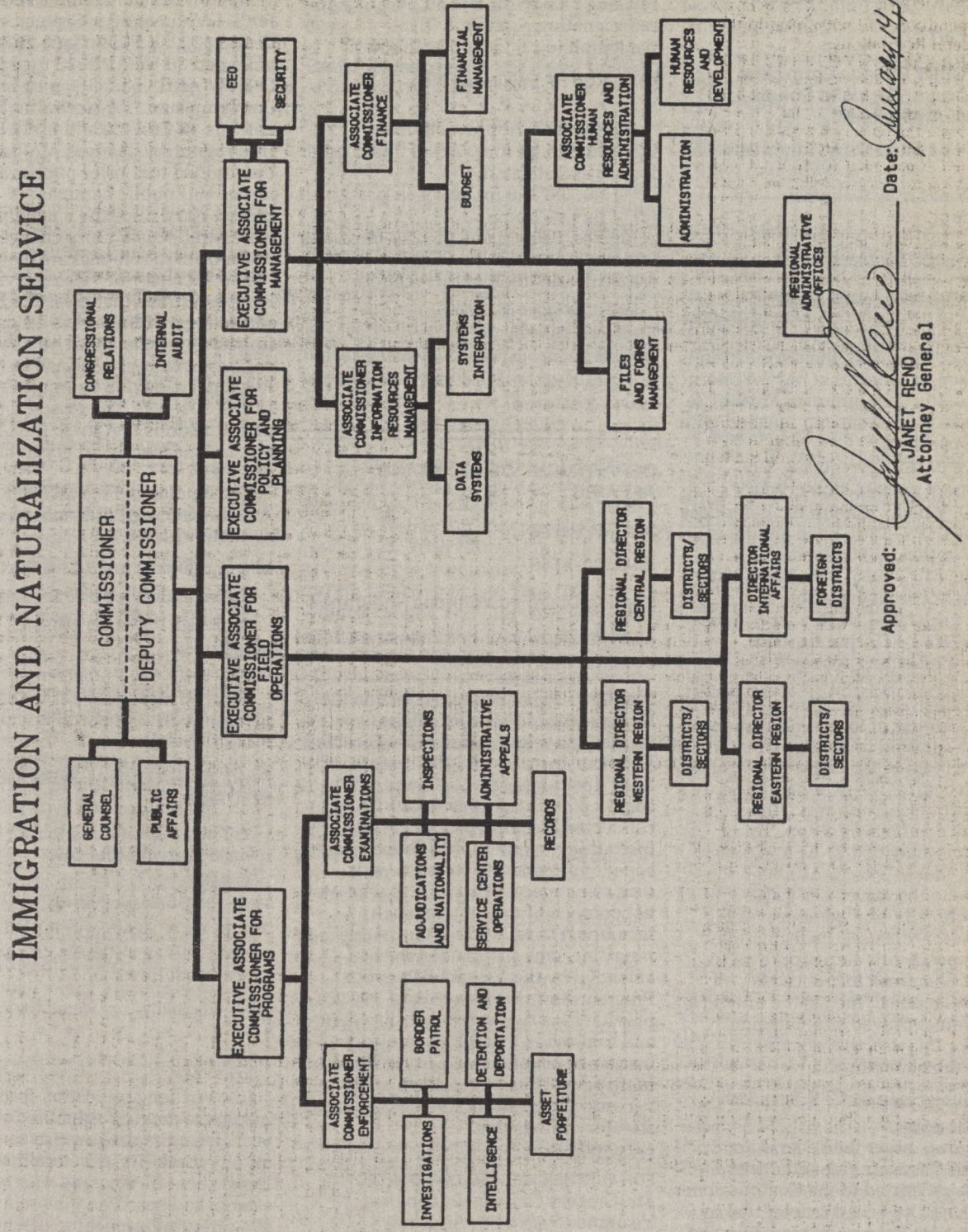
Dated: October 27, 1994.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

**Note:** Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 4410–10–M




Appendix A

[FR Doc. 94–28697 Filed 11–21–94; 8:45 am]

BILLING CODE 4410–10–C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 529

### Certain Other Dosage Form New Animal Drugs; Formalin Solution; Technical Amendment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to clarify approval of a supplemental new animal drug application (NADA) 140–989 filed by Western Chemical, Inc. This action is being taken to reflect that only Western Chemical, Inc., has approval for the use of formalin to treat shrimp infected with external parasites.

**EFFECTIVE DATE:** November 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1642.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 8, 1993 (58 FR 59168), FDA published a document reflecting approval of a supplement to NADA 140–989 filed by Western Chemical, Inc. The supplement provides for use of formalin solution (aqueous solution of 37 percent formaldehyde) in tanks, raceways, and ponds to control the external penaeid shrimp protozoa *Bodo* spp., *Epistylis* spp., and *Zoothamnium* spp. The regulations amended 21 CFR 529.1030 to reflect that approval. Although the preamble to the November 8, 1993, final rule specifically limited approval of Formalin for this use, the regulations did not specifically limit approval to Western Chemical, Inc. Because Western Chemical, Inc., is the only firm that has an approved supplemental NADA for this use, this document corrects that amendment.

### List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 529 continues to read as follows:

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

2. Section 529.1030 is amended by revising paragraph (b) and by redesignating paragraph (d) as paragraph (c)(3) to read as follows:

**§ 529.1030 Formalin solution.**

* * * * *

(b) *Sponsor.* Approval to firms identified in § 510.600(c) of this chapter for use as indicated:

(1) No. 050378 for use as in paragraph (c) of this section.

(2) Nos. 049968 and 051212 for use as in paragraphs (c)(1)(i), (c)(1)(ii), (c)(2)(i), (c)(2)(ii), and (c)(3) of this section.

Dated: October 26, 1994.

**Stephen F. Sunlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 94–28778 Filed 11–21–94; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 8

**RIN 2900–AF69**

### Service-Disabled Veterans' Insurance

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final regulations.

**SUMMARY:** This document amends the Department of Veterans Affairs regulations relating to Service-Disabled Veterans' Insurance (S–DVI) prefixed "RH" (pertaining to life insurance acquired by veterans with service-connected disabilities) and "ARH" (pertaining to gratuitous life insurance benefits provided to veterans with service-connected disabilities who are not competent to apply for such insurance) to reflect that the statute regarding such insurance has been amended by the Veterans' Benefits Programs Improvement Act of 1991 to provide for a two-year eligibility period and to provide that ARH gratuitous insurance benefits must be paid in one lump sum. These amendments are necessary to conform the regulations to statutory provisions.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory C. Hosmer, Senior Insurance Specialist/Attorney, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 951–5710 .

**SUPPLEMENTARY INFORMATION:** Section 201(b) of the "Veterans' Benefits Programs Improvement Act of 1991," Public Law 102–86, in part, amended 38 U.S.C. 1922 to increase the S–DVI eligibility period from one year to two years for veterans found to be eligible for S–DVI on or after September 1, 1991. Section 202 of Public Law 102–86 amended 38 U.S.C. 1922 to provide that S–DVI "ARH" benefits must be paid in one lump sum. VA, accordingly, hereby amends 38 CFR 8.0 and 8.116 to reflect these statutory changes. VA has determined that prior publication for notice and public comment is unnecessary since the amendments merely reflect statutory changes and are not subject to rule-making requirements.

The Secretary of Veterans Affairs hereby certifies that these final regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these final regulations merely reflect statutory changes.

The Catalog of Federal Domestic Assistance Program number for these regulations is 64.103.

### List of Subjects in 38 CFR Part 8

National Service Life Insurance.

Approved: November 8, 1994.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 8 is amended as set forth below:

## PART 8—NATIONAL SERVICE LIFE INSURANCE

1. The authority citation for Part 8 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

2. In § 8.0, paragraph (b)(1)(iii) is revised and an authority citation added to read as follows:

**§ 8.0 Eligibility.**

* * * * *

(b) * * *

(1) * * *

(iii) Written application for such insurance must be submitted within two years from the date service connection for any disability as determined by the Department of Veterans Affairs is established based on the promulgation of a rating subsequent to discharge. If it is shown by satisfactory evidence that the applicant was mentally incompetent during any part of the two-year period, application may be filed within two years after a guardian is appointed or within two years after the removal of such mental incompetency, whichever

is the earlier date. If service connection for a disability is based on a rating promulgated prior to September 1, 1991, then the written application must be submitted within one year of the date the rating establishing service connection for the disability was promulgated.

(Authority: 38 U.S.C. 1992)

* * * * *

3. Section 8.116 is amended as follows:

a. In paragraph 8.116(a)(1) the phrase "1-year" is removed and the phrase "two year" is added in place thereof. Also in paragraph 8.116(a)(1) the phrase "(this subparagraph is effective on or after Jan. 1, 1959)" is deleted.

b. In paragraph 8.116(a)(2) the phrase "one year" is removed and the phrase "two year" is added in place thereof.

c. In paragraphs 8.116(a)(3) and 8.116(b) the phrase "one year" is removed and the phrase "two years" is added in place thereof.

d. Paragraphs 8.116(d) and 8.116(e) are revised, and paragraphs 8.116(f) and 8.116(g) are removed to read as follows:

**§ 8.116 National Service Life Insurance granted under section 1922(b) of title 38 U.S.C.**

* * * * *

(d) Insurance granted under section 1922(b) shall be payable in one lump sum.

(e) The right of any beneficiary to payment shall be conditioned upon his or her being alive to receive such payment. No person shall have a vested right to insurance granted under section 1922(b) and no insurance shall be paid to the heirs, creditors, or legal representatives as such of the insured or of any beneficiary. If no person within the permitted class survives to receive the insurance or any part thereof, no payment shall be made.

* * * * *

e. Paragraph (h) is redesignated as paragraph (f), and

f. The following authority citation is added after the newly redesignated paragraph (f):

(Authority: 38 U.S.C. 1922)

[FR Doc. 94-28605 Filed 11-21-94; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 94-4; RM-8413 and RM-8460]**

### Radio Broadcasting Services; Walker and Nashwauk, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 270A to Walker, Minnesota, in response to a request from Roger Paskvan. *See* 59 FR 7238, February 15, 1994. The coordinates for Channel 270A at Walker are 47-07-08 and 94-33-22. There is a site restriction 3 kilometers (2 miles) northeast of the community. In response to a counterproposal filed by Ingstad Broadcasting, Inc., we shall allot Channel 275C3 to Nashwauk, Minnesota. The coordinates for Channel 275C3 are 47-22-36 and 93-09-48. Canadian concurrence has been received for the allotment of Channel 270A at Walker and Channel 275C3 at Nashwauk. With this action, this proceeding is terminated.

**DATES:** Effective Jan. 3, 1995. The window period for filing applications for Channel 270A at Walker, Minnesota, and Channel 275C3 at Nashwauk, Minnesota, will open on January 3, 1995, and close on February 3, 1995.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 94-4, adopted November 8, 1994, and released November 17, 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, DC. 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, DC 20037, (202) 857-3800.

**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 Minnesota, is amended by adding Channel 270A at Walker and by adding Nashwauk, Channel 275C3.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94-28767 Filed 11-21-94; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 93-28; RM-8172, RM-8299]**

### Radio Broadcasting Services; Colonial Heights, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Murray Communications, permittee of Station WLJQ (FM), Channel 290A, Colonial Heights, Tennessee, substitutes Channel 290C3 for Channel 290A at Colonial Heights and modifies Station WLJQ(FM)'s authorization to specify operation on Channel 290C3. *See* 58 FR 15462, March 23, 1993. Channel 290C3 can be allotted to Colonial Heights in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.7 kilometers (10.4 miles) southwest to accommodate Murray's desired site. The coordinates for Channel 290C3 are 36-21-11 and 82-35-24. The counterproposal filed by Murray (RM-8299), *see* 58 FR 59431, November 9, 1993, requesting the substitution of Channel 240C2 or Channel 240C3 for Channel 290A at Colonial Heights, Tennessee, is denied. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 3, 1995.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-28, adopted November 8, 1994, and released November 17, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, 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—[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 Tennessee, is amended by removing Channel 290A and adding Channel 290C3 at Colonial Heights.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–28833 Filed 11–21–94; 8:45 am]

BILLING CODE 6712–01–M

# Proposed Rules

Federal Register
Vol. 59, No. 224
Tuesday, November 22, 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

### Food and Consumer Service

### 7 CFR Parts 272, 274, and 277

[Amdt. No. 361]

RIN 0584–AB66

### Food Stamp Program; Payment of Certain Administrative Costs of State Agencies

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule reduces the Federal reimbursement rate for certain costs of State agencies in administering the Food Stamp Program. These changes are mandated by the Mickey Leland Childhood Hunger Relief Act of 1993 (Leland Act). The Leland Act reduces the Federal rate of reimbursement for fraud control, automated data processing development, and Systematic Alien Verification for Entitlements costs. This rule proposes to amend Food Stamp Program regulations to comply with Leland Act mandates on these funding provisions. In addition, this rule proposes to limit the period that a State agency may retroactively claim Federal funding of administrative costs for Food Stamp Program activities and allows the costs of certifying Aid to Families with Dependent Children households for food stamps to be charged to the Food Stamp Program for Federal reimbursement purposes.

**DATES:** Comments must be received on or before January 23, 1995, in order to be assured of consideration.

**ADDRESSES:** Comments should be addressed to Cecilia Fitzgerald, Section Chief, State Management Section, Program Accountability Division, Food and Nutrition Service (FNS), 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, room 905.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this proposed rulemaking should be addressed to Ms. Fitzgerald at the above address or by telephone at (703) 305–2386.

**SUPPLEMENTARY INFORMATION:**

### Classification

*Executive Order 12866*

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

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551 and information on State agency administrative matching grants for the Food Stamp Program is listed under No. 10.561. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Executive Order 12778*

This 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" section 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 Food Stamp Program the administrative procedures are as follows:

(1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15;

(2) For State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities);

(3) For program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

*Regulatory Flexibility Act*

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William Ludwig, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect the State and local agencies which administer the Food Stamp Program, by modifying the recordkeeping and reporting requirements applicable to them, and modifying the rates of Federal funding reimbursement for certain Food Stamp Program activities.

*Paperwork Reduction Act*

The requirement under the Leland Act to eliminate enhanced funding levels for certain Program activities, resulted in the need for the Department to revise forms FNS–366A, Budget Projection, and SF–269, Financial Status Report to include a column for reporting activities funded at the 50 percent funding rate. The SF–269 is a nationwide form required by OMB to be used by all government agencies to report financial status. The Department regulations at 7 CFR 3015.84 implemented this mandatory use of SF–269. The revisions have been sent to the Office of Management and Budget (OMB) and have been approved under OMB No. 0584–0083 for the FNS–366A and 0505–0008 for the SF–269. OMB also requires the use of form SF–270 when an agency wants to adjust the Program's financial status when the letter-of-credit is not used. The Department regulations at 7 CFR 3015.84(b) implemented this mandatory use of SF–270. A specific reference to the use of form SF–270 for Food Stamp Program purposes appears in § 277.11 of this proposed action. While the form is approved for use by OMB under OMB No. 0505–0008, the Department had inadvertently neglected to inform OMB of the burden hours associated with the use of this form for Food Stamp Program purposes. For Food Stamp Program purposes only, burden associated with SF–270 is estimated to average 1 hour per response. This estimated burden assumes that each respondent (53 State

welfare agencies) would submit a SF–270 at least three times annually. Thus, burden associated with OMB No. 0505–0008 will increase an estimated 159 hours annually. Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the increased burden estimate will be forwarded to OMB for inclusion into the overall burden estimates approved under OMB No. 0505–0008.

The public reporting burden discussed in the previous paragraphs for OMB Nos. 0584–0083 and 0505–0008 includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of the information collection requirements, including suggestions for reducing the burden, to the State Management Section, Program Accountability Division (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503, Attn: Wendy Taylor, Desk Officer for FNS.

The remaining provisions of this proposed rulemaking do not contain reporting or recordkeeping requirements subject to approval by OMB.

**Background**

The Leland Act (Pub. L. 103–66), signed on August 10, 1993, made a number of changes to the Food Stamp Act of 1977, as amended (the Food Stamp Act). This proposed rulemaking pertains to the administrative funding rate provisions established in Section 13961 of the Leland Act. These provisions are discussed in the following paragraphs.

Most State agency food stamp administrative costs are reimbursed by the Department's Food and Nutrition Service (FNS) at the Federal reimbursement rate of 50 percent. However, certain State agency activities are reimbursed at higher or "enhanced" rates, including fraud control, automated data processing (ADP) system development, and Systematic Alien Verification for Entitlement (SAVE). Under the current rules in 7 CFR 277.4, 277.15, 277.18, and 277.19 of Food Stamp Program Regulations, the Federal reimbursement rates for these activities were, until April 1, 1994, 75 percent for fraud control, 75 or 63 percent for ADP development, and 100 percent for SAVE.

Section 13961 of the Leland Act reduces the Federal reimbursement rate for fraud control, ADP development, and SAVE costs to the regular 50 percent Federal reimbursement level. The new rate was effective April 1, 1994 and applies to costs incurred on or after April 1, 1994.

Costs for a particular activity listed above for which a legal liability to pay existed at or before the close of business on March 31, 1994 may be claimed at the enhanced rate in effect at that time for the particular activity. Costs satisfying this condition are direct costs of goods and other property delivered to and accepted by the State or local agency; direct costs of services rendered to the State or local agency by employees, contractors, subrecipients and other payees; and associated indirect costs. All costs incurred on or after April 1, 1994, including costs for which obligations (encumbrances) but not liabilities to pay had been created before April 1, 1994, shall be claimed at the regular 50 percent Federal reimbursement rate unless written approval is subsequently received from FNS delaying the effective date, under certain specified circumstances, as explained below. If FNS grants such approval after the April 1, 1994 effective date, an appropriate adjustment in Federal funding will be made.

*Fraud Control Activity—Sections 277.4, 277.15, 272.2*

On August 10, 1979, the Department published a final rule at 44 FR 47037 which allows enhanced Federal reimbursement at the 75 percent rate for food stamp investigations and prosecutions. Food Stamp Program regulations also refer to Federal reimbursement as Federal Financial Participation (FFP). The Department set out the procedures for State agencies to receive 75 percent FFP for fraud control activity in that rule.

Section 13961 of the Leland Act amended Section 16 of the Food Stamp Act (7 U.S.C. 2025) to reduce the Federal reimbursement rate for fraud control activity from 75 percent to the regular 50 percent rate. The new rate is effective, by law, on April 1, 1994.

The new rate applies to food stamp investigations, prosecutions, administrative disqualification hearings, claims collections, and other allowable fraud control activity. It applies to all such costs incurred on or after April 1, 1994.

Under current rules at 7 CFR 277.15 of Food Stamp Program regulations, State agencies are required to submit a fraud control plan prior to receiving the enhanced funding. A plan is not currently required under the regulations for standard fraud funding. In Fiscal Year 1993, all State agencies submitted or extended their current fraud control plans and all State agencies received enhanced fraud funding. The Department is proposing to retain the requirement for a fraud control plan. The Department believes a fraud control plan is an important management tool in combatting fraud and an important component of the State agency's Plan of Operation. Further, because program benefits are fully funded by the Department, the Department has an interest in seeing that State agencies develop and implement an effective fraud control plan. However, the Department is proposing to drop the other specific requirements in § 277.15 (e.g., job title of Investigator, separate claims units, etc.) that pertain solely to enhanced funding for fraud control activity. Fraud control activity performed either by investigators or certification workers would be eligible for 50 percent funding.

The Department is also proposing to change the timing of the submission of the fraud control plan. Under current rules the Fraud Plan is submitted annually to FNS as an attachment to the FNS–366B, Program Activity Statement, 45 days after the end of the *State's* fiscal year. For most States which operate on a July 1 to June 30 fiscal year, this created an August 15 deadline for the fraud control plan. The Department is proposing a new § 272.2(e)(10) which would create a uniform due date of August 15th for all State agencies, regardless of their *State* fiscal year. The change will ensure that the fraud control plan is submitted prior to the start of the *Federal* fiscal year to which it applies, and it links submission of the fraud control plan with the submission of the Budget Projection Statement which is also due August 15. The Department believes the planning and budgeting of program activity should be linked since significant changes in planned activity may also mean changes in Federal funding. The Department is proposing to make conforming amendments to § 272.2(a), (c)(3), and (e)(3).

The Department further proposes to remove § 277.15 and incorporate the retained provisions elsewhere in the regulations. As noted above, the Department intends to retain the fraud control plan requirements in § 277.15(c) by incorporating these requirements into the Plan of Operation requirements at 7 CFR 272.2(d). The Department is also proposing to make conforming amendments to § 272.2(a)(2), (c)(3), and (d)(1), as appropriate, related to the due date of the plan and the relocation of the submission procedure from (c)(3) to (e)(10). The Department is not proposing

to create new requirements for the fraud control plan but to extend the current requirements and change the due date for this plan. The Department is proposing to reserve section 277.15 for future use.

Because the Department is proposing to move the fraud control plan submission requirement to § 272.2(d)(1)(xi), the current submission requirement in § 272.2(c)(3)(i) is being deleted. The deletion of paragraph (i) requires redesignating § 272.2(c)(3)(ii) as § 272.2(c)(3). Although the wording must be changed slightly to accomodate the restructuring of the paragraph, the requirements in the current § 272.2(c)(3)(ii) for submission of certain interagency agreements are unchanged.

The Department also intends to incorporate the provision regarding the funding rate for investigations of retail or wholesale food concerns currently found in § 277.15(f)(2), with a slight modification for clarity, into a new paragraph (e) of § 277.4.

*ADP Development—Sections 277.18, 274.12*

On June 11, 1982, the Department published a rule at 47 FR 25496 to implement section 129 of Public Law 96–249, which allowed enhanced FFP at the 75 percent level for costs associated with the planning, design, development, acquisition, or installation of ADP systems. On January 19, 1994, the Department published another final rule at 59 FR 2725 which reduced the Federal reimbursement rate to the 63 percent level effective October 1, 1991 for system proposals which were approved on or after November 28, 1990 unless the State had an approved Advance Planning Document and had submitted an Implementation Advance Planning Document with all the paperwork required for approval prior to November 28, 1990. The requirements and procedures for State agencies for system development at both the enhanced and standard rates of funding were codified in 7 CFR 277.18 of Food Stamp Program Rules.

Section 13961 of the Leland Act amends Section 16 of the Food Stamp Act to reduce the rate of Federal funding for system development to the regular 50 percent rate. The change in rates is effective, by law, on April 1, 1994.

The new rate applies to costs associated with the planning, design, development, acquisition, or installation of ADP systems. The change in the funding rate applies to new proposals as well as proposals approved prior to April 1, 1994 at the enhanced rate of either 75 or 63 percent. Previously approved projects will continue to be reimbursed at the enhanced rate for costs incurred, as defined in the Background section of this preamble, only through March 31, 1994. The Federal reimbursement rate will then drop to the regular 50 percent rate for the time remaining in the approval period. Modifications on or after April 1, 1994 to existing systems will be reimbursed at the regular 50 percent rate. All new systems developed on or after April 1, 1994 will be reimbursed at the regular 50 percent rate.

Under current rules at 7 CFR 277.18(c), the State agency is required to obtain prior written approval from FNS when it plans to acquire ADP equipment or services with enhanced Federal funding, regardless of the cost, or at the regular funding rate if total acquisition costs meet or exceed $500,000 in Federal and State funds. By dropping enhanced funding, the dollar threshold before FNS approval is required for all ADP systems would be the standard $500,000 threshold applicable to the regular funding requirements at § 277.18(c). As a result of this change, modifications or revisions to systems and services previously approved at the enhanced funding rate described at § 273.18(c) but which the total cost of the system does not meet or exceed $500,000 would no longer be subject to prior FNS approval beginning April 1, 1994, as long as the total cost of the system remains under $500,000.

Accordingly, the Department will retain most of the requirements of § 277.18, but is proposing modifications to that section. The proposed modifications include the elimination of requirements that pertain solely to enhanced funding and retention of the baseline requirements and dollar thresholds for FNS funding systems under the standard funding at § 277.18(b), (c)(1)–(c)(2), (d)(1)–(d)(2), (e)(1) and (p)(5). In addition, the Department proposes to retain certain conditions set forth in § 277.18(g)(1) and (g)(2) that are currently tied to receipt of enhanced funding since the Leland Act amendments made these conditions applicable to receipt of funding at the standard funding rate. Therefore, the Department is proposing that as a condition of receiving approval for funding at the 50 percent standard funding rate, the proposed ADP system must: (1) Assist the State agency in meeting the requirements of the Food Stamp Act; (2) meet the Model Plan requirements specified in § 272.10 of this part; (3) provide for more efficient and effective administration of the program; and (4) be compatible with other such systems used in the administration of State agency plans under the Aid to Families with Dependent Children (AFDC) program. Accordingly, the Department proposes to amend § 277.18(g)(1) and (g)(2) to set out these conditions and to revise the heading of the section to read "Conditions for Receiving FFP." The Department is further proposing to extend the requirements at § 277.18(g)(3) to all ADP systems. That section currently requires that the proposed ADP systems receiving enhanced funding be Statewide and integrated with AFDC, unless the State agency can demonstrate that a local, dedicated or single function system will provide for more efficient and effective administration of the program. The Department is proposing to modify this requirement so it applies to all ADP systems regardless of funding level.

The Department is also proposing to make conforming amendments to § 274.12(k) to reflect the elimination of enhanced funding for the development of electronic benefit transfer (EBT) systems which are components of complete ADP systems to be developed in accordance with § 277.18(g).

*SAVE—Section 277.19*

On October 7, 1988 at 53 FR 39433, the Department published a rule which authorized 100 percent Federal funding for State and local agency costs incurred in the verification of the documented alien status of Food Stamp Program applicants through the SAVE program. The requirements to receive the enhanced funding are at § 277.19.

Section 13961 of Leland Act amends Section 16 of the Act (7 U.S.C. 2025) to reduce Federal funding for SAVE activity from the 100 percent reimbursement rate to the regular 50 percent rate. The change in rates is effective, by law, on April 1, 1994.

The new rate applies to State and local agency costs incurred in the verification of the documented alien status of Food Stamp Program applicants through the SAVE program. The current rule at § 272.11(e) requires State agencies to submit a SAVE plan as an attachment to the State agency's Plan of Operation prior to receiving funding. The current rule at § 277.19 sets forth the required conditions for obtaining 100 percent FFP for SAVE. The Department is proposing to retain the current requirement for a SAVE plan at § 272.11 but is proposing to delete § 277.19.

The current rule at 7 CFR 277.19 requires FNS approval prior to acquisition of any ADP equipment for SAVE. The proposal to eliminate 7 CFR 277.19 modifies this requirement so that

ADP equipment for SAVE would require prior approval by FNS only if the cost is above the cost thresholds in § 277.18. Under current rules in § 277.19, non-ADP equipment for SAVE having a net unit cost of $25,000 or more must receive prior FNS approval. However, with the elimination of § 277.19, the net acquisition cost threshold in Section (B)(3) of Appendix A to 7 CFR Part 277 would apply. This provision provides that prior FNS approval would be required for the acquisition of equipment having a useful life of more than one year and a net acquisition cost of more than $5,000 per unit after allocation to FNS as projected for one year after purchase.

**State Agency Implementation**

To implement this provision as of April 1, 1994 with minimum disruption to the Program, State agencies may wish to begin taking appropriate steps early. State agencies may wish to obtain the additional State funding from their State legislatures to offset the reduction in the Federal rate of reimbursement, cut back total administrative expenses prior to Federal cost sharing as of April 1, 1994, reallocate resources to or realign functions to maintain current levels of effort and to ensure the efficiency and effectiveness of overall operations.

*Delaying the Effective Date*

Section 13971 of the Leland Act allows the April 1, 1994 effective date for the change in the Federal reimbursement rates to be delayed by the Secretary of Agriculture in the case where a State's legislature meets biennially and is not scheduled to meet in calendar year 1994. A delay may be obtained for such a State only if the State demonstrates to the satisfaction of the Secretary that there is no mechanism for appropriating additional State funds prior to the next legislative session.

It is the Department's intent that State agencies submit their requests to delay the effective date early, and not wait for the completion of the rulemaking process. It is in the State agency's interest to apply early for a delay in the effective date so a decision on the State agency's request may be made promptly. To allow adequate time for the review of these requests prior to the effective date, FNS instructed its regional offices to notify State agencies that they would need to submit their requests to FNS by December 31, 1993. State agencies were informed of this deadline in letters which were issued by FNS regional offices during the last week of October 1993 and the first week of November. The Department will, however, consider requests submitted after the deadline.

A final rule will not be published prior to the April 1, 1994 effective date in the Leland Act. The Department has made decisions on requests for a delay of the effective date based on the policy set out in the previous notifications to the States and reflected in the following paragraphs of this section of the preamble. Comments on the proposed policy are welcomed.

As stated in the previous paragraph, a State agency which believes it meets the above criteria for a delay of the effective date was instructed to submit its request to FNS by December 31, 1993 to allow for adequate time for FNS to review the request prior to the April 1, 1994 effective date. The Department required that the request contain the following:

(1) Documentation showing that the State legislature meets only biennially;

(2) Documentation showing that the State legislature does not meet in calendar year 1994;

(3) Certification by the State's chief legal officer, along with any supporting documentation, that there is no mechanism under the State constitution and laws for appropriating funding prior to the next regular legislative session;

(4) Information as to when the next regular legislative session is scheduled to start and, if available, is expected to end.

The issue of whether a State's laws permit the appropriation of funds prior to the next regular legislative session is a legal question. State agencies must provide supporting documentation where appropriate such as specific provisions of law dealing with when the State legislature is scheduled to meet in a regular session, and with the appropriation process. The wording of the Leland Act essentially requires State agencies to provide proof that something does not exist—that no mechanism for appropriating funds prior to the next regular legislative session exists under the State's constitution and laws. However, it would be too burdensome for FNS to require that a State agency provide FNS a complete set of its laws as proof that no such mechanism exists.

However, in all cases, FNS needs some assurance that a thorough and accurate review of State law has been made. Accordingly, the Department proposes that a signed statement from the State's chief legal officer—the Attorney General or equivalent official—certifying that no such mechanism exists with brief supporting documentation, if any, should suffice in most cases. The Department believes it is appropriate and necessary for State agencies to provide such a certification regarding the State's laws.

It should be noted here that the Leland Act specifies that there be no mechanism for appropriating funding prior to the next regular legislative session in order to qualify for a delay of the effective date. The language in the Act refers to an appropriating mechanism. If the State legislature fails to appropriate the additional State funds in a regular session, no delay in the effective date will be granted. Also, the Leland Act does not authorize a delay in the effective date if a State legislature is scheduled to meet in regular session in calendar year 1994, but sometime after April 1, 1994.

For some State agencies, the State legislature may not be scheduled to meet in regular session during calendar year 1994, but the State's laws allow the State legislature to be called into special session or provide other means (other than a special session) by which the State may appropriate additional funds. A request for a delay of the effective date should be submitted if a State with a biennial legislature which does not meet in calendar year 1994 has no mechanism to appropriate the additional State funds under State law other than to call a special legislative session to appropriate the additional State funds. For purposes of deciding whether or not to grant a request for a delay in the effective date, the Department is proposing to define "special legislative session" to mean a legislative session that is not scheduled to occur on a regularly scheduled basis. Thus, a regularly scheduled short legislative session in even number years to consider necessary or emergency bills would be considered a regular legislative session. Legislative sessions that are not scheduled on a standing regular basis and must be called under State law for a specific purpose would be considered a special legislative session.

The Department is taking this proposed position because it recognizes that in many cases a special legislative session could cost a State more than the additional State administrative funding that would be involved for the Food Stamp Program. In addition, this position conforms with AFDC's policy and procedures for implementing Section 13741 of the Leland Act which makes a similar change in Federal reimbursement rates for the AFDC Program. State agencies should note that this position treats State agencies with biennial legislatures the same regardless of whether or not the State has called a special session in calendar year 1994 for

some specific purpose or has chosen not to call a special session.

The Department has also considered how it would interpret the criteria in Section 13971 of the Leland Act that a State have "no mechanism, under the constitution and laws of the State, for appropriating the additional funds required * * * before the next such regular legislative session * * *" The Act is not clear as to what kind of appropriating mechanism would meet the test. Webster's Third New International Dictionary defines an appropriation as a sum of money set aside or allotted by official or formal action for a specific use. Accordingly, State appropriation mechanisms could be interpreted to include the process by which the State legislature or other entities in the State appropriate funds as well as State procedures to set aside funds from discretionary or emergency accounts for specific purposes.

In general, State constitutions and laws provide for appropriation by the State's legislature. However, some State laws also provide other funding mechanisms such as voter initiatives to appropriate funds, procedures allowing State officials or emergency commissions to authorize the spending of funds from the State treasury, another program's revenue account, or an emergency account, and procedures by which funds previously appropriated for one program may be transferred to another program. The Department recognizes that while these mechanisms may exist under State law, they may not be useable by the State for several reasons. Voter initiatives to amend the constitution or law to provide State funding require months just to raise the issue to a sufficient number of voters and schedule an election and are beyond the control of the State. Regarding the spending of discretionary or emergency funds, State officials would be reluctant to declare an emergency in order to utilize emergency procedures to transfer funds from the State Treasury or other accounts to the State's Food Stamp Program for a non-emergency purpose. Further, the interpretation of what is a State appropriation under State law as opposed to emergency funds transfer mechanisms varies by State. The Department believes that State legal officers are in the best position to determine what are the appropriation mechanisms that are readily available and useable under the State law. Accordingly, the Department is proposing to interpret the law to cover only mechanisms by which the State legislature appropriates funding and not to cover voter initiative mechanisms and State transfer mechanisms from discretionary or emergency accounts.

In March 1994, the Department approved enhanced funding extension requests from four State agencies using this policy. The Department acted on these requests prior to the rulemaking so the State agencies affected would know their Federal funding status prior to the April 1, 1994 effective date mandated in the law.

If a decision by FNS to grant a delay is made after April 1, 1994, an adjustment will be made so an affected State agency can receive enhanced Federal funding retroactive to April 1, 1994 for eligible costs.

If approval is granted to delay the effective date, Section 13971 of the Leland Act provides that the delayed effective date would be the first day of the first calendar quarter which begins after the close of the State's regular legislative session. In such a case, State agencies would be required to promptly advise FNS in writing as to the actual date the next regular session of the State legislature is completed once such session is completed so the delayed effective date can be determined.

*Enhanced Funding for Low Payment Error Rates*

Under Section 16(c) of the Food Stamp Act and the current rules at § 277.4(b), the Federal share of administrative costs specified in section 16(a) of the Food Stamp Act may be enhanced from the regular 50 percent rate to a maximum of 60 percent after the end of the Federal fiscal year if the State agency qualifies by achieving a low payment error rate. Costs which were eligible for greater enhanced funding rates under section 16 (a), (g), and (j) of the Act (fraud control costs, ADP development, and SAVE) were ineligible for the 60 percent enhancement. With the drop in the funding rate to 50 percent, these three activities now become eligible along with other costs funded at the 50 percent rate for the increased Federal reimbursement rate of up to 60 percent if the State agency meets the low payment error rate specified in § 277.4. The enhanced funding may only be paid on costs shared at the 50 percent level to State agencies who qualify. The Department proposes to amend § 277.4, to allow these three new activities to become eligible for the 60 percent enhanced funding by removing § 277.4 (b)(1), (b)(10), (b)(11) and (b)(12), redesignating the remaining provisions, and by revising newly designated paragraph (b)(7).

*Deadline for Filing Claims for Retroactive Funding—Section 277.11*

Current rules at § 277.11 do not limit State agencies from making claims for prior year administrative costs. The one exception is that the provision at § 277.15(b) limits 75 percent funding for fraud control activities to prior year costs incurred in the Federal fiscal year during which a State agency initially applied for 75 percent funding. However, State agencies may make claims for prior year fraud control activities at the 50 percent Federal reimbursement rate with no time limit.

State agencies are currently required at § 277.11 to submit a Form SF–269, Financial Status Report, on a quarterly basis to report program costs and to support the claims made for Federal funding. Final reports are due December 30 for the preceeding Federal fiscal year which runs from October 1 through September 30. In addition, after the fiscal year is over, State agencies may request retroactive funding for past years or pay back FNS for inadvertent overclaims by submitting an SF–270, Request for Advance or Reimbursement. It is the SF–270 adjustments which, under current rules potentially may go on without end. In Fiscal Years (FY) 1991 through 1993, FNS received SF–270 requests for retroactive funding from State agencies going back as far as FY 1981 and SF–270 payments from State agencies to FNS going back to FY 1979 and prior years for the Food Stamp Program.

The Department proposes to amend § 277.11 to add a new paragraph (d)(1) which would limit the time period during which State agencies may file a request for retroactive funding. The intended effect of this proposal is to limit State agency and FNS resources toward the present operation of the program. The Department believes State agencies have a responsibility to properly claim Federal funding on a timely basis.

Other Federal programs currently have claim limitations in place. The U.S. Department of Health and Human Services (DHHS) has claim limits on grants to State agencies for the Aid to Families with Dependent Children and Medicaid Programs. For example, in those programs, DHHS will reimburse a State agency only if the State agency files a claim for an expenditure within two years after the calendar quarter in which the State agency made the expenditure. In this rule, the Department is proposing a similar limitation for the Food Stamp Program.

The Department proposes in new § 277.11(d)(3) to provide, that subject to

the availability of funds, FNS would reimburse a State agency for an allowable expenditure at the appropriate Federal reimbursement rate only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency obligated the funds. In the case of 75 percent funding for fraud control activity, the same two-year limit would apply to claims for retroactive 75 percent fraud funding but there would be an additional limit in that the retroactive funding would not be available prior to the year in which the State agency applied for 75 percent funding.

Further, the Department proposes in new § 277.11(d)(2) to provide that subject to the availability of funds and any required FNS approval related to the Advance Planning Document under 7 CFR 277.18(c), FNS would reimburse State agencies for the purchase of automated data processing (ADP) equipment and services at the appropriate reimbursement rate in effect at the time the equipment or service was received only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency obligated the funds. This proposed time limit applies to ADP expenditures approved for funding at the enhanced rate and at the regular rate.

The Department's proposal in new § 277.11(d)(4) would provide for certain exceptions to the two-year limit. State agencies may request a waiver of the time limit in writing in advance of the deadline. In order to be granted by FNS, the request must include supporting explanation, justification and documentation. In addition, as set forth in proposed § 277.11(d)(5) the time limit would not apply to audit exceptions, or where FNS determines there was good cause resulting from circumstances beyond the State agency's control for filing a late claim. An audit exception means a proposed adjustment by the Department to any expenditure claimed by a State agency by virtue of an audit. Finally, the Department's proposal would limit the time period for the use of the SF–270 to repay FNS for an overclaim to three years from the end of the Federal fiscal year unless litigation, an audit, or a claim is pending at the end of the three-year period. FNS reserves the right to assert a claim against State agencies for amounts due when an SF–270 is not submitted by the State agency to repay any money due FNS.

Note that under the current program rules at § 277.12, State agencies are required to maintain all financial records for three years unless there is pending litigation, or an unresolved audit or claim. If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved. The Department is not proposing any changes to these record retention requirements in this rule.

*AFDC/Food Stamp Certification Costs—Section 277.9*

The Department is also proposing amendments to current regulations to correspond to current practice related to the charging of certain food stamp certification costs to the Food Stamp Program.

The current regulations at § 277.9 provide that any cost related to determining the Food Stamp Program eligibility of Aid to Families with Dependent Children (AFDC) cases is to be included as part of the AFDC determination costs and claims and not as an allowable cost for FNS reimbursement. However, beginning October 1, 1983, as a result of a Memorandum of Understanding between the Department and DHHS, the Department changed this policy, but not the regulatory provision, so that the incremental cost of certifying AFDC households for Food Stamp Program benefits shall be charged to FNS, not to the Office for Family Assistance, DHHS. State agencies were notified by FNS regional offices of this change in August 1983. Beginning October 1, 1983, State agencies have been allowed to charge such costs to FNS.

The Department is proposing that this longstanding practice be codified in the Food Stamp Program Regulations. The Department proposes to amend § 277.9(b) to provide that the incremental cost of certifying AFDC cases for food stamp benefits would be an allowable cost for FNS reimbursement at the standard Federal reimbursement rate. This proposed provision modifies program regulations so that they conform to current policy and practice.

*Effective Dates and Implementation Requirements*

The Department is proposing that all the provisions in § 277.11 regarding time limits for State agencies to file claims to amend a prior expenditure report to request retroactive funding for costs previously incurred will be effective the first day of the first calendar quarter occurring not less than 60 days following publication of the final rule.

The Department proposes that the provision at § 277.9(b) on the charging of food stamp certifications of AFDC households become effective 30 days following publication of the final rule since it does not require any special implementation efforts on the part of State agencies since the change merely conforms the regulations to current practice.

Pursuant to Section 13971 of the Leland Act, the reduction in FFP rates mandated by Section 13961 of the Leland Act was effective on April 1, 1994, unless the Department grants a delay in certain limited circumstances, as specified in this proposed rule.

In the last week of October and the first week of November 1993, the Department briefed State agencies administering the Food Stamp Program on how to implement the new Federal funding rates for FNS–366A, Budget Projection, and SF–269, Financial Status Report, actual cost reporting and payment purposes effective April 1, 1994. The prompt implementation was necessary prior to rulemaking to comply timely with the Leland Act's mandate to reduce the Department's share of State agency administrative costs to the mandated rate as of April 1, 1994, and to minimize the need for revised reporting by State agencies related to budget projections for FY 1994 and actual cost reporting on or after April 1, 1994. It also gave lead time to State agencies opting to seek from their State legislatures additional State funds to offset the reduction in the rate of Federal funding. State agency budget projections for FY 1994 should take into account the new funding rate as of April 1, 1994. Beginning April 1, 1994, State agencies began drawing down Federal funds for expenditures based on the new funding rate for these activities. Effective with the third quarter Fiscal Year 1994 SF–269 report, State agencies will begin reporting costs using the new funding rate for these activities.

Costs incurred by the State or local agency on or after April 1, 1994 will be claimed at the regular 50 percent Federal reimbursement rate. State agencies currently report the amount of Federal funds requested on the FNS–366A, Budget Projection, and actual costs on the SF–269, Financial Status Report. For reporting purposes, the Department is proposing to require State agencies to begin reporting budget and cost information using the new lower Federal reimbursement rate for costs incurred for periods beginning on or after April 1, 1994.

Section 13961 of the Leland Act, which reduces the enhanced funding for fraud control, ADP development, and

SAVE costs, applies, by its terms, to costs incurred on or after April 1, 1994. The deadline for submitting a request to delay the effective date for the reduction in enhanced funding is December 31, 1993 as specified in letters sent by FNS regional offices to State agencies in the last week of October and the first week of November 1993. However, the Department will consider requests submitted after that date.

The conforming amendments to Food Stamp Program regulations in §§ 272.2, 272.11, 272.13, 274.12, 277.4, 277.15, 277.18, and 277.19 will be effective 30 days following publication of the final rule.

**Public Comments**

This rule proposes to bring the regulations into conformity with the Leland Act. Publication of the rule does not change the implementation guidance which was issued by the Department beginning in late October 1993. The Department is merely proposing to incorporate the new Federal reimbursement rate for these activities into the regulations. Although the Department has taken action to ensure prompt implementation of the new reimbursement rate effective April 1, 1994, this rulemaking is still necessary in order to conform the regulations to the new rate.

The Department requests public comments because they may be beneficial to the rulemaking. However, commenters should note that the new Federal reimbursement rate and the implementation date for the reduction in the Federal reimbursement rate were mandated in the Act and are not items involving Departmental discretion. Only the decision of whether a State agency has demonstrated that it meets the criteria for a delay of the effective date involves some degree of Departmental discretion. Any comments received by the deadline stated above for comments will be considered prior to publication of a final rulemaking.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 274*

Administrative practice and procedure, Food stamps, Fraud, Grant Programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 277*

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 272, 274 and 277 are proposed to be amended as follows:

1. The authority citation for Parts 272, 274 and 277 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2032.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.2:

a. The last sentence of paragraph (a)(2) is amended by adding the words "and the fraud control plan" to the end of the sentence;

b. Paragraph (c)(3) is revised;

c. New paragraphs (d)(1)(xi) and (d)(3) are added;

d. The first sentence of paragragh (e)(3) is amended by removing the reference "§ 272.2(c)(3)(ii)" and adding in its place the reference "§ 272.2(c)(3)" and the second sentence is removed; and

e. New paragragh (e)(10) is added.

The addition and revisions read as follows:

**§ 272.2 Plan of Operation.**

* * * * *

(c) *Budget Projection Statement and Program Activity Statement.* * * *

(3) *Additional Attachments.* Attached for informational purposes (not subject to approval as part of the plan submission procedures) to the Program Activity Statement and submitted as required in § 272.2(e)(3) shall be the agreements between the State agency and the United States Postal Service for coupon issuance, and between the State agency and the Social Security Administration for supplemental security income/food stamp joint application processing and for routine user status.

(d) *Planning Documents.*

(1) * * *

(xi) A plan for fraud control as specified in paragraph (d)(3) of this section.

* * * * *

(3) *Fraud Control Plan.* State agencies shall develop and use a fraud control plan to assure that food stamp investigations and prosecutions are conducted as appropriate. The fraud control plan shall contain the identification of the organizational units involved including units outside the State agency, with a brief description of the intentional Program violation investigation, disqualification hearing, or prosecution function assigned; a copy of the statutes or court decisions under which intentional Program violation cases are prosecuted; a detailed description of the coordination between the investigative units and the prosecuting units, and the process by which prosecuting officials present indictments regarding intentional Program violation cases; an agreement that investigative reports, prepared by the investigation or prosecution units, and other related records will be made available to USDA upon request; and assurance that the administrative disqualification hearing activity is conducted in accordance with § 273.16.

(e) *Submittal Requirements.* * * *

(10) The Fraud Control Plan shall be signed by the head of the State agency and submitted to FNS annually no later than August 15.

* * * * *

**§ 272.11 [Amended]**

3. In § 272.11:

a. Paragraph (d)(1)(iii) is amended by removing the reference to "§ 277.19" and adding in its place a reference to "§ 277.18 and Appendix A".

b. Paragraph (e)(2) is amended by removing from the first sentence the words ", as outlined in § 277.19(e)".

## PART 274—ISSUANCE AND USE OF COUPONS

**§ 274.12 [Amended]**

4. In § 274.12, paragraphs (k)(2) and (k)(3) are removed and paragraphs (k)(4) through (k)(6) are redesignated as paragraphs (k)(2) through (k)(4) respectively.

## PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

5. In § 277.4:

a. Paragraphs (b)(1), (b)(10), (b)(11), and (b)(12) are removed;

b. Paragraphs (b)(2) through (b)(9) are designated as paragraphs (b)(1) through (b)(8) respectively;

c. The second sentence in newly redesignated paragraph (b)(7) is revised; and

d. New paragraph (g) is added.

The revision and addition reads as follows:

**§ 277.4 Funding.**

* * * * *

(b) *Federal Reimbursement Rate*

* * *

(7) * * * The rates of Federal funding for the activities identified in paragraphs (b)(2) and (b)(3) of this section shall not be reduced based upon the agency's payment error rate.

* * * * *

(g) Investigations of authorized retail or wholesale food concerns when performed in coordination with the USDA Office of Inspector General and FNS shall be funded at the 50 percent Federal reimbursement rate.

* * * * *

6. In § 277.9, paragraph (b) is revised to read as follows:

**§ 277.9 Administrative Costs Principles.**

* * * * *

(b) The incremental cost of certifying AFDC households for Food Stamp Program benefits are allowable costs for FNS reimbursement.

* * * * *

7. In § 277.11, a new paragraph (d) is added to read as follows:

**§ 277.11 Financial Reporting Requirements.**

* * * * *

(d) *Time Limit for State Agencies to File Claims.*

(1) After the deadline in paragraph (c)(4) of this section for the final Form SF–269 report, State agencies shall use the Form SF–270, Request for Advance or Reimbursement, as needed within three years of the end of the Federal fiscal year to amend a prior expenditure report pertaining to such Federal fiscal year. The three-year reporting deadline may be extended by FNS if litigation, an audit, or a claim is unresolved at the end of the three-year period. The SF–270 shall be used to amend prior expenditure reports, and to request reimbursement for any additional funding due or to pay back to FNS any inadvertent prior overclaim. Requests for reimbursement will only be honored if the claim is filed within the timeframe in paragraph (d)(2) of this section. FNS reserves the right to bill State agencies for amounts due FNS due to an overclaim even if no SF–270 has been submitted.

(2) Subject to the availability of funds from the appropriation for the year in which the expenditure was incurred, FNS may reimburse State agencies for an allowable expenditure only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency obligated the funds. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(3) For Automated Data Processing (ADP) expenditures approved under § 277.18(c), subject to the availability of funds and required FNS approval related to the Advance Planning Document, FNS may reimburse State agencies for allowable expenditures at the appropriate rate in effect at the time the equipment or service was received only if the State agency files for a claim with FNS within two years after the calendar quarter in which the funds were obligated. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(4) Waiver requests for an extension of the deadline in paragraphs (d)(2) and (d)(3) of this section may be granted by FNS only if the request was submitted in writing to FNS prior to the applicable deadline. The State agency's request for a waiver must include a specific explanation, justification, and documentation of why the claim will be late and when the claim will be filed.

(5) The time limits in paragraphs (d)(2) and (d)(3) of this section will not apply to any of the following:

(i) Any claim for an adjustment to prior year costs previously claimed under an interim rate concept;

(ii) Any claim resulting from an audit exception;

(iii) Any claim resulting from a court-ordered retroactive payment. However, this provision does not bind FNS to a State or Federal decision when FNS was not a party to the action;

(iv) Any claim for which FNS determines there was good cause for the State agency's not filing it within the time limit. Good cause is lateness due to circumstances beyond the State agency's control such as Acts of God or documented action or inaction of the Federal Government. It does not include neglect or administrative inadequacy on the part of the State, State agency, legislature, or any of their offices or employees.

**§ 277.15 [Removed and Reserved]**

8. Section 277.15 is removed and reserved.

9. In § 277.18:

a. In paragraph (b), the definition of "Enhanced funding or enhanced FFP rate" is removed and the definition of "Regular funding or regular FFP rate" is amended by removing the words "except for the 75 percent funding rate for State agency planning, design, development or installation of computerized systems, as specified at § 277.4(b)(1)(ii)";

b. Paragraph (c)(1) is revised and paragraphs (c)(2)(ii)(A) and (c)(2)(ii)(B) are amended by removing the words "at the regular funding rate or $100,000 at the enhanced funding rate,";

c. The introductory text of paragraphs (d)(1) and (d)(2) are amended by removing the words "at the regular or enhanced funding rate";

d. Paragraph (d)(1)(ii) is amended by removing the last sentence;

e. The third sentence of paragraph (d)(1)(v) is amended by removing the words "thresholds of § 277.18(c)(1) are met" and adding the words "threshold of § 277.18(c)(1) is met" is their place;

f. The first sentence of paragraph (e)(1) is revised;

g. The heading of paragraph (g) is revised;

h. Paragraphs (g)(1) and (g)(2) are revised and paragraphs (g)(3) through (g)(8) are removed; and

i. Paragraph (p)(5) is revised.

The revisions read as follows:

**§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.**

* * * * *

(c) *General acquisition requirements.*—(1) *Requirement for prior FNS approval.* A State agency shall obtain prior written approval from FNS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services which it anticipates will have total acquisition costs of $500,000 or more in Federal and State funds. However, a State agency shall obtain prior written approval from FNS for the acquisition of ADP equipment or services to be utilized in an EBT system regardless of the cost of acquisition. A State agency shall also obtain prior written approval from FNS when it plans to noncompetitively acquire ADP equipment or services from a nongovernmental source which cost more than $100,000 in Federal and State funds. The State agency shall request prior FNS approval by submitting the Planning APD or Implementation APD signed by the appropriate State official to the FNS Regional Office.

* * * * *

(e) *APD Update.*—(1) *General submission requirements.* The State agency shall submit an APD Update for FNS approval for all approved Planning and Implementation APD's when total acquisition costs exceed $1 million.

* * *

* * * * *

(g) *Conditions for Receiving FFP.*—(1) A State agency may receive FFP at the 50 percent reimbursement rate for the costs of planning, design, development or installation of ADP and information retrieval systems if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food Stamp Act;

(ii) Meet the program standards specified in § 272.10(b)(1), (b)(2) and (b)(3) of this chapter, except for the requirements in § 272.10 (b)(2)(vi), (b)(2)(vii) and (b)(3)(ix) of this chapter to eventually transmit data directly to FNS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with other such systems utilized in the administration of State agency plans under the program of Aid to Families with Dependent Children (AFDC).

(2) State agencies seeking FFP for the planning, design, development or installation of automated data processing and information retrieval systems shall develop Statewide systems which are integrated with AFDC. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the Statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State agency system used to administer AFDC. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

* * * * *

(p) * * *

(5) *Costs.* Costs incurred for complying with the provisions of paragraphs (p)(1) through (p)(3) of this section are considered regular administrative costs which are funded at the regular FFP level.

**§ 277.19 [Removed]**

10. Section 277.19 is removed.

Dated: November 15, 1994.

**Ellen Haas,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

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**7 CFR Part 273**

**RIN 0584–AB59**

## Food Stamp Program; Excess Shelter Expense Limit and Standard Utility Allowances

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes several changes in Food Stamp Program rules relating to the limit on deductible excess shelter expenses and use of standard utility allowances. The major change would implement a provision of the Mickey Leland Childhood Hunger Relief Act as set forth in the Omnibus Budget Reconciliation Act of 1993. The provision would increase Program benefits to households that have no elderly or disabled members by gradually increasing and then, in 1997, removing the limit on the amount of excess shelter expenses these households can deduct from their income to determine eligibility and benefits. The changes in provisions for standard utility allowances would allow State agencies to use allow use of additional standards and would simplify requirements for determining entitlement to a standard.

**DATES:** Comments must be received on or before January 23, 1995 to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2496. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305–2454. All written comments will be open for public inspection at the office of the Food and Consumer Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305–2496.

**SUPPLEMENTARY INFORMATION:**

### Classification

*Executive Order 12866*

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget.

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The changes will increase benefits to food stamp recipients and simplify administration of the Program by State and local welfare agencies.

*Paperwork Reduction Act*

This proposed rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

*Regulatory Impact Analysis*

Need for Action

This action is required by section 13912(b) of Pub. L. 103–66, which amended Section 5(e) of the Food Stamp Act to provide for incremental increases in the excess shelter expense deduction in July 1994 and October 1995 and the elimination of the limit on the amount of shelter expenses that may be deducted from the net income of a household that does not contain an elderly or disabled member, effective January 1, 1997.

Benefits

This action increases benefits to households with high shelter expenses and simplifies administration of the Program by State and local offices.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $40 million in FY 1994, $125 million in FY 1995, $190 million in FY 1996, $490 million in FY 1997, and $620 million in FY 1998.

*Executive Order 12778*

This 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 Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

**Background**

*1. Excess Shelter Cap—7 CFR 273.9(d)(5) and 273.9(d)(8)*

Under current rules at 7 CFR 273.9(d)(5), households are entitled to a deduction from income for excess shelter expenses, i.e., shelter expenses (including rent or mortgage and utilities) that exceed 50 percent of the household's net income remaining after all other deductions. For households with an elderly or disabled member (as defined in 7 CFR 271.2), all of the excess shelter expenses are deducted. For other households, only excess shelter expenses up to a limit are deducted. This limit, usually referred to as the "shelter cap," is adjusted annually to reflect changes in the shelter, fuel, and utilities components of housing costs in the Consumer Price Index (CPI-U) published by the Bureau of Labor Statistics for the 12 months ending the preceding June 30. In FY 1994, the cap is $207 for the contiguous 48 States and the District of Columbia, $359 in Alaska, $295 in Hawaii, $251 in Guam, and $152 in the Virgin Islands.

Section 13912 of the Mickey Leland Childhood Hunger Relief Act (Leland Act), Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, enacted August 10, 1993, 107 Stat. 312), amended section 5(e) of the Food Stamp Act of 1977 (as amended), (the Act) 7 U.S.C. 2014(e), to provide for incremental increases in the shelter cap and for the elimination of the cap according to the following schedule:

1. Effective July 1, 1994 through September 30, 1995, the excess shelter expense deduction shall not exceed $231 a month in the 48 contiguous States and the District of Columbia, $402 in Alaska, $330 in Hawaii, $280 in Guam, and $171 in the Virgin Islands.

2. Effective October 1, 1995 through December 31, 1996, the excess shelter expense deduction shall not exceed $247 a month in the 48 contiguous States and the District of Columbia, $429 in Alaska, $353 in Hawaii, $300 in Guam, and $182 in the Virgin Islands.

3. Effective January 1, 1997, the limit on the excess shelter expense deduction is removed.

According to the legislative history of the Leland Act (*Congressional Record*, S10725, August 6, 1993), the changes in the shelter cap are designed to provide more food stamps to families with especially high rent and utility bills. To implement section 13912 of Pub. L. 103–66, 7 CFR 273.9(d)(8) will be amended to add the statutorily imposed increased shelter cap amounts effective in July 1994 and October 1995 and to indicate that the shelter cap will be eliminated effective January 1, 1997. Those regulatory changes are mandated by statute and, in accordance with 5 U.S.C. 553(b)(3)(A), are therefore not subject to public comment.

This action proposes to amend the homeless shelter expense provisions of 7 CFR 273.9(d)(5) to eliminate the reference to the excess shelter cap. Current regulations provide that State agencies may develop their own standard estimate of the shelter expenses of households in which all members are homeless and do not receive free shelter throughout the month. State agencies that do not want to develop their own standards may use the estimate provided by the Department. The regulations provide that this homeless shelter estimate will be updated annually using the same method as is used to index the excess shelter cap. Since the excess shelter cap will be set at the amounts established by the Leland Act beginning July 1, 1994 and will be removed in January 1997, we are proposing to amend 7 CFR 273.9(d)(5) effective July 1, 1994 to provide that the homeless shelter expense estimate will be revised each October 1 to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI-U for the 12 months ending the preceding June 30. The homeless shelter estimate will be adjusted on October 1, 1994 and each October 1 thereafter. State agencies will be notified of the amount by memorandum prior to each change. State agencies will still have the option of developing and using their own estimates.

*2. Standard Utility Allowances—7 CFR 273.9(d)(6)*

The legislative history of the Leland Act (*Congressional Record*, S10725, August 6, 1993 and House Report 103–213, p. 924, August 4, 1993) indicates Congressional intent that the excess shelter expense deduction be simple to administer and that the standard utility allowance facilitate, rather than hinder, program simplification. We have reviewed the regulations governing shelter expenses and utility standards to determine how they might be improved. As a result, we are proposing to revise 7 CFR 273.9(d)(6) in its entirety.

In section 5(e) of the Food Stamp Act (7 U.S.C. 2014(e)), Congress authorized use of a standard utility allowance (standard) in computing a household's excess shelter deduction to reduce the burden on State agencies and households of having to report, verify, and calculate actual utility costs. However, subsequent legislation and numerous regulatory revisions have resulted in increasingly complicated requirements for use of the standards. State agencies have complained that current regulations are confusing and, by their very complexity, defeat the purpose of using standards.

Rules published October 17, 1978 (43 FR 47846, 47865–66) required State agencies to establish a standard utility allowance which households could include in claiming their shelter costs. Households that incurred costs for electricity and fuel for heating, cooling, or cooking were allowed to use the State agency's single utility standard which included these costs. Alternatively, States were allowed to develop separate standards for each utility. A household incurring a cost for any of these utilities was allowed the option of claiming actual costs or the standard in the calculation of benefits.

To give State agencies more flexibility in operating the Program, the Omnibus Budget Reconciliation Act of 1982, Pub. L. 97–253, (September 8, 1982, 96 Stat. 775–6), made use of a standard utility allowance a State agency option. In doing so, the use of the standard became more complex. Use of a single standard that included heating or cooling costs was restricted to those households that incurred heating or cooling costs separately from their rent or mortgage. However, households in *public* housing who were billed only for excess usage were prohibited from using this standard. These households were required to use actual expenses. The law

also required State agencies to prorate the standard among separate households who lived together and shared heating or cooling expenses.

Interim regulations implementing the provisions of Pub. L. 97–253 were issued on November 16, 1982 (47 FR 51551) and made final on June 21, 1983 (48 FR 28190). (Readers may refer to the preambles of these regulations for a full explanation of the changes.) The rules implemented the prohibition against use of a heating or cooling standard by households in *public* housing. In addition, the rules provided that renters in *private* housing could receive the heating or cooling standard only if the amount of heating or cooling usage was established through a separate meter. Households not entitled to the heating or cooling standard could claim actual costs.

Legislation governing the Low-Income Home Energy Assistance (LIHEA) program also has had an effect on use of the heating or cooling standard by households receiving LIHEA and further complicated this policy. The Low-Income Home Energy Assistance Act of 1981, Title XXVI, Pub. L. 97–35, enacted August 13, 1981, (42 U.S.C. 8621, *et seq.*) required State agencies to exclude LIHEA payments from income in assistance programs, including the Food Stamp Program. Under the food stamp rules, households that received direct LIHEA payments and still incurred a heating or cooling expense in excess of the LIHEA payments were allowed use of the heating or cooling standard. However, households that received LIHEA assistance in the form of vendor payments made to the energy provider were not entitled to the heating or cooling standard. Section 273.10(d)(1)(i) provided that any expense covered by an excluded reimbursement or vendor payment was not deductible. As early as 1981, lawsuits were filed challenging the Department's position on this issue. (See *Schmeige* v. *USDA*, 693 F.2d 55 (8th Cir. 1982), *Idaho* v. *Block*, 784 F.2d 895 (9th Cir. 1986); and *Seban* v. *Block*, 626 F. Supp. 545 (S.D. Ind. 1985)).

The Food Security Act of 1985, Pub. L. 99–198 (December 23, 1985) amended the Food Stamp Act to provide that households which incurred out-of-pocket heating or cooling expenses over and above their LIHEA or similar energy assistance payments were entitled to receive a standard allowance for heating or cooling costs. In the context of entitlement to a heating or cooling standard, out-of-pocket expenses are those that exceed any energy assistance payments made to or on behalf of the household. The law allowed State agencies to develop two standard allowances including heating or cooling expenses: One standard for households that did not receive indirect energy assistance payments and a second standard for households that received indirect payments and incurred out-of-pocket heating or cooling expenses. (The preamble to regulations published May 21, 1986, 51 FR 18744, 18746, contains a complete explanation of the provisions.)

The amendments to the Food Stamp Act made by the Food Security Act of 1985 were nullified by the Human Services Reauthorization Act of 1986, Pub. L. 99–425 (September 30, 1986), which included a provision affecting the treatment of LIHEA payments in calculating an excess shelter expense deduction. Section 504(e) of that law provided that LIHEA payments must be treated consistently regardless of how the payments are distributed to the household and that the full amount of the payments was to be deemed expended by the household for heating or cooling expenses.

A final rule published February 23, 1987 (52 FR 5434) amended 7 CFR 273.9(d)(6) and 7 CFR 273.10(d)(1)(i) to require State agencies to consider energy expenses covered by LIHEA payments made to the energy supplier on behalf of the household (indirect payments) as deductible shelter expenses. State agencies were required to consider all households receiving LIHEA as eligible to claim the heating or cooling standard whether or not the household had any out-of-pocket expense. The rule eliminated a State agency's option to use a separate heating or cooling standard allowance for those households which received indirect LIHEA payments.

State agencies have indicated that the legislative conflict between the desire to avoid reducing a household's food stamp allotment when it receives energy assistance and the principle that the heating or cooling standard should be allowed only when a household actually incurs an out-of-pocket heating or cooling expense has resulted in regulations that are error-prone and difficult to administer. Numerous policy memoranda and clarifications have been issued to assist State agencies in determining the circumstances under which a household is entitled to a heating or cooling standard. However, State agencies continue to raise questions concerning use of the standard.

Within the constraints of the Food Stamp Act and legislation governing the LIHEA program, we are proposing to revise 7 CFR 273.9(d)(6) to assist State agencies in using a heating or cooling standard and to provide greater flexibility in developing other standards. Under this proposal, provisions relating to standard utility allowances would be organized into the following areas: (a) Developing and updating standard utility allowances, (b) entitlement to a heating or cooling standard, (c) household option, and (d) sharing utility costs. We are also proposing to add the last sentence of current 7 CFR 273.9(d)(6)(i) regarding allowable cooling costs to the list of allowable utility costs in 7 CFR 273.9(d)(5)(ii)(C) so that all allowable utility costs are listed in one paragraph. The proposed changes are discussed below.

a. Developing and updating standard utility allowances. Current regulations at 7 CFR 273.9(d)(6)(i), (iii), (iv), (v), and (vi) set forth the requirements for developing standard utility allowances. They allow State agencies to use seasonal standards; annual standards that do not have to be adjusted seasonally; separate standards for each utility expense; or single utility standards that include the cost of heating or cooking fuel, cooling, electricity, water, sewerage, garbage or trash collection, and the basic service fee for one telephone.

In an effort to ease confusion and clarify the rules regarding the establishment of utility standards, we are proposing to consolidate the current rules into a single, revised paragraph, 7 CFR 273.9(d)(6)(i). At the same time, we are proposing several changes in existing policy. The changes in policy are described below.

Several State agencies have requested and have been granted waivers to use a combined standard for all nonheating or noncooling expenses. As justification for their waiver requests, State agencies cite difficulty in obtaining verification for utility expenses and, consequently, increased errors relating to shelter costs when certifying households. To provide greater State agency flexibility without the need for waivers and to reduce the error-prone use of actual utility expenses, we are proposing in 7 CFR 273.9(d)(6)(i) to allow State agencies to develop standard utility allowances for individual utilities and a combination of utilities. As provided in current regulations, the allowances may be seasonal or annualized to include costs for all seasons and may be varied by household size or geographic location. Although the proposal for a combined standard is not as broad as some standards currently in use, we believe it would provide some additional flexibility to State agencies and would reduce the number of cases in which

workers must verify actual expenses without greatly increasing Program costs.

As provided in current 7 CFR 273.9(d)(6)(i) and under our proposal, State agencies would not be permitted to develop a separate standard or decrease the heating or cooling standard for households that receive LIHEA payments. However, a State agency would be able to develop and use a separate heating/cooling standard for households that receive energy assistance other than energy assistance provided under the Low-Income Home Energy Assistance Act of 1981. In developing other standard utility allowances, State agencies would be required to include only the allowable costs identified in 7 CFR 273.9(d)(5)(ii)(C). No additional costs could be added.

Therefore, under the proposed revision of 7 CFR 273.9(d)(6)(i), State agencies would be allowed to develop the following standards: (a) A separate standard for each type of utility expense; (b) a standard that includes heating or cooling costs; (c) a telephone standard; and (d) a combined standard that includes electricity, water, sewerage, and garbage or trash collection and is available only to households that incur the cost of electricity and either water or sewerage. State agencies would be allowed to add the telephone standard to a separate standard for electricity, for example, for households that incur both expenses. The telephone standard could also be added to the combined standard to allow use of a standard for households that incur costs for electricity, sewerage or water, and telephone.

State agencies could use the heating or cooling standard for households that incur a heating or cooling cost and an individual standard for households that incur an expense for only one utility, such as electricity. Because State agencies may develop a variety of standards, the proposed rule specifies that no household shall receive more than one standard for the same utility expense. For example, if the State agency's combined standard includes the expense of a basic telephone, a household that receives the combined standard would not also be entitled to a separate telephone standard. Households whose only utility expense is for a telephone would be entitled to the telephone standard only.

The proposal would require State agencies that develop new standard utility allowances to use FCS-approved methodologies. The State agency would be required to review the standards annually and submit revised amounts to FCS for approval. State agencies would be required to submit methodologies used in developing and updating standards to FCS every 3 years. They would also be required to submit the methodologies when they are revised or upon a request from FCS. We are requiring State agencies to submit methodologies every 3 years so that we will be able to monitor State agency development and use of standards.

b. Entitlement to a heating or cooling standard. Another complex and confusing area of policy involving standard utility allowances is determining who is entitled to a standard that includes heating or cooling costs. We are proposing in revised § 273.9(d)(6)(ii) to clarify and simplify these rules. In doing so, we are attempting to eliminate inequities that exist in the application of current policy.

Current regulations at 7 CFR 273.9(d)(6)(ii) provide that a heating or cooling standard shall be made available only to households that incur out-of-pocket heating and cooling costs separately from their rent or mortgage and to households that receive LIHEA. Renters must be billed on a monthly basis by their landlords for actual usage as determined through individual metering to be entitled to use the standard. Recipients of indirect energy assistance payments other than LIHEA must incur expenses in excess of the payments during the certification period to qualify for the heating or cooling standard. Households in public or private housing with a central meter who are billed only for excess usage are not permitted to use the standard. A household not entitled to the standard can claim actual expenses.

As indicated above, provisions of interim regulations published November 16, 1982 (47 FR 51551) and finalized June 21, 1988 (48 FR 28190) limited use of the heating or cooling standard by households in public or private housing to those households whose costs could be verified by separate metering. Previously, households in public or private housing who could verify that they incurred heating or cooling costs separately from their rent were entitled to use the heating or cooling standard. Although these households were no longer entitled to a heating or cooling standard under food stamp rules, they were entitled to the heating or cooling standard if they received LIHEA. Therefore, State agencies had to determine which households would or would not receive LIHEA before food stamp eligibility and benefits could be determined. This presented a problem for State agencies, particularly when there was no easy method for exchanging information with the LIHEA agency. Although this policy has been in effect for some time now, State agencies still experience difficulty in anticipating entitlement to a heating or cooling standard when a household is entitled solely because of receipt of LIHEA payments.

Our first proposed change to the rules governing the use of a heating or cooling standard is to provide direct entitlement to a standard by households in private housing who have heating or cooling costs apart from or in addition to their rent. Under the proposal, these households would be entitled to use the heating or cooling standard even if their actual utility usage is not determined by separate metering.

The amount of the expense could be determined and verified by means other than separate metering, such as a statement from the landlord. If, in addition to rent, the landlord charges a flat amount for utilities each month which includes the cost of heating or cooling, the household would be entitled to the heating or cooling standard. Regulations at 7 CFR 273.2(f)(1)(iii) do not require State agencies to verify entitlement to a standard allowance. However, entitlement to a standard may be verified if it is questionable, as provided in 7 CFR 273.2(f)(2)(i) or under 7 CFR 273.2(f)(3) as a State agency option. The proposed rule retains the statutory prohibition against use of the heating or cooling standard by households in *public* housing.

This proposed change would extend use of the standard to households that live separately but share a utility meter. Under current policy, if two households live separately but have one meter, the households are prohibited from sharing the standard, and the State agency cannot grant the standard to both households even though both incur heating or cooling costs. Under the proposed change, the State agency would be required to grant the full heating or cooling standard to both households if both incur or anticipate incurring out-of-pocket heating or cooling expenses separately from their rent or receive or anticipate receiving LIHEA.

A second proposed change in the standard utility allowance rules stems from numerous policy questions that have been raised regarding when and how often a household has to incur an expense in order to be eligible for an annualized heating or cooling standard. As indicated above, State agencies currently may choose between seasonal heating or cooling standards and an

annualized standard that includes year-round heating and cooling costs. State agencies have complained that regulations and policy regarding use of an annualized standard are confusing and difficult to administer. We are proposing in this rule to simplify the regulations for determining when a household is entitled to an annualized standard utility allowance that includes heating or cooling costs.

Annualized standards represent the average monthly heating and cooling costs for the entire year. This means that in some months during the year, and perhaps during the certification period, the household may not have any heating or cooling costs. For example, a household that previously had no heating or cooling costs applies in June and does not anticipate incurring any heating or cooling costs during the summer months. However, the household will incur heating costs in the fall. Regulations at 7 CFR 273.10(d)(4) provide that the State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Therefore, if the household above is certified for three summer months and incurs no heating or cooling costs, the household is not entitled to an annualized standard that includes heating costs. If the household is certified for six months and anticipates incurring heating costs in the fall, however, it is entitled to the heating standard. State agencies have complained that this policy is difficult to administer and can result in inequities.

To reduce the problems associated with determining when a household is entitled to an annualized heating or cooling standard, we are proposing in this rule that a household that currently incurs or expects to incur out-of-pocket heating or cooling costs during the next heating or cooling season (except a household in public housing with a central meter where the household is billed only for excess usage) is entitled to an annualized heating or cooling standard regardless of when the certification period begins or ends.

This rule further proposes that the household shall continue to be entitled to the standard until it no longer expects to incur heating or cooling costs during the next heating or cooling season. The State agency would be required to reexamine a household's entitlement to the heating or cooling standard at recertification, when the household moves, or when the household voluntarily reports a change affecting entitlement to the standard.

Under this proposal, a household with no heating or cooling costs which is certified for three summer months and which expects to be billed for heating costs in the fall would be entitled to a heating or cooling standard at the time of certification. Also, a household that incurred no heating or cooling expenses in the past which moves to a living arrangement where it will incur heating costs in the next heating season would be allowed the annualized standard from the time of the move. If a State agency uses seasonal standards, households would be entitled to the appropriate seasonal standard if they incur or expect to incur a qualifying expense (or receive or expect to receive a LIHEA payment) during the season covered by the standard.

We believe this proposal is more equitable and easier to administer than current policy. We would appreciate specific comments supporting the proposal or pointing out any problems with the proposed change.

Although food stamp households are categorically eligible for LIHEA, not all food stamp households receive the assistance, either because they do not apply for it or because LIHEA funds run out before all eligible households can be served. This makes it extremely difficult for State agencies to know in advance whether or not a household will receive LIHEA and be entitled to the standard. To grant the standard beginning with the month the household reports receipt of LIHEA would not meet the intent of the LIHEA legislation. Therefore, we are also proposing in revised § 273.9(d)(6)(ii) that the State agency shall allow a heating or cooling standard to households that receive or anticipate receiving LIHEA in the next heating or cooling season. These households shall continue to be entitled to the standard until they no longer receive or anticipate receiving LIHEA in the next heating or cooling season. The State agency would consult with the household concerning the household's intention to apply for LIHEA, determine whether or not the household received LIHEA for the previous season at the same address, and contact the LIHEA agency if necessary to determine the availability of funds and the likelihood that the household will receive energy assistance. The case worker would document the case file to support the decision to allow or deny use of the standard.

Current regulations at 7 CFR 273.9(d)(6)(ii)(C) require that households incur recurring costs for heating or cooling in order to qualify for a heating or cooling standard. The regulations are confusing in that they specify that the household must be billed regularly, but, if the household is not billed regularly, it may use the standard between billing periods if it is otherwise eligible to use the standard. Under this proposed revision, the regulatory provisions for billing would not be needed. Entitlement to the heating or cooling standard would be based on anticipated expenses. Most households that are responsible for paying heating or cooling expenses have these expenses on a recurring basis. Therefore, we are proposing to remove the provisions regarding recurring costs from the regulations. We are also proposing to remove the provisions in 7 CFR 273.9(d)(6)(ii)(C) and 7 CFR 273.10(d)(6) regarding households that incur out-of-pocket expenses for heating or cooling in excess of non-LIHEA energy assistance. These provisions would also be unnecessary under the proposed revision of the regulations. Any household that receives LIHEA or incurs an out-of-pocket expense for heating or cooling (except a household in public housing billed only for excess usage) would be entitled to an annualized heating or cooling standard.

We are also proposing a conforming amendment to 7 CFR 273.10(d)(3) to provide that standard utility allowances shall be allowed in accordance with 7 CFR 273.9(d)(6). This change is necessary because the provisions allowing the averaging of fluctuating expenses and the determination of entitlement to an annualized heating or cooling standard based upon anticipated heating or cooling costs are exceptions to the provisions regarding billed expenses in 7 CFR 273.10(d)(2) and anticipating expenses in 7 CFR 273.10(d)(4).

c. Household option. Current regulations at 7 CFR 273.9(d)(6)(vii) require State agencies to advise households at the time of certification that, except for the telephone allowance, they may deduct their actual verified utility costs or the standard allowance throughout the certification period. The State agency is also required to advise households that they may switch between the use of actual utility costs and the standard at the time of recertification and one additional time during each twelve-month period.

State agencies have pointed out that households may move from one residence to another more frequently than once a year. Current policy is that the household's eligibility for the heating or cooling standard must be redetermined at the time of the move. We have granted waivers to several State agencies to allow households to choose between actual expenses or the

standard when the household moves without having the choice count as a "switch."

This rule proposes to include the provisions of current 7 CFR 273.9(d)(6)(vii) regarding the household option to use a standard or actual costs in revised § 273.9(d)(6)(iii). The proposed rule also adds a provision requiring State agencies to give households that move the option of actual expenses or a standard utility allowance based on circumstances at the new address. When a household reports a move, it would be the State agency's responsibility to redetermine the household's entitlement to a standard and give the household the opportunity to choose between actual costs and the standard, if the household is entitled to the standard. Households that report a move would be granted the standard on the same basis as applicants. If the household anticipates that it will receive LIHEA or incur out-of-pocket heating or cooling expenses during the next heating or cooling season at the new address, it would be allowed use of the standard. The household's choice of a standard or actual costs when it moves would not be considered a switch.

Current regulations at 7 CFR 273.9(d)(6)(iii)(C) provide that the State agency may mandate use of the telephone allowance even if actual telephone costs are higher. This provision was included in the regulations because of the concern of State agencies that use of actual telephone costs would be extremely error-prone. We believe that use of an adequate telephone standard increases the administrative efficiency of determining a household's excess shelter expense without any significant adverse effect on households. Therefore, we are proposing to retain the provision of current 7 CFR 273.9(d)(6)(v)(C) concerning the telephone allowance and incorporate it in revised § 273.9(d)(6)(iii).

d. Prorating standard utility allowances. Under section 5(e) of the Food Stamp Act, State agencies are required to prorate a heating or cooling standard among households that live together and share the heating or cooling expense. Current regulations at 7 CFR 273.9(d)(6)(viii) require State agencies to prorate a standard allowance among households that live together and share utility expenses. It is not clear in the regulations whether proration is limited to the heating or cooling standard or whether other standards, such as a telephone standard, must also be prorated among the households contributing to the payment of the utility cost. Questions have arisen concerning proration of a heating or cooling standard when one household pays for heat, for example, and another household pays for the water. We believe it is equitable to prorate any standard among the households sharing the expense included in the standard.

The current provision indicates that if the State agency is unable to accurately determine the pro rata share of utility costs paid by the parties, the State agency may use the actual utility costs paid by each household. The regulations provide that under no circumstances shall the total amount of utility costs used to determine the amount of the deduction exceed the total amount of actual utility costs for the residence.

Under this proposed rule, households would be able to share a standard or claim actual verified costs. They would not be allowed to use a combination of these methods in claiming a deduction for utility expenses. That is, State agencies could not allow one household to claim a share of the utility standard and allow another household sharing the expense to claim actual costs. We believe that allowing a combination of actual expenses and a share of the standard is burdensome on State agencies.

Under this proposal, the total allowable deduction for the residence would not exceed actual costs or one standard allowance. If one household pays all the utility expenses, that household would be entitled to the applicable standard or could claim actual costs. The household that did not pay any utility costs would not be able to claim any actual utility costs or any part of a standard. If one household pays for heat and the other household pays another expense, such as water, a standard that includes the costs of heating and water would be prorated between the households according to a method established by the State agency.

We propose to provide in revised § 273.9(d)(6)(iv) of this rule that the State agency shall prorate any utility standard among all parties incurring an expense covered by the standard or allow actual costs incurred by each party. The State agency would be able to determine the proration method if a standard is prorated.

### Corrections

We are taking this opportunity to correct the reference in the first sentence of 7 CFR 273.12(a)(1)(i) to the joint processing regulations. The correct citation is 7 CFR 273.2(j)(3).

### Implementation

In accordance with the requirements of section 13971(b)(6) of Pub. L. 103–66, this rule provides that the increase in the excess shelter expense deduction to $231 in the 48 contiguous States and the District of Columbia ($402 in Alaska, $330 in Hawaii, $280 in Guam, and $171 in the Virgin Islands) will be effective and must be implemented on July 1, 1994; that the increase to $247 in the 48 contiguous States and the District of Columbia ($249 in Alaska, $353 in Hawaii, $300 in Guam, and $182 in the Virgin Islands) will be effective and must be implemented on October 1, 1995; and that removal of the excess shelter deduction limit will be effective and must be implemented on January 1, 1997. The changes in provisions for the homeless shelter estimate in 7 CFR 273.9(d)(5)(i) will be effective July 1, 1994. State agencies are required to adjust all cases on January 1, 1997 to reflect the deduction for all allowable excess shelter expenses. Restored benefits must be provided to all households whose cases are not adjusted on the required implementation date. Variances resulting from implementation of the final rule would be excluded from quality control consideration for 120 days from the required implementation date in accordance with section 13951 of Pub. L. 103–66.

We are proposing that the changes in requirements for standard utility allowances made by this rule be effective and implemented 120 days after publication of the final rule. The affected regulatory sections are: 7 CFR 273.9(d)(5)(ii)(C), 273.9(d)(6), 273.10(d)(3), 273.10(d)(6), and 273.12(a)(1)(i). State agencies would be required to adjust the cases of ongoing households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. Variances resulting from implementation of the provisions of the final rule shall be excluded from error analysis for 120 days from the required implementation date.

### List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Part 273 is proposed to be amended as follows:

1. The authority citation for Part 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2032.

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.9:

a. the sixth and seventh sentences of paragraph (d)(5)(i) are removed, and one new sentence is added in its place;

b. paragraph (d)(5)(ii)(C) and paragraph (d)(6) are revised; and

c. the fourth sentence of paragraph (d)(8)(i) is amended by removing the word "thereafter," and adding the words "thereafter through October 1, 1993," in its place and by adding three sentences at the end of the paragraph.

The additions and revision read as follows:

**§ 273.9 Income and deductions.**

* * * * *

(d) *Income deductions.* * * *

(5) *Shelter costs.*

(i) *Homeless households.* * * * The Department will revise the homeless shelter expense estimate each October 1 to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI–U for the 12 months ending the preceding June 30 and will notify State agencies of the adjusted amount. * * *

(ii) *Household shelter deduction.*

* * *

(C) The cost of heating and cooking fuel, cooling (verifiable expenses relating to the operation of air conditioning systems or room air conditioners), electricity, water, sewerage, garbage and trash collection, the basic service fee for one telephone (including tax on the basic fee), and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

* * * * *

(6) *Standard utility allowances*—(i) *Developing and updating standard utility allowances.* A State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: a separate standard for each type of utility expense; a single standard for all utilities that includes heating or cooling costs; a telephone standard; and a combined standard that includes electricity, water, sewerage, and garbage or trash collection that is available only to households that incur the costs of electricity and either water or sewerage. The State agency shall submit proposed standards to FCS for approval. The State agency shall update the standards annually and submit revised amounts to FCS for approval. State agencies shall submit methodologies used in developing and updating standards to FCS for review every 3 years, when there is a change in the methodology, and upon a request from FCS. State agencies may use a heating or cooling standard, a combined standard, and individual standards. However, they shall not allow households the use of two standards that include the same expense. The State agency may elect to use seasonal standards that include heating or cooling costs or an annual standard that does not have to be adjusted seasonally. The State agency may vary the allowance by factors such as household size or geographical area. Only utility costs identified in paragraph (d)(5)(ii) of this section shall be used in developing standards. The State agency shall not use a reduced standard for households that receive assistance under the Low-Income Home Energy Assistance Act (LIHEAA) of 1981. Households shall be allowed to use standards that include heating or cooling costs in accordance with paragraphs (d)(6)(ii), (d)(6)(iii) and (d)(6)(iv) of this section. Households whose only utility expense is for a telephone are entitled to only the separate telephone standard if one has been developed by the State agency.

(ii) *Entitlement to a heating or cooling standard.* A standard with a heating or cooling component shall be made available to households that incur heating or cooling expenses separately from their rent or mortgage or expect to incur such expenses in the next heating or cooling season, except households in public housing units which have central utility meters and charge households only for excess utility costs. Households that receive assistance under the LIHEAA but do not incur out-of-pocket heating or cooling expenses are also entitled to a standard that includes a heating or cooling component on the same basis as households that incur such costs. Households that receive other indirect energy assistance are entitled to a standard that includes heating or cooling only if they incur out-of-pocket expenses for heating or cooling costs. Entitlement to an annualized heating or cooling standard shall continue until the household no longer incurs or expects to incur a heating or cooling expense or no longer receives or expects to receive a LIHEAA payment during the next heating or cooling season. If the State agency elects to use seasonal standards, the State agency shall ensure that a standard is provided only to households that incur or expect to incur an expense that would entitle the household to the standard or receive or expect to receive a LIHEAA payment during the season covered by the standard.

(iii) *Household option.* The State agency shall advise a household at the time of certification and whenever it reports a move that it may deduct verified actual utility costs (for any allowable expense identified in paragraph (d)(5)(ii)(C) of this section) it incurs rather than the standard (except for the telephone standard) throughout the certification period if actual expenses are more than the standard or the household is not eligible for the standard. The State agency may require use of the telephone standard for the cost of basic telephone service even if actual costs are higher. The State agency shall also inform the household that it may switch between use of actual utility costs and the standard at recertification and one additional time during each twelve-month period.

(iv) *Sharing utility expenses.* If a household lives with and shares utility expenses with another individual, another household, or both, the State agency shall prorate a standard among the household and the other individual, household, or both, or allow the actual costs of each household. The State agency shall determine the proration method if a standard is used.

* * * * *

(8) *Adjustment of shelter deduction.* (i) * * * Effective July 1, 1994 through September 30, 1995, the excess shelter expense deduction shall not exceed $231 a month in the 48 contiguous States and the District of Columbia, $402 in Alaska, $330 in Hawaii, $280 in Guam, and $171 in the Virgin Islands. Effective October 1, 1995 through December 31, 1996, the excess shelter expense deduction shall not exceed $247 a month in the 48 contiguous States and the District of Columbia, $429 in Alaska, $353 in Hawaii, $300 in Guam, and $182 in the Virgin Islands. Effective January 1, 1997, the limit on the excess shelter expense deduction is removed.

* * * * *

3. In § 273.10:

a. paragraph (d)(3) is amended by adding a new sentence after the first sentence.

b. paragraph (d)(6) is removed, and paragraph (d)(7) is redesignated as paragraph (d)(6).

The addition reads as follows:

**§ 273.10 Determining household eligibility and benefit levels.**

* * * * *

(d) *Determining deductions.* * * *

(3) *Averaging expenses.* * * * Households shall be allowed to use annualized standard utility allowances in accordance with § 273.9(d)(6). * * *

* * * * *

**§ 273.12 [Amended]**

4. In 273.12, the first sentence of paragraph (a)(1)(i) is amended by

removing the citation "§ 273.2(j)(2)" and adding in its place the citation "§ 273.2(j)(3)".

Dated: November 15, 1994.

**Ellen Haas,**

*Under Secretary for Food, Nutrition, and Consumer Services.*

[FR Doc. 94–28830 Filed 11–21–94; 8:45 am]

BILLING CODE 3410–30–P

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## FEDERAL RESERVE SYSTEM

## 12 CFR PART 263

**[Docket No. R–0855]**

## Uniform Rules of Practice and Procedure

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board of Governors) proposes to amend a provision of the Uniform Rules of Practice and Procedure adopted by the Board. The proposal is intended to clarify that the rules' provisions relating to *ex parte* communications conform to the requirements of the Administrative Procedure Act (APA). In particular, the proposed amendment would clarify that the *ex parte* provisions do not apply to intra-agency communications, which are governed by a separate provision of the Administrative Procedure Act.

**DATES:** Comments must be received on or before December 8, 1994.

**ADDRESSES:** Comments should refer to Docket No. R–0855 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

**FOR FURTHER INFORMATION CONTACT:** Katherine H. Wheatley, Assistant General Counsel, Legal Division (202/452–3779), or Ann Marie Kohlligian, Senior Counsel, Division of Banking Supervision and Regulation (202/452–3528). For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

**SUPPLEMENTARY INFORMATION:**

### I. Background

In August 1991, the Board of Governors adopted the Uniform Rules of Practice and Procedure ("Rules") (56 FR 38048, Aug. 9, 1991). The Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS) and National Credit Union Administration (NCUA) have also adopted the Rules (OCC, 56 FR 38024, Aug. 9, 1991; FDIC, 56 FR 37968, Aug. 9, 1991; OTS, 56 FR 38302, Aug. 12, 1991; and NCUA, 56 FR 37762, Aug. 8, 1991). The Board of Governors now proposes to amend one aspect of the Rules relating to *ex parte* communications to clarify that the Rules parallel the requirements of the Administrative Procedure Act. The other agencies are considering proposing a similar amendment.

Currently, § 263.9 of the Rules prohibits "a party, his or her counsel, or another interested person" from making an *ex parte* communication to the Board or other decisional official concerning the merits of an adjudicatory proceeding. When the Rules were proposed and adopted in 1991, the joint notice of proposed rulemaking (56 FR 27790, 27793, June 17, 1991) explained that the proposed rule regarding *ex parte* communications "adopts the rules and procedures set forth in the APA regarding *ex parte* communications." There was no intention at that time to impose a rule more restrictive than that imposed by the APA itself.

The APA contains two provisions relating to communications with agency decision-makers. The APA's *ex parte* communication provision restricts communications between "interested person[s] *outside the agency*" and the agency head, the administrative law judge (ALJ), or the agency decisional employees. 5 U.S.C. 557(d) (emphasis added). *Intra-agency* communications are governed by the APA's separation of functions provision, 5 U.S.C. 554(d). That section prohibits investigative or prosecutorial personnel at an agency from "participat[ing] or advis[ing] in the decision, recommended decision, or agency review" of an adjudicatory matter pursuant to section 557 of the APA except as witness or counsel. The same separation of function provision provides that the ALJ in an adjudicatory matter may not consult any party on a fact in issue unless the other parties have an opportunity to participate. 5 U.S.C. 554(d)(1). The separation of functions provision does not prohibit agency investigatory or prosecutorial staff from seeking the amendment of a notice or the settlement or termination of a proceeding.

The rule as proposed and adopted in 1991, however, neglected to mention the separation of functions concept explicitly, and appeared to apply the *ex parte* communication prohibition to all communications concerning the merits of an adjudicatory proceeding between the agency head, ALJ or decisional personnel on the one hand, and any "party, his or her counsel, or another person interested in the proceeding" on the other. The Board of Governors does not interpret this provision as limiting agency enforcement staff's ability to seek approval of amendments to or terminations of existing enforcement actions. As drafted, however, the provision could be misinterpreted to expand the *ex parte* communication prohibition beyond the scope of the APA. The Board of Governors did not intend this result.

The proposed amendment clarifies that the regulation is intended to conform to the provisions of the APA by limiting the prohibition on *ex parte* communications to communications to or from "interested persons outside the agency," 5 U.S.C. 557(d), and by incorporating explicitly the APA's separation of functions provisions, 5 U.S.C. 554(d). This approach is also consistent with the most recent Model Adjudication Rules prepared by the Administrative Conference of the United States.

### II. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Board of Governors hereby certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This proposed rule makes a minor amendment to a rule of practice already in place, and affects intra-agency procedure exclusively. Thus, it should not result in additional burden for regulated institutions. The purpose of the revised regulation is to conform the provisions of the regulation to those imposed by statute.

### List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set forth in the preamble, the Board of Governors proposes to amend 12 CFR Part 263 as set forth below:

## PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, and 3909; 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2.

2. Section 263.9 would be amended by revising paragraphs (a) and (b) and adding a new paragraph (e) to read as follows:

**§ 263.9 Ex parte communications.**

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Board (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, a member of the Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an *ex parte* communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Board until the date that the Board issues its final decision pursuant to § 263.40(c):

(1) No interested person outside the Federal Reserve System shall make or knowingly cause to be made an *ex parte* communication to a member of the Board, the administrative law judge, or a decisional employee; and

(2) A member of the Board, administrative law judge, or decisional employee shall not make or knowingly cause to be made to any interested person outside the Federal Reserve System any *ex parte* communication.

* * * * *

(e) *Separation of functions.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the Board in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 263.40, except as witness or counsel in public proceedings.

By order of the Board of Governors of the Federal Reserve System, November 17, 1994.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 94–28757 Filed 11–21–94; 8:45am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 94–NM–198–AD]**

### Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require replacement of the horizontal stabilizer trim electric actuator. This proposal is prompted by reports of a binding condition in the clutch disk in the horizontal stabilizer trim electric actuator. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane due to binding of a clutch disk in the horizontal stabilizer trim electric actuator.

**DATES:** Comments must be received by January 19, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–132S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2673; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–198–AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

#### Discussion

Recently, the FAA has received reports from operators of Boeing Model 737–300, –400, and –500 series airplanes that the stabilizer trim wheel continued to turn after the switches for the stabilizer trim had been operated and released. Investigation revealed that the clutch disk in the horizontal stabilizer trim electric actuator may have caused the clutch to bind intermittently.

Normally, when the switches for the stabilizer trim are operated, the horizontal stabilizer trim electric actuator turns and engages either the "nose up" or the "nose down" clutch, which causes the stabilizer to move. When the switches for the stabilizer trim are released, the clutch disengages,

and the actuator continues to turn until it stops (coasts) through deceleration. Under normal operating conditions, the stabilizer movement stops immediately after the clutch disengages.

However, a binding clutch may cause the stabilizer to continue to move while the electric actuator coasts. The stabilizer may move in the direction it was last commanded or it may reverse and move in the opposite direction. The direction depends on which clutch disk is binding. This condition, if not corrected, could result in reduced controllability of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1191, Revision 1, dated November 3, 1994, which describes procedures for replacement of horizontal stabilizer trim electric actuators, having part number (P/N) 10–62033–3, with a different model (P/N 10–62033–4) that eliminates the problems associated with binding of the clutch disk.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of the electric actuator of the stabilizer trim with a different model. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

[**Note:** As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Under these circumstances, at least one operator appears to have incorrectly assumed that its airplane was not subject to an AD. On the contrary, all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.]

There are approximately 1,448 Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 590 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts would be approximately $600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $495,600, or $840 per airplane.

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket 94–NM–198–AD.

*Applicability:* Model 737–300, –400, and –500 series airplanes; as listed in Boeing Alert Service Bulletin 737–27A1191, Revision 1, dated November 3, 1994; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

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

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, replace the horizontal stabilizer trim electric actuator having part number 10–62033–3 with one that has been modified and re-identified as P/N 10–62033–4, in accordance with Boeing Alert Service Bulletin 737–27A1191, Revision 1, dated November 3, 1994.

(b) As of the effective date of this AD, no person shall install a horizontal stabilizer trim electric actuator having part number 10–62033–3 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1994.

**Darrell M. Pederson,**

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

[FR Doc. 94–28745 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–172–AD]

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

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes and Model MD–88 airplanes. This proposal would require a visual inspection to verify proper installation of the wire termination lugs on the ignition selector switch, and removal and correct installation of any improperly installed wire termination lugs. This proposal would also require application of sealant to the wire termination lugs and the attachment screws. This proposal is prompted by a report that, during the manufacturer's production flight testing, an abnormal engine start valve open annunciation for engine No. 2 occurred and resulted in an uncontained failure of the engine starter. The actions specified by the proposed AD are intended to prevent damage to the engine cowling, damage to adjacent engine components, and possible fire in the cowling, due to an uncontained failure of the engine starter.

**DATES:** Comments must be received by January 19, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5245; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–172–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report that, during the manufacturer's production flight testing, an abnormal engine start valve open annunciation for engine No. 2 occurred on a Model DC–9 series airplane. After the airplane landed, inspection revealed that an uncontained failure of the engine starter on engine No. 2 had occurred. Investigation revealed that a wire termination lug in the ignition selector switch was installed barrel down, and consequently, contacted an adjacent terminal, causing an electrical short. This electrical short at the ignition selector switch caused the engine start valve to stay open and resulted in an uncontained failure of the engine starter. This condition, if not corrected, could result in damage to the engine cowling, damage to adjacent engine components, and possible fire in the cowling.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 24–121, dated February 24, 1992, which describes procedures for visual inspection to verify proper installation of the wire termination lugs on the ignition selector switch. This service bulletin also describes procedures for removal and proper installation of the wire termination lug if it is found to be installed incorrectly. Additionally, the service bulletin describes procedures for the application of a sealant to the termination lugs and attachment screws.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to verify proper installation of the wire termination lugs on the ignition selector switch. The proposed AD would also require removal of the wire termination lugs and reinstallation, if they are installed improperly. Additionally, the proposed AD would require the application of a sealant to the termination lugs and attachment screws. The actions would be required to be accomplished in accordance with the service bulletin described previously.

[**Note:** As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. Under these circumstances, at least one operator appears to have incorrectly assumed that its airplane was not subject to an AD. On the contrary, all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this requirement.]

There are approximately 1,954 Model DC–9, DC–9–80, and C–9 series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,097 airplanes of U.S. registry would be

affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost of required parts would be nominal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $131,640 or $120 per airplane.

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

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**McDonnell Douglas:** Docket 94–NM–172–AD.

*Applicability:* Model DC–9 and C–9 (Military) series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 24–121, dated February 24, 1992, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

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

To prevent an engine start valve uncontained failure, which could cause damage to the engine cowling, damage to adjacent engine components, and possible fire in the cowling, accomplish the following:

(a) Within 8 months after the effective date of this AD, perform a visual inspection of the wire termination lugs on the ignition selector switch located in the forward overhead switch panel in the flight compartment to determine if the lugs are installed correctly, in accordance with McDonnell Douglas DC–9 Service Bulletin 24–121, dated February 24, 1992.

(1) If any wire termination lug is improperly installed, prior to further flight, remove and reinstall the wire terminations with the barrel up, and encapsulate the wire termination lugs and attachment screws with sealant, in accordance with the service bulletin.

(2) If all wire termination lugs are properly installed, prior to further flight, encapsulate the termination lugs and attachment screws with sealant in accordance with the service bulletin.

(b) Within 10 days after removing and reinstalling any wire terminations with the barrel up, as required by paragraph (a)(1), submit a report of that action to the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712, Attention: Robert Baitoo, ANM–140L; fax (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1994.

**Darrell M. Pederson,**

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

[FR Doc. 94–28744 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–U

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**14 CFR Part 71**

**[Airspace Docket No. 94–AGL–30]**

## Proposed Establishment of Class E Airspace; Rantoul, IL

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace to accommodate a new Very High Frequency Omnidirectional Range (VOR) runway 27 Standard Instrument Approach Procedure (SIAP) at Rantoul National Aviation Center Airport, Rantoul, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

**DATES:** Comments must be received on or before January 4, 1995.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–30, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the office of the Assistant Chief Counsel, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–30." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace to accommodate a VOR runway 27 SIAP, at Rantoul National Aviation Center Airport, Rantoul, IL. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations 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. 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 extending upward from 700 feet or more above the surface of the earth.*

**AGL IL E5 Rantoul, IL [New]**

Rantoul National Aviation Center Airport, IL (lat. 40°17′35″, long. 88°08′18″)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Rantoul National Aviation Center Airport, excluding those portions which overlie the Champaign, IL, and Paxton, IL, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on November 7, 1994.

**Roger Wall,**

*Manager, Air Traffic Division.*

[FR Doc. 94–28731 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 31

[GL–32–REG–94]

RIN 1545–AS22

## Liability of Third Parties Paying or Providing for Wages: Suit Period and Its Extension and Maximum Amount Recoverable

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments regarding the liability of lenders, sureties, or other third persons for withholding taxes when those persons have supplied funds, either directly to employees or to or for the account of an employer, for

the specific purpose of paying wages of the employees of that employer.

The amendments revise the regulations under section 3505(b) with regard to the maximum liability of third parties who supply funds for wages. The amendments also revise the regulations under section 3505 to increase the period of limitations for collection after assessment of third-party liability, consistent with the statutory extension of general limitation on collections the Internal Revenue Code, and to permit the third party to consent to extend that period of limitations. The proposed amendments affect third parties paying or providing for wages.

**DATES:** Written comments and requests for a public hearing must be received by January 23, 1995.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R (GL–32–REG–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (GL–32–REG–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Walker, (202) 622–3640 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

This notice of proposed rulemaking contains proposed changes to § 31.3505–1. Section 3505 of the Internal Revenue Code (Code) was added by section 105(a) of the Federal Tax Lien Act of 1966, Pub. L. 89–719 (1966). Treasury regulations were issued with an effective date of August 19, 1976 (TD 7430). Neither the Code section nor the regulations has been amended since enactment or issuance, respectively. Since the issuance of the regulations, courts have consistently determined the maximum liability of third parties who supply funds for wages in a manner that is contrary to the existing regulations. Administrative difficulties have also arisen because the self-imposed period of limitations on collection of these liabilities differs from the Code's general limitation on collections, and there is no provision in the regulations to extend this period by agreement.

The proposed amendments revise the regulations with regard to the maximum liability of third parties who supply funds for wages to conform to judicial interpretation of the statute. To aid administration of this provision, the proposed amendments also (i) increase the self-imposed period of limitations for collection of section 3505 liabilities, consistent with the 1990 extension of the Code's general limitation on collections (See section 6502), from 6 years to 10 years and (ii) add a provision allowing this period to be extended with the consent of the third party.

## Explanation of Provisions

Under section 3505(b), if a lender, surety, or other person (the lender) supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of that employer, and the lender has actual notice or knowledge (within the meaning of section 6323(i)(1)) that the employer does not intend or will not be able to make timely payment or deposit of the required withholding taxes, the lender shall be liable to the United States in a sum equal to the taxes (together with interest) that are not paid over to the United States by the employer with respect to those wages. The lender's liability for withholding taxes, in lieu of the employer, is limited to an amount equal to 25 percent of the amount of wages so supplied to or for the account of the employer. Code section 3505(b) (final sentence).

Existing regulations provide that the 25-percent limitation applies only to the tax, and not the interest on that tax, with the result that the lender could be held liable for more than 25 percent of the amount of funds it supplied. The courts that have addressed this issue, however, have held that the 25-percent limitation on the amount of wages supplied by a third party is an absolute cap with respect to the recovery of withholding taxes and prejudgment interest. *United States v. Metro Constr. Co., Inc.*, 602 F.2d 879 (9th Cir. 1979); *United States v. Intercontinental Ind., Inc.*, 635 F.2d 1215 (6th Cir. 1980); *United States v. Hannan Co.*, 639 F.2d 284 (5th Cir. 1981); *Taubman v. United States*, 449 F. Supp. 520 (E.D. Mich. 1978). *See also O'Hare v. United States*, 878 F.2d 953 (6th Cir. 1989); *United States v. Security Pacific Business Credit, Inc.*, 956 F.2d 703 (7th Cir. 1992); *United States v. Vaccarella*, 735 F. Supp. 1421 (S.D. Ind. 1990).

The proposed amendments conform the existing regulations to judicial interpretation and clarify that interest will continue to be computed in addition to any withholding tax liability, but only to an overall maximum of 25 percent of the amount of the funds supplied by the lender.

The proposed revisions to the regulations also change the period of limitations for collection of the withholding taxes and interest from six years to ten years. This revision will conform the period of limitations for the purposes of section 3505 with the general rule on limitations on collection. See Internal Revenue Code section 6502, amended by the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, § 11317(a)(1) (1990).

Finally, § 31.3505–1(d)(3) has been added to the regulations to provide for extensions of the period of limitation for collection because, on occasion, the IRS or the lender requires additional time for compliance with the regulation.

## Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these regulations is Robert Walker, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

**Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

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

**Par. 2.** Section 31.3505–1 is amended as follows:

1. Paragraph (b) is amended by:

a. Removing "for such taxes" from the second sentence of paragraph (b)(1)(ii).

b. Removing ", plus interest thereon" from the last sentence of paragraph (b)(2), *Example (1).*

c. Removing a "for withholding taxes" from the fifth sentence of paragraph (b)(2), *Example (2).*

d. Removing "plus interest thereon" from the last sentence of paragraph (b)(2), *Example (2).*

2. Paragraph (d) is amended by:

a. Revising the last sentence in paragraph (d)(1).

b. Revising the last sentence of paragraph (d)(2)(iii).

3. Paragraph (d)(3) and (g) are added.

The additions and revisions read as follows:

**§ 31.3505–1 Liability of third parties paying or providing for wages.**

* * * * *

(d) * * *

(1) * * * In the event that the lender, surety, or other person does not satisfy the liability imposed by section 3505, the United States may collect the liability by appropriate civil proceedings commenced within 10 years after assessment of the tax against the employer.

(2) * * *

(iii) * * * Thus, after the second payment by the employer, the lender's liability under section 3505(b) is $75 ($250 less $175), plus interest due on the underpayment for the period of underpayment, to a maximum of $250, 25 percent of the funds supplied.

(3) *Extensions of the period for collection.* Prior to the expiration of the 10-year period for collection after assessment against the employer, the lender, surety, or other third party may agree in writing with the district director, service center director, or compliance center director to extend the 10-year period for collection. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If any timely proceeding in court for the collection of the tax and any applicable interest is commenced, the period during which such tax and interest may be collected shall be extended and shall not expire until the liability for the tax (or a judgment against the lender, surety, or other third party arising from such liability) is satisfied or becomes unenforceable.

* * * * *

(g) *Effective date.* This section is effective on the date of publication of the final regulations in the **Federal Register.** For regulations in effect prior to the date final regulations are published in the **Federal Register**, see § 31.3505–1 (as contained in 26 CFR part 31, revised April 1, 1994).

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

[FR Doc. 94–27792 Filed 11–21–94; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Parts 42, 48, 70, 71, 75, 77, and 90

RIN 1219–AA79

### Decertification of Approved Instructors and Certified and Qualified Persons

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Extension of comment period.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rulemaking on decertification of approved instructors and certified and qualified persons.

**DATES:** Written comments must be received on or before February 6, 1995. Commenters are encouraged to send comments on a computer disk along with their comments in hard copy.

**ADDRESSES:** Send written comments and computer disks to the Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower III, 4015 Wilson Boulevard, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

**SUPPLEMENTARY INFORMATION:** On November 2, 1994, MSHA published a proposed rule (59 FR 54855) to establish uniform, due-process procedures for decertifying persons who have been designated as MSHA-approved instructors and individuals certified or qualified to perform certain mining related tasks under the applicable training and safety and health regulations.

The comment period was scheduled to close on January 6, 1995. The mining community has requested a 30-day extension of the comment period because of anticipated holiday schedules and the desire of commenters to gather information about States' decertification procedures. In response to this request, the Agency is extending the comment period to February 6, 1995. All interested parties are encouraged to submit comments prior to that date.

Dated: November 16, 1994.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 94–28717 Filed 11–21–94; 8:45 am]

BILLING CODE 4510–43–M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[AD–FRL–5110–9]

RIN 2060–AE02

### National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework; Reopening of the Public Comment Period

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

**ACTION:** Reopening of the public comment period.

**SUMMARY:** On June 6, 1994, EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from aerospace manufacturing and rework facilities which are part of major sources under Section 112 of the Clean Air Act as amended in 1990. The period for receiving public comment on the proposed rule ended on September 15, 1994. This action announces the reopening of the comment period to take comments on several amendments to the proposed rulemaking and other issues raised during the original comment period; clarification of the intent of a proposed requirement; and a correction of a typographical error.

**DATES:** *Comments:* Comments must be received on or before January 6, 1995.

**ADDRESSES:** *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket

and Information Center (6102), Attn: Docket No. A–92–20, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

*Docket:* All information used in the development of this action is contained or referenced in the preamble below. Docket No. A–92–20 contains the supporting information for the original NESHAP and is available for public inspection and copying between 8:30 am and 5:00 pm, Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 1st floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or FAX (202) 260–4400. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Tom Kissell at (919) 541–4516, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On June 6, 1994 (59 FR 29216), national emission standards for hazardous air pollutants for the aerospace manufacturing and rework source category were proposed. Since that time, the EPA has received information on several aspects of the proposed rule which has led to the amendments being proposed in this notice for the following sections of the proposed subpart GG of 40 CFR part 63: §§ 63.742, 63.745, 63.747, 63.749, 63.751, and 63.752. These sections deal with definitions, standards for primer and topcoat application operations, standards for chemical milling maskant application operations, compliance determinations, monitoring requirements, and recordkeeping requirements, respectively, for the NESHAP for aerospace manufacturing and rework facilities. This notice announces the reopening of the comment period for the aerospace NESHAP. However, only comments limited to the subjects listed below will be considered.

(1) Correction of a typographical error regarding a request for comments for commercial exterior primers;

(2) Proposal of a more stringent inorganic HAP emission control requirement for new primer and topcoat application operations and proposal of definition of high efficiency particulate air filter;

(3) Proposal to eliminate the exemption for chemical milling maskant application operations for use with Type I chemical milling etchants;

(4) Clarification of the intent of the proposed requirement for control devices used to control emissions from coating application operations;

(5) Proposal of reduced recordkeeping requirements to encourage the use of a low VOC primer;

(6) Request for comment on depainting for private, corporate, and small commuter aircraft;

(7) Request for comment on use and efficiency of control devices for depainting operations using HAP-containing chemicals; and

(8) Request for comment on determining the appropriate length of the rolling material balance period for liquid-liquid material balances for carbon adsorbers used as control devices for solvent recovery systems.

These actions are further discussed in Part III of this preamble.

As indicated in the preamble to the proposed rule at 59 FR 29217, the EPA traditionally issues a draft CTG containing recommended control levels for public comment. Rather than issue a separate draft CTG in this case, the EPA used the notice of proposed rulemaking to request public comment on draft best available control measures (BACM), which is the same as the proposed maximum achievable control technology (MACT) for coatings and solvents. Comments on the proposed rule and on the proposed amendments in this document will also be considered in formulating a final BACM.

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–92–20 or by written or telephone request from the Air and Radiation Docket and Information Center (see **ADDRESSES**). This notice with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

## II. Summary of and Rationale for Changes to the Proposed Rule and Request for Public Comments

### *A. Correction: Request for Comments on Commercial Exterior Primers*

Section II.B.2.a of the preamble to the proposed rule requested comments concerning whether the proposed organic HAP and VOC limits for commercial exterior topcoats represents demonstrated technology. This section should have referenced commercial exterior primers rather than topcoats. Consequently, the specific paragraph in this section (see 59 FR 29224, middle column) should read as follows:

> The EPA has received information indicating that the organic HAP and VOC content limits for primers do not represent demonstrated technology for exterior commercial primers. Consequently, the EPA is soliciting comments on whether a separate category should be developed for exterior commercial primers with organic HAP and VOC content levels higher than the proposed levels for primers. These comments should provide a technical justification for a higher limit, including why currently available commercial primers cannot be used by all sources.

### *B. Amendment: New Source Requirements for Inorganic HAP Emissions from Coating Operations*

The EPA has received information that at least one facility is controlling inorganic HAP emissions from coating operations to a greater degree than that required in the proposed rule. This facility is using high efficiency particulate air (HEPA) filters in addition to the filtration methods required in the proposed rule. Consequently, the EPA is proposing that § 63.745 require new primer and topcoat application operations to use HEPA filters in addition to the requirements specified in the rule proposed on June 6, 1994. Finally, the EPA is proposing that these sources keep records of documentation supplied by the filter manufacturer that the filter being used meets the HEPA filter requirements specified in the definition in § 63.742 being proposed by this notice.

### *C. Amendment: Inclusion of Chemical Milling Maskant Application Operations for Use With Type I Chemical Milling Etchants*

As proposed on June 6, 1994, the rule would apply only to those chemical milling maskant application operations in which Type II chemical milling etchants are subsequently used. This was based on information the EPA received showing that no facilities had implemented controls (either low VOC product substitutions or control devices) on chemical milling maskant application operations for use with Type I chemical milling etchants. Since proposal, the EPA has received comment that there is at least one chemical milling maskant application operation for use with Type I chemical milling etchants (which are not currently covered in the proposed rule) with reduced organic HAP and VOC content levels. The information

supplied to the EPA, however, did not detail the applicability of this chemical milling maskant to all Type I etchant operations.

The MACT floor for chemical milling maskant application operations, as determined by the average of the best performing 12 percent of sources for which the EPA had emission information, included the use of control devices (e.g., carbon adsorbers) as well as low organic HAP and VOC content chemical milling maskants. As mentioned above, the applicability of the low organic HAP and VOC content chemical milling maskant for which the EPA received comment is unknown. However, the use of the same control device technology as used for Type II chemical milling operations is applicable to Type I chemical milling operations. Consequently, the EPA is proposing to eliminate the exemption in § 63.747 for chemical milling maskants used with Type I etchants and require them to meet the same requirements as chemical milling maskants for use with Type II etchants. This will allow the use of any low organic HAP and VOC content chemical milling maskant that meets the 160 grams per liter (1.3 pounds per gallon) organic HAP and VOC content limits or the use of control devices as specified in the proposed rule.

*D. Amendment: Requirement for the Capture of All Emissions by Control Devices*

The proposed rule required that whenever a control device is used to meet the emission limitations specified, the owner or operator must meet two provisions in order to demonstrate compliance. The first is that the overall control efficiency, taking into account capture and control efficiency, must be at least 81 percent. The second provision, as specified in §§ 63.745(c)(1), 63.747(d)(1), 63.749(d)(4)(ii)(A), and 63.749(g)(3)(ii)(A) of the proposed rule, requires that all of the emissions from the respective operations be captured and controlled by the control device. In addition, the latter two paragraphs specify that all emissions must be controlled other than "incidental emissions that may escape the capture system."

The EPA has reviewed these provisions based on comments that have been received concerning their enforceability. Based on this review, the EPA has concluded that the provision specifying an overall control efficiency is adequate to ensure application of MACT. The additional language only added confusion to the proposed rule without any added environmental benefit. The EPA, therefore, is deleting from the proposed rule the four paragraphs referenced above concerning the capture of all emissions from coating operations.

*E. Amendment: Reduced Recordkeeping Requirements for Low Organic HAP and VOC Content Primer*

The EPA has received information that a low organic HAP and VOC content (approximately 250 grams VOC per liter (2.1 pounds per gallon) less water and exempt solvents) military waterborne primer has been qualified according to military specification MIL-P-85582A, Type I, Class II. While this primer may not represent demonstrated technology for all types of uses, the EPA wishes to encourage the use of low organic HAP and VOC content coatings. Consequently, the EPA is proposing to amend the recordkeeping requirements of § 63.752 of the proposed rule to require that only annual purchasing records be maintained on the use of any primer that contains a maximum of 250 grams organic HAP per liter (2.1 pounds per gallon) less water as applied and 250 grams VOC per liter (2.1 pounds per gallon) less water and exempt solvents as applied. This significantly reduces the recordkeeping from the monthly records required for coatings with higher organic HAP and VOC contents.

*F. Request for Comments: Depainting Requirements for Private, Corporate, and Small Commuter Aircraft*

The EPA has received comments that the proposed standards for depainting do not represent demonstrated technology for private, corporate, and small commuter aircraft. Specifically, the commenters stated that depainting of these aircraft cannot be accomplished through the use of non-HAP chemical strippers or media blasting methods. One commenter also stated that the physical characteristics of the coatings typically used on the exterior of private and corporate aircraft cannot be removed by the non-HAP chemical strippers currently on the market. Another comment concerned the use of a control device, such as carbon absorbers followed by a catalytic incinerator, to reduce emissions from depainting operations where HAP-containing chemical strippers are used as an alternative means of compliance.

In order to obtain additional and more specific information on this sector of the aerospace rework industry, the EPA is requesting data and information on the following specific issues:

1. One commenter stated that to achieve the finish quality demanded by private and corporate aircraft purchasers, the aircraft manufacturers are using coatings that have a cross-linked polymer structure. According to the commenter, the structure of these coatings does not allow the non-HAP chemical strippers to penetrate the coating in order to break the bond between the coating and substrate. The EPA requests information on whether non-HAP chemical strippers have been shown to be effective on this type of coating. Commenters are requested to provide as many details as possible of non-HAP chemical depainting processes such as type and number of aircraft depainted, specific type of primer and topcoats removed, VOC content (as applied, less water and exempt solvents) of the primer and topcoat removed, and method of disposal of the waste stripper. Information on the cross-linked polymer coatings (e.g., VOC content, manufacturer) and its finish characteristics are also requested.

In addition, the EPA requests comments on whether coatings other than cross-linked polymers can be used on private and corporate aircraft. Information requested includes: whether substitute coatings can be used to achieve similar finishes; whether these other coatings are easier to strip; VOC content (as applies, less water and exempt solvents) of these other coatings; application methods; whether changing coatings or not painting aircraft would affect aircraft safety; and the economic impacts of changing coatings or not painting aircraft.

2. Another commenter focused on the thin exterior skin panels of private, corporate, and small commuter aircraft. The commenter said that since weight is a critical parameter for these aircraft, very thin exterior skin panels, that are very susceptible to damage from blast depainting methods, are typically used. The commenter states that as a consequence, no rework facilities are currently using blast depainting methods on these aircraft.

Information on this topic is requested from any facility that has evaluated or is currently using any blast depainting method or non-chemical means to remove coatings from the exterior of private, corporate, or small commuter aircraft. Specifically, the information should document both successful and unsuccessful applications of blast or mechanical depainting methods for these aircraft, or any other aircraft with similarly thin exterior skin panels. Any information on the generation and control of emissions from blast or mechanical depainting operations (of any type of aircraft) would also be beneficial.

*G. Request for Comment: Control Devices for Depainting Operations Using HAP-Containing Chemicals*

Another commenter recommended that conventional chemical strippers (containing HAPs) be allowed when emissions are reduced through the use of a control device. The commenter stated that a combination of a carbon adsorber and catalytic incinerator can achieve greater than 99 percent removal efficiency, and would be essentially equal to the depainting standard of no HAP emissions.

Information submitted on this topic should address the feasibility of installing such a control system, including cost and ability to achieve greater than 99 percent removal efficiency on a dilute airstream. Also, since some portion of the volatile HAP content of conventional strippers will be retained in the waste sludge produced from the operation, commenters should detail the ultimate fate of emissions from the volatile HAPs in the waste stream. For example, a conventional waste treatment system may aerate the waste stream as an initial processing step, emitting the volatile HAPs at that point. However, other waste treatment methods may destroy HAPs before the aeration step. Comments are also requested on whether a standard allowing the use of control devices to reduce emissions from depainting operations should apply only to the depainting of private, corporate, and small commuter aircraft, or if it should apply to military and commercial aircraft as well.

*H. Request for Comment: Appropriate Length of Rolling Material Balance Period for Liquid-Liquid Material Balances for Carbon Adsorbers Used as Control Devices on Solvent Recovery Systems*

The EPA proposed Method 309, "Method to Determine Length of Rolling Period for Liquid/Liquid Material Balance Method" to determine the length of the rolling material balance period for the liquid-liquid material balance for carbon adsorbers used as control devices on solvent recovery systems. Several comments have been received concerning whether Method 309 is the most appropriate method for the aerospace industry in all instances. Therefore, the EPA is requesting comment on alternatives to Method 309. Information in support of alternatives to Method 309 should include how the length of the balance period is determined; discussions of operations that make an alternate determination of length appropriate; discussions concerning how compliance is indicated and ensured with the alternative determination; whether the alternative determination has been approved by state or local air pollution agencies in permits or other documents; and why Method 309 does not allow for the alternative determination.

## III. Administrative Requirements

*A. Paperwork Reduction Act*

The changes detailed in this notice will have the following effects on the information collection burden (recordkeeping, reporting, and monitoring requirements) of the proposed rule:

(1) The request for comments concerning commercial exterior primers does not affect the information collection burden of the proposed rule;

(2) New sources would be required to use HEPA filter and to maintain records documenting that the filters used meet the requirements of HEPA filters, but this would not significantly increase the recordkeeping burden;

(3) The inclusion of Type I chemical milling maskants would require the same recordkeeping and reporting requirements as specified for Type II chemical milling maskants. Since the EPA has no information on which to base an estimate of the number of facilities currently using Type I chemical milling etchants, the magnitude of the effect on the information collection burden cannot be made;

(4) The deletion of the requirement to capture and control all of the emissions from coating operations does not affect the information collection burden of the proposed rule; and

(5) Reducing the recordkeeping requirements for low organic HAP and VOC content primers will result in a decrease in the information collection requirements for those facilities that use these primers. However, the EPA has no information on which to base an estimate of the number of facilities that will use the low organic HAP and VOC content primers. Therefore, the magnitude of the effect on the information collection request burden cannot be made.

Even though the effect on the information collection burden cannot be completely quantified, the EPA believes that it will not significantly change. Therefore, the Information Collection Request document developed for the proposed rule has not been revised.

*B. Executive Order 12866 Review*

This rule was classified as "non-significant" under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 14, 1994.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 94–28842 Filed 11–21–94; 8:45 am]

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**40 CFR Part 70**

**[AD-FRL–5107–2]**

## Clean Air Act Proposed Interim Approval of Title V Operating Permits Program; Ventura County Air Pollution Control District, California

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes interim approval of the Operating Permits Program submitted by the Ventura County Air Pollution Control District (APCD) for the purpose of complying with Federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by December 22, 1994.

**ADDRESSES:** Comments should be addressed to Ginger Vagenas at the Region 9 address.

Copies of Ventura County APCD's submittal and other supporting information used in developing this proposed interim approval are available for inspection during normal business hours at the following location: USEPA, Region 9, 75 Hawthorne Street, San Francisco, CA.

**FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, USEPA A–5–2; 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1252.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Purpose

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw

approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70. Title V requires states to develop and submit to EPA, by November 15, 1993, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act, which outlines criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

## II. Proposed Action and Implications

### *A. Analysis of State Submission*

The analysis contained in this notice focuses on specific elements of Ventura's title V operating permits program that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document (TSD), which contains a detailed analysis of the submittal, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

Ventura's title V program was submitted by the California Air Resources Board (CARB) on November 16, 1993. Additional material was submitted on December 6, 1993. The submittal was found to be administratively complete on February 4, 1994. The Governor's letter requesting source category-limited interim approval, California enabling legislation, and Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in Ventura's submittal. The Ventura submission does contain a complete program description, District implementing and supporting regulations, and all other program documentation required by § 70.4. An implementation agreement is currently being developed between Ventura and EPA.

2. Title V Operating Permit Regulations and Program Implementation

Ventura's regulations that implement part 70 include Rule 8, Access to Facilities; Rule 15, Standards for Permit Issuance; Rule 15.1, Sampling and Testing Facilities; Rule 23, Exemption from Permit; Rule 26.1, New Source Review (definitions of "modified emissions unit," "new emissions unit," and "stationary source" only); Rule 29, Conditions on Permits (paragraph C only); Rule 33, Part 70 Permits; and Rule 42, Permit Fees. These rules, in conjunction with authorities granted under California State law, substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and minor permit modifications; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are several program deficiencies that are outlined under section II.B. below as interim approval issues and further described in the Technical Support Document.

*Variances.* Ventura County APCD has the authority to issue a variance from requirements (except the requirement to obtain a permit to construct or operate)imposed by state and local law. See California HSC sections 42350–42364 and Ventura Regulation VII. In the opinion submitted with California operating permit programs, California's Attorney General states that "[t]he variance process is not part of the Title V permitting process and does not affect Federal enforcement for violations of the requirements set forth in a Title V permit." (Emphasis in original.)

The EPA regards the State and District variance provisions as wholly external to the program submitted for approval under part 70 and consequently is proposing to take no action on these provisions of state and local law. The EPA has no authority to approve provisions of state law that are inconsistent with the CAA. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures), to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

*Permit content.* EPA is specifically approving the General part 70 Permit Conditions that were submitted as part of Ventura's part 70 program. Any modifications to these general conditions must be approved by EPA. Failure to include these conditions in part 70 permits will be cause for EPA to object to a District operating permit. See § 70.8(c)(1).

Ventura's permit content rule (Rule 33.3) does not include the level of detail regarding periodic monitoring found in § 70.6(a)(3)(i)(B). Paragraphs A.1. and A.3. of Rule 33 more generally address the requirements for periodic monitoring. These paragraphs provide that operating permits issued pursuant to this rule will assure compliance with all applicable requirements and will include conditions establishing all applicable emissions monitoring and analysis procedures etc., required under all applicable requirements. Although the rule does not explicitly state that the periodic monitoring or testing will be "sufficient to yield reliable data from the relevant time period that are representative of the source's compliance period * * *," the more general language cited above is consistent with this requirement. Should Ventura draft a permit that does not meet the requirements of § 70.6(a)(3)(i)(B), EPA will exercise its authority under § 70.8(c)(1) and will object to the permit.

*Insignificant activities.* Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA must approve as part of that state's program any activity or emission level that the

state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of part 70 program under review.

Ventura provided its current permit exemption list as its list of insignificant activities. Because EPA was provided no criteria or information on the level of emissions of activities on Ventura's exemptions list and no demonstration that these activities are not likely to be subject to an applicable requirement, EPA cannot propose full approval of the list as the basis for determining insignificant activities.

For other state programs, EPA has proposed to accept, as sufficient for full approval, emission levels for insignificant activities of 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below applicability thresholds for many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application and are consistent with current permitting thresholds in Ventura County. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Ventura County. This request for comment is not intended to restrict the ability of the District to propose and EPA to approve other emission levels if the District demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

*Definition of title I modification.* Ventura's definition of "title I modification" does not include changes reviewed under a minor source preconstruction review program ("minor NSR changes"). The EPA is currently in the process of determining the proper definition of that phrase. As further explained below, EPA has solicited public comment on whether the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include state preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

On August 29, 1994, EPA proposed revisions to the interim approval criteria in 40 CFR 70.4(d) to, among other things, allow state programs with a more narrow definition of "title I modifications" to receive interim approval (59 FR 44572). The Agency explained its view that the better reading of "title I modifications" includes minor NSR and pre–1990 NESHAP requirements, and solicited public comment on the proper interpretation of that term (59 FR 44573). The Agency stated that if, after considering the public comments, it continued to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval.

The EPA hopes to finalize its rulemaking revising the interim approval criteria under 40 CFR 70.4(d) expeditiously.[1] If EPA establishes in its rulemaking that the definition of "title I modifications" can be interpreted to exclude changes reviewed under minor NSR programs, Ventura's definition of "title I modification" would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, Ventura's definition of "title I modifications" will become a basis for interim approval. If the definition becomes a basis for interim approval as a result of EPA's rulemaking, Ventura would be required to revise its definition to conform to the requirements of part 70.

Accordingly, today's proposed approval does not identify Ventura's definition of "title I modification" as necessary grounds for either interim approval or disapproval. Again, although EPA has reasons for believing that the better interpretation of "title I modifications" is the broader one, EPA does not believe that it is appropriate to determine whether this is a program deficiency until EPA completes its rulemaking on this issue.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum" (§ 70.9(b)(2)(i)).

Ventura has opted to make a presumptive minimum fee demonstration. Ventura's existing fee schedule requires title V facilities to pay an average of $65.34 per ton in annual renewal fees. Ventura calculated its fee level at $65.34 per ton by adding up the annual renewal fees paid by sources identified as title V facilities ($1,192,780), and dividing that number by the permitted emissions (tons per year of regulated air pollutants) of those facilities (18,254.2 tons per year). The numbers in the calculation underestimate fee revenues and overestimate actual emissions, and therefore result in a conservative calculation of the fees collected per ton of pollutant. Ventura's fee demonstration shows that currently assessed renewal fees will be adequate to cover program costs for the next four years. For more information, see section VI of Ventura's Title V Operating Permit Program Description, available in the docket.

4. Provisions Implementing the Requirements of Other Titles of the Act

*a. Authority and commitments for section 112 implementation.* Ventura has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining "federally enforceable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Ventura to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Ventura is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993 guidance memorandum

[1] Publication of the proposed interim approval criteria revisions was delayed until August 29, 1994, and EPA received several requests to extend the public comment period until November 27, 1994. Given the importance of the issues in that rulemaking to states, sources and the public, but mindful of the need to take action quickly, EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)).

titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards, U.S. EPA.

*b. District preconstruction permit program to implement 112(g).* As a condition of approval of the part 70 program, Ventura is required to implement section 112(g) of the Act from the effective date of the part 70 program. Imposition of case–by–case determinations of MACT or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Ventura's preconstruction permitting program found in Ventura's Regulation II under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a District rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Ventura has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Although section 112(l) generally provides the authority for approval of state air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Ventura does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Ventura's part 70 program, approve the alternative instead.

This approval is for an interim period only, until such time as the District is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Ventura, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 12 months following promulgation by EPA of section 112(g) regulations. Comment is solicited on whether 12 months is an appropriate period considering Ventura's procedures for adoption of regulations.

*c. Program for delegation of section 112 standards as promulgated.* Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Ventura's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Ventura has informed EPA that it intends to accept delegation of section 112 standards through automatic delegation, as provided for by sections 39658 and 42301.10 of the California Health and Safety Code. The details of this delegation mechanism will be set forth in an Implementation Agreement between Ventura and EPA, expected to be completed prior to approval of Ventura's section 112(l) program for straight delegations. This program applies to both existing and future standards but is limited to sources covered by the part 70 program.

*d. Commitments for title IV implementation.* In a letter dated May 26, 1994, Ventura's Air Pollution Control Officer (APCO) committed to propose to the District governing board (Board), a complete acid rain program, with sufficient time to submit the program to EPA by January 1, 1995. The APCO stated his intent to propose to the Board that they incorporate by reference the relevant provisions of part 72. The letter further indicates that the incorporation by reference will automatically incorporate Federal revisions to part 72.

*B. Proposed Interim Approval and Implications*

The EPA is proposing to grant interim approval to the operating permits program submitted by Ventura County APCD on December 6, 1993. If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Ventura would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if Ventura failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that Ventura had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Ventura's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the District, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In all cases, if, six months after EPA applied the first sanction, Ventura had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state or district has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a title V operating permits program by the expiration of an interim approval and that expiration occurs

after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that state of district upon interim approval expiration.

1. Ventura's Title V Operating Permits Program

If interim approval is granted, Ventura must make the following changes to receive full approval:

*a. Insignificant activities.* Rules 33.2 and 23 provide the framework for Ventura's insignificant activities provisions. For its program to be fully approvable, Ventura must provide a demonstration that activities that are exempt from part 70 permitting are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, the District may restrict the exemptions to activities that are not likely to be subject to an applicable requirement and emit less than District-established emission levels. The District should establish separate emission levels for HAPs and for other regulated pollutants and demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

*b. Revision process for significant changes to monitoring terms and conditions.* The definitions of "minor permit modification" and "significant part 70 permit modification" in Rule 33.1 must be revised to ensure that significant changes to existing monitoring permit terms or conditions are processed as significant permit modifications. See § 70.7(e)(4).

*c. Operation of modifications prior to permit revision.* Except in the case when a federally enforceable permit condition would prohibit it, Ventura's Rule 33.9 A.1. allows sources to make significant modifications prior to receiving a part 70 permit revision. In order to be consistent with part 70, Ventura must revise its rule so that the only changes that may be operated prior to receiving a part 70 permit revision are those modifications subject to section 112(g) and title I, parts C and D of the Act, and that are not prohibited by the existing part 70 permit. Under part 70, if a proposed change does not meet these criteria, the source may not make the change until the permitting authority has revised the source's part 70 permit. See § 70.5(a)(1)(ii).

*d. Public notice.* Revise Rule 33.7 B. to include notice "by other means if necessary to assure adequate notice to the affected public." See § 70.7(h)(1).

*e. Permit content.* Ventura's permit content requirements are found in Rules 33.3 and 33.9. These regulatory provisions adequately address nearly all of the part 70 requirements. Certain elements (e.g. § § 70.6(a)(3)(ii)(B), 70.6(a)(6)(i)), are more fully detailed in the General Part 70 Permit conditions, which were submitted in appendix B.2.b. of Ventura's part 70 program submittal. Ventura must establish a binding requirement that the General Part 70 Permit Conditions will be included in all part 70 permits. Ventura may accomplish this by modifying its regulation to reference the general conditions that were submitted and approved by EPA, or by more fully addressing the conditions within the regulation.

*f. Recordkeeping requirements.* Revise Rule 33.3 permit content requirement to provide adequate specificity with regard to the applicable recordkeeping requirements. See § 70.6(a)(3)(C)(ii).

*g. Emissions trading under applicable requirements.* Add emissions trading provisions consistent with § 70.6(a)(10), which require that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

*h. Compliance schedule.* Rule 33.3 B.2., which requires that a schedule of compliance be included in the permit, does not create an explicit link with 33.9 B.4., which details the contents of a compliance schedule. Revise Rule 33.3 permit content requirements to ensure that all elements of the compliance schedule under § 70.5(c) are incorporated into the permit.

*i. EPA Notification of operational flexibility changes.* Rule 33.5 D. must be revised to incorporate EPA notification of changes made under the operational flexibility provisions, either by providing for it within the regulation, or by making the general permit conditions, which do specify EPA notification, required elements of each permit. See § 70.4(b)(14)(ii)

2. California Enabling Legislation

*Legislative source category limited interim approval issue.* Because California state law currently exempts agricultural production sources from permit requirements, the California Air Resources Board has requested source category limited interim approval for all California districts. EPA is proposing to grant source category limited interim approval to the operating permits program submitted by the California Air Resources Board on behalf of Ventura County on December 6, 1993. In order for this program to receive full approval (and to avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

The above described program and legislative deficiencies must be corrected before Ventura can receive full program approval. For additional information, please refer to the TSD, which contains a detailed analysis of Ventura's operating permits program and California's enabling legislation.

## III. Administrative Requirements

### *A. Request for Public Comments*

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of Ventura's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by [insert date 30 days after date of publication].

### *B. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

### *C. Regulatory Flexibility Act*

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: November 9, 1994.

**John Wise,**

*Acting Regional Administrator.*

[FR Doc. 94–28713 Filed 11–21–94; 8:45 am]

BILLING CODE 6560–50–F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 431**

**Medicaid**

**RIN 0970–AB32**

**Administration for Children and Families**

**45 CFR Part 205**

**Aid to Families With Dependent Children; National Voter Registration Act of 1993; Implementation**

**AGENCIES:** Administration for Children and Families (ACF), and Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** These proposed rules would remove certain regulatory restrictions that conflict with implementation of the National Voter Registration Act of 1993 (NVRA). NVRA provisions will make it easier for individuals to vote in elections for Federal office.

**DATES:** Consideration will be given to written comments received on or before January 23, 1995.

**ADDRESSES:** Comments on the proposed changes to 45 CFR 205.50(a)(4) to be submitted in writing to the Assistant Secretary for Children and Families, Attention: Mr. Mack A. Storrs, Director, Division of AFDC Program, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments may be inspected between 8:00 a.m. and 4:30 p.m. during regular business days by making arrangements with the contact person identified below

Mail written comments (1 original and 3 copies) on the proposed changes to 42 CFR 431.307 to the Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: MB–092–P, P.O. Box 7518, Baltimore, Maryland 21207–0518. In commenting, please refer to file code MB–092–P. Comments may be delivered to Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** AFDC: Larry Carnes, Branch Chief, Eligibility and Administration Policy Branch, Division of AFDC Program, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–5782

Medicaid: Mr. Marinos T. Svolos, Director, Division of Medicaid Eligibility Policy, Office of Medicaid Policy, Room 323, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (410) 966–4451.

**SUPPLEMENTARY INFORMATION:**

## Background

The National Voter Registration Act (NVRA) of 1993, Public Law 103–31, contains three provisions which will make it easier for individuals to register to vote in elections for Federal office. These include: (1) the simultaneous application for or renewal of drivers licenses and voter registration (the motor voter part of the bill); (2) the adoption and use of a "mail" application form for voter registration; and (3) the designation of State voter registration agencies, including among others, all offices in a State that provide "public assistance" and "State-funded programs primarily engaged in providing services to persons with disabilities."

As defined in the conference report, the term "public assistance agencies" include "* * * those State agencies in each State that administer or provide services under the food stamp, Medicaid, the Women, Infants and Children (WIC) and the Aid to Families with Dependent Children (AFDC) programs". H. Rep. No. 103–66 (1993), p. 19.

According to section 7(a)(4) of the NVRA, public assistance offices shall: distribute mail voter registration forms; provide assistance in forms completion; and provide a service to accept completed forms and to transmit them to appropriate authorities. These services are to be available at the time of application, recertification, or renewal or when a change in address is reported. The NVRA also contains provisions addressing how applicants and recipients of public assistance are to be informed of their right to request or decline in this assistance.

Section 7(a)(5) of the NVRA indicates that these offices shall not: seek to influence a party preference; display party-affiliated materials; discourage registration; or imply in any way that the availability of services or benefits is dependent upon a decision to register or not to register to vote.

Current regulatory provisions at 45 CFR 205.50(a)(4) and 42 CFR 431.307 (a)(2), (b), and (c) result in barring the distribution of voter registration materials to AFDC and Medicaid applicants recipients. Enactment of the NVRA mandates that State and local public assistance offices conduct such activities. In order to comply with these statutory requirements, we propose to amend 45 CFR 205.50 and 42 CFR 431.307 to remove the bar from the States subject to NVRA. The bar, however, would continue to apply to States that are exempt from NVRA. States that permit voter registration at polling places (since March 11, 1993 or pursuant to State law enacted on or before that date) or States with no voter registration requirements for any voter in the state with respect to an election for Federal office (since March 11, 1993) are exempt from NVRA requirements.

State agencies responsible for the administration of the AFDC and Medicaid programs have already been advised of the availability of Federal financial participation (FFP) necessary to conduct voter registration assistance in public assistance offices in accordance with Section 7 of the NVRA. The Administration for Children and Families and the Health Care Financing Administration will issue further guidance in program instructions as needed to AFDC and Medicaid agencies regarding the implementation of these provisions. All relevant Federal agencies will continue to work closely with each other and with State public assistance agencies toward the successful implementation of this Act.

Under Section 9 of the NVRA the Federal Election Commission (FEC) is required to develop a national mail voter registration form for elections to Federal office and to submit reports to Congress to assess the impacts of the legislation each odd-numbered year beginning June 30, 1995. The FEC published an NPRM related to these provisions in the **Federal Register** on March 10, 1994, 59 FR 11211. The comment period closed on April 11, 1994.

## Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles.

**Paperwork Reduction Act**

These proposed regulations do not require any information collection activities and therefore no approval is necessary under the Paperwork Reduction Act.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these proposed rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant economic impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

**List of Subjects**

*45 CFR Part 205*

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

*42 CFR Part 431*

Aid to Families with Dependent Children, Aliens, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

[Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance; and Program No. 93.778, Medical Assistance Program]

Dated: June 21, 1994.

**Mary Jo Bane,**

*Assistant Secretary for Children and Families.*

Dated: June 30, 1994.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Approved: August 10, 1994.

**Donna E. Shalala,**

*Secretary, Health and Human Services.*

For the reasons explained in the preamble, 42 CFR Part 431 and 45 CFR Part 205 of the Code of Federal Regulations are amended as set forth below:

**42 CFR CHAPTER IV**

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for Part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.307 is amended by revising paragraph (a)(2) and (b) and by adding a new paragraph (d) to read as follows:

**§ 431.307 Distribution of information materials.**

(a) * * *

(2) Have no political implications except to the extent required to implement the National Voter Registration Act of 1993 (NVRA) (Pub. L. 103–31);

* * * * *

(b) The agency must not distribute materials such as "holiday" greetings, general public announcements, voting information except to the extent required to implement NVRA and alien registration notices.

* * * * *

(d) The agency shall distribute such materials as are required to implement NVRA.

**45 CFR CHAPTER II**

## PART 205—GENERAL ADMINISTRATION PUBLIC—ASSISTANCE PROGRAMS

1. The authority citation for Part 205 is revised to read as follows:

**Authority:** 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), 1320b–7 and 1973gg–5.

2. Section 205.50 is amended by revising paragraphs (a)(4) introductory text and (a)(4)(i), and by adding a new paragraph (a)(4)(iv) to read as follows:

**§ 205.50 Safeguarding information for the financial assistance programs.**

(a) * * *

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications except to the extent required to implement the National Registration Act of 1993 (NVRA) Pub. L. 103–31. Under this requirement:

(i) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, alien registration notices, and voting information except to the extent required to implement NVRA.

* * * * *

(iv) The agency shall distribute such materials as are required to implement NVRA.

* * * * *

[FR Doc. 94–28672 Filed 11–21–94; 8:45 am]

BILLING CODE 4184–01–M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Part 28**

**[CGD 94–025]**

**RIN 2115–AE77**

## Commercial Fishing Industry Vessel Regulations for Aleutian Trade Act Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** On September 13, 1994, the Coast Guard published a supplemental notice of proposed rulemaking in the **Federal Register** (59 FR 47034). This proposed rule would promulgate a new subpart regulating certain equipment requirements and operating procedures for fish tender vessels operating in the Aleutian trade. These regulations would allow for the continued cargo service by water to remote communities in Alaska while ensuring increased safety standards for the vessels engaged in this trade.

The **Federal Register** incorrectly indicated the comment period would close November 14, 1993 vice November 14, 1994.

In an effort to be responsive to the best interests of the public and receive the greatest amount of input possible regarding this proposed rulemaking, the Coast Guard has decided to reopen the comment period until December 31, 1994.

**DATES:** Comments must be received on or before December 31, 1994.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–025), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Mark D. Bobal, Office of Marine Safety, Security and Environmental Protection, (G–MIV–4), Room 1405, U.S. Coast Guard Headquarters, Washington, DC 20593–0001 (202) 267–2307.

Dated: November 16, 1994.

**Joseph J. Angelo,**

*Acting Chief, Office of Marine Safety Security and Environment Protection.*

[FR Doc. 94–28816 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–14–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 94–132, RM–8529]**

### Radio Broadcasting Services; Reed City, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Steven B. Beilfuss proposing the allotment of Channel 247A to Reed City, Michigan, as that community's first local FM broadcast service. There is a site restriction 1.9 kilometers (1.2 miles) southwest of the community. Canadian concurrence has been requested for this allotment at coordinates 43–51–31 and 85–30–50.

**DATES:** Comments must be filed on or before January 9, 1995, and reply comments on or before January 23, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Steven V. Beilfuss, 5355 N. Brentwood, Grawn, Michigan 49637.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–132, adopted November 9, 1994, and released November 17, 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, DC. 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, DC 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. 94–28765 Filed 11–21–94; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 94–133, RM–8539]**

### Radio Broadcasting Services; Wewoka, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Jean and Jerry Spencer requesting the allotment of Channel 284A to Wewoka, Oklahoma, as the community's first local FM broadcast service. Channel 284A can be allotted to Wewoka in compliance with the Commission's technical requirements with a site restriction of 11 kilometers (6.8 miles) southwest, at coordinates 35–04–52 North Latitude and 96–34–07 West Longitude, to avoid short-spacings to Stations KMYZ–FM Channel 283C1, Pryor, OK, KREK, Channel 285A, Bristow, OK, and KTMC–FM, Channel 285A, McAlester, OK.

**DATES:** Comments must be filed on or before Jan. 9, 1995, and reply comments on or before January 23, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerry Spencer, P.O. Box 1260, Wewoka, OK 74884 (Petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–133, adopted November 9, 1994, and released Nov. 17, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 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. 94–28766 Filed 11–21–94; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 90

**[PR Docket No. 93–144, PP Docket No. 93–253; FCC 94–271]**

### Facilitation of Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 800 MHz SMR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has adopted a Further Notice of Proposed Rule Making (Further Notice) aimed at establishing a flexible regulatory scheme for Specialized Mobile Radio (SMR) systems in the 800 MHz band. The intended effect of this Further Notice is to solicit comment on assignment of blocks of SMR spectrum in defined market-based service areas that will facilitate the development of wide-area, multi-channel SMR systems that are comparable to and compete with cellular and broadband Personal Communications Services (PCS) systems; how the needs of smaller SMR systems primarily seeking to provide local service can best be accommodated

under the proposed licensing scheme; regulatory treatment of existing SMR systems; application and licensing procedures for both the wide-area SMR spectrum blocks and locally licensed SMR channels; continued licensing of SMR systems on 800 MHz General Category channels or on other non-SMR channels through inter-category sharing; and competitive bidding procedures for resolution of mutually exclusive 800 MHz SMR applications.

**DATES:** Comments must be filed on or before December 5, 1994, and reply comments must be filed on or before December 20, 1994.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** D'wana Speight, (202) 632–7125 (Private Radio Bureau, Land Mobile and Microwave Division).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rule Making, PR Docket No. 93–144, PP Docket No. 93–253, FCC 94–271, adopted October 20, 1994, and released November 4, 1994. The full text of the Further Notice is available for inspection and copying during normal business hours in the FCC Public Reference Center, Room 239, 1919 M Street, N.W., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800.

**Summary of Further Notice of Proposed Rule Making**

1. The Further Notice is intended to build upon and refine the Commission's previous efforts to promote the development of wide-area SMR service in the 800 MHz band, particularly its 1993 Notice of Proposed Rule Making that initiated this docket (8 FCC Rcd 3950 (1993), 58 FR 33062 (June 15, 1993)). The proposals presented in the Further Notice also are part of the Commission's continuing implementation of the new regulatory framework for mobile radio services enacted by Congress in the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 312, 392 (Budget Act).

2 . In implementing the Budget Act, the Commission previously determined that its SMR channel assignment rules should be revised to facilitate licensing in some portion of the 800 MHz SMR band on a Major Trading Area (MTA) basis. In the Further Notice, the Commission proposes to divide the existing 14 MHz of SMR spectrum into two categories for future licensing: (a) the 10 MHz "upper block", comprised of the 200 contiguous SMR channels (Channels 401 to 600), would be licensed on an MTA basis; (b) the remaining 4 MHz, comprised of the 80 non-contiguous SMR channels, would be licensed in groups of five channels on a local basis. The Commission tentatively concludes that the 10 MHz upper block of SMR spectrum is best suited for wide-area licensing because of its contiguity.

3. The Commission also seeks comment on its tentative conclusion that the 80 non-contiguous SMR channels should be licensed on a local basis. The Commission seeks comment on whether dividing the 800 MHz band spectrum in this fashion is fair and equitable and also solicits alternative allocations that would fairly balance the interests of wide-area and local SMR systems.

4. The Commission proposes to divide the upper 10 MHz "MTA block" into four blocks of 2.5 MHz, corresponding to 50 channels per block under our existing frequency allocation rules. The Commission seeks comment on whether the proposed allocation is a fair division of channels within the MTA and will lead to efficient spectrum use and the appropriateness of alternative block sizes both smaller and larger than 2.5 MHz.

5. In addition, the Commission tentatively concludes that a limit on the aggregation of 800 MHz SMR spectrum by a single licensee within a particular MTA is unnecessary. The Commission previously concluded that 45 MHz cap on aggregation of broadband PCS, cellular, and SMR spectrum, combined with existing service-specific caps for cellular and PCS, was sufficient to maintain a competitive commercial mobile radio service market. The Commission nonetheless seeks comment on whether there should be such an aggregation limit for 800 MHz SMR.

6. The Commission further propose to continue licensing SMR systems on the "lower 80" channels on a local basis in order to provide opportunities for SMR operators who seek to provide local service. The Commission solicits comment on two alternative approaches to local SMR licensing. The first alternative would be to continue licensing these channels under the same geographic separation and channelization criteria that exist in the Commission's current SMR rules. The second alternative would be to discontinue site-specific licensing and instead offer licenses for individual channels or small channel blocks covering defined geographic areas. The Commission also seeks comment on any possible licensing alternatives for the "lower 80" channels that might further promote the SMR operators' ability to quickly gain access to spectrum and to provide efficient service to the public.

7. The Commission also proposes that MTA licensees will be entitled to use any available border area channels within their spectrum blocks, subject to the relevant rules regarding international assignment and coordination of such channels. The Commission seeks comment on this proposal and on how to license the channels in border areas that are not contained in the proposed MTA block, which include both lower 80 SMR channels and channels that are allocated to non-SMR services outside the border areas. The Commission proposes to license these channels on a channel-by-channel basis.

8. The Commission believes that a key element in any new licensing scheme for wide-area SMR sytems is that licensees be extended the same flexibility, to the extent feasible, as cellular and PCS licensees in terms of the location, design, construction, and modification of their facilities throughout their service area. Thus, the Commission tentatively concludes that MTA licensees in the 800 MHz band should be authorized to construct stations at any available site and on any available channel within their MTAs (subject to their obligation to provide co-channel protection to incumbents as discussed *infra*). It also proposes to allow MTA licensees to add, subtract, move, and otherwise modify their base station facilities without any need for prior Commission consent, provided they notify the Commission of the coordinates and certify compliance with other applicable FCC technical requirements.

9. The Commission proposes that if an incumbent fails to construct, discontinues operations, or otherwise has its license terminated by the Commission, the spectrum covered by that incumbent's authorization should automatically revert to the MTA licensee who has obtained the contingent rights to that spectrum. An additional proposal is that the MTA license confer the right to negotiate with incumbent systems within the MTA to purchase or relocate their facilities. In this regard, the Commission proposes that any request for transfer or assignment of an incumbent authorization to the MTA licensee be presumptively considered in the public interest. The Commission seeks comment on these proposals and other

alternatives, including the costs and benefits associated with each alternative in markets that are heavily occupied by incumbent licensees.

10. The commission tentatively concludes that incumbent SMR systems should not be required to relocate new frequencies, but that decisions regarding relocation should instead be left to the parties involved and the marketplace. Thus, it asks commenters to address: (a) whether relying on voluntary negotiations between MTA licensees and incumbents will continue to provide sufficient inducement for incumbents to relocate; (b) whether the Commission should intervene if incumbents refuse "reasonable" inducements to relocate; and, (c) what constitutes a "reasonable" inducement and the specific form of intervention, if any, that should be taken by the Commission in those instances when the incumbent has refused such inducements. The Commission also seeks further comment on mandatory relocation as an alternative to voluntary arrangements between MTA licensees and incumbents similar to the Commission's provisions for relocation of microwave licensees from the 2 GHz PCS band. In addition, the Commission solicits comment on possible mechanisms for ensuring that all relocation costs to incumbents would be guaranteed by the MTA licensee, descriptions of specific costs, both direct and indirect, that would be associated with relocation (including whether they should be fully reimbursable by the MTA licensee), and whether MTA licensees should be required to offer some form of premium over cost (*e.g.*, additional channels or improved facilities) if they seek to invoke a mandatory relocation option.

11. Also, the Commission tentatively concludes that incumbent systems should not be allowed to expand beyond their existing service areas on MTA-licensed channels without the consent of the MTA licensee. The Commission also proposes to allow incumbent licenses to freely modify their facilities provided such modifications do not expand their service areas. The Further Notice requests comment regarding the advantages and disadvantages of these proposals and specific examples of circumstances under which incumbents should be permitted to modify their systems.

12. The Commission seeks comment on whether a fixed-radius protected service area (e.g., 30 kilometers which approximates the 40 dBu signal strength contour of an SMR station operating with maximum facilities) should be established for incumbent SMR systems so that such systems may construct new base stations within the existing station's 40 dBu signal strength contour. The Commission asks commenters to include a technical analysis of this proposal and any alternative proposals that permit greater flexibility for locally licensed SMR systems.

13. The Commission has previously concluded that the co-channel interference protection obligations of SMR MTA licensees with respect to other MTA licensees would be similar to those imposed in the cellular and PCS services where licensees are required to comply with interference protection criteria between Commission-defined service areas only at service area borders. Thus, the Commission tentatively concludes that wide-area SMR licensees in the 800 MHz band should not be allowed to exceed a signal level of 22 dBuV/m at their service area boundaries (unless they negotiate a different signal strength limit with all potentially affected adjacent licensees).

14. In addition, the Commission proposed to apply out-of-band emission rules only to the "outer" channels included in a MTA license and to spectrum adjacent to interior channels used by incumbents. The proposed 800 MHz SMR emission mask rule is that for any frequency outside an MTA licensee's frequency block, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$ (P) decibels or 80 decibels, whichever is the lesser attenuation. The Further Notice seeks comment on this proposal including a request for technical analysis of the proposal and discussion of any alternatives.

15. The Commission previously established a uniform 12-month period for constructing a standard base station in all CMRS services licensed on a channel-by-channel basis. The Further Notice proposed to no longer grant extended construction periods on non-MTA channels under § 90.629 of the Commission's rules. The Commission seeks comment on whether strict enforcement of this construction period will be an adequate protection against spectrum warehousing on frequencies occupied by local SMR systems.

16. The Commission tentatively concludes that MTA licensees should have five years to construct their systems. Because some existing wide-area SMR licensees have already been granted extended implementation periods of up to five years, the Commission requests comment on how existing licensees with extended implementation periods should be treated. It also asks commenters to address what is a reasonable timeframe for completing such systems given the technologies presently available in the SMR market.

17. The Commission proposes that MTA-based 800 MHz SMR licensees be required to provide coverage to one-third of the MTA population within three years of initial license grant and to two-thirds of the population by the end of their five-year construction period. The Commission further proposed that an MTA licensee must satisfy these requirements regardless of the extent of the presence of incumbents within its MTA block. The Commission also seeks comment on whether a specific definition of what constitutes coverage should be adopted for this service, *e.g.*, should single channel coverage be sufficient or should a mult-channel coverage requirement be imposed.

18. The Commission also tentatively concludes that an MTA licensee's failure to meet the coverage requirements imposed either at the third or fifth years of its construction period should result in forfeiture of the license. This penalty for failure to comply with coverage requirements is consistent with the penalties provided in the Commission's broadband PCS rules and would allow the spectrum to be made available to other qualified applicants.

19. The Commission tentatively concludes that the eligibility rules for the General Category channels and Industrial/Land Transportation and Business Category Channels (collectively, "Pool Channels") should be revised to prohibit SMR and non-SMR applicants from applying for the same channels in the future. The Commission seeks comment, however, on how the spectrum should be allocated to address the relative demand for SMR and non-SMR services. One alternative would be to eliminate SMR eligibility for all future licensing on General Category and Pool Channels. Another alternative would be to prohibit future inter-category sharing by SMR applicants on Pool Channels, but to designate a portion of the General Category for SMR-only licensing while the remaining channels would be available only to non-SMR licensees. A third alternative would be to designate the entire General Category for future licensing exclusively to SMR applicants. In light of the proposed restriction on future SMR use of Pool Channels, and possibly, General Category channels that are designated for non-SMR use, the Commission also tentatively concludes that other Part 90 services should be restricted from future eligibility for licenses on SMR Category channels. The

Further Notice seeks comment on this proposal, including whether incumbent SMRs on the General Category or Pool Channels should be allowed to apply for new authorizations on these channels.

20. The Commission proposes that both existing licensees and new applicants should be eligible for MTA licenses as well as for local licenses in the 800 MHz SMR band. It requests comment on this proposal, including whether there is any need to restrict eligibility for MTA licenses to incumbent licensees (or to restrict eligibility based on other criteria) if competitive bidding procedures are used.

21. For 800 MHz SMR MTA licenses, the Commission proposes to use application procedures similar to those used for licensing of PCS based on the common use of Commission-defined geographic areas and spectrum blocks to define the scope of licenses in both services. The Commission seeks comment on this view, and on any alternative procedural approach that commenters may consider appropriate. It also proposes (1) to treat all MTA applicants as initial applicants for public notice, application processing, and competitive bidding purposes, (2) to require applicants for MTA-based SMR licenses to file an initial "short-form" application to qualify for competitive bidding, after which the successful bidder files a "long form" application, and (3) to adopt rules analogous to its PCS rules with respect to application content, amendment and modification of applications, return of defective applications, waiver procedures, and petitions to deny. In addition, the Commission proposes to allow a limited opportunity for MTA applicants to cure minor defects in their short-form applications (but not to allow major amendments after the expiration of the short-form filing window) and to adopt rules regarding major and minor modification of MTA licenses and petition to deny procedures (including "greenmail" restrictions limiting payments that a petitioner may receive in exchange for agreeing to withdraw a petition) that are consistent with its PCS rules.

22. The Commission also seeks comment on licensing procedures for local SMR channels. If local licensing is based on defined service areas, the Commission proposes to use application procedures similar to those used for the licensing of MTA blocks. If, on the other hand, site-specific licensing is adopted for the locally licensed SMR channels, the Commission proposes to use application procedures similar to those recently adopted for non-cellular Part 22 licensees. To the extent that 800 MHz SMR channels continue to be licensed on a site-specific basis, the Commission proposes to classify the following as "initial" applications for new authorizations: all applications for new frequencies or for stations more than 2 kilometers from an existing facility using the same channel.

23. In addition, the Commission recently indicated that for CMRS providers licensed on a site-specific basis, major modifications include a change in frequency, an increase in the effective radiated power or antenna height above average terrain in any azimuth, or a change in location. The Commission seeks comment on the applicability of this definition to locally licensed SMR systems and whether there are other types of modifications that should be deemed major in this context. The Commission proposes that major modification applications would be subject to filing window and cutoff procedures and processed on a first-come, first-served basis, except that (1) modification applications that are mutually exclusive with initial or modification applications filed on the same day would be classified as members of a "same day filing group," and (2) modification applications filed within the 30-day public notice period of a competing initial application would be considered part of the 30-day filing group. In both cases, the mutually exclusive group of applications would be designated for comparative hearing (unless the parties negotiate a legal settlement) because the Budget Act does not permit the use of competitive bidding procedures to determine whether a modification application should be granted. The Further Notice seeks comment on whether our proposed definitions and procedures for dealing with modification applications are appropriate for licensing of local SMR channels. It also proposes adoption of petition to deny procedures for local SMR licensing similar to those proposed for MTA-based licensing. The Commission seeks comment, however, on whether petitions to deny locally licensed SMR applications should be filed within the initial 30-day public notice period following acceptance of such applications, or only after an auction winner has been determined, as is proposed in the case of MTA applications. In either case, the Commission intends to review only petitions filed against the auction winner.

24. The Commission proposes to classify all MTA licensees presumptively as CMRS providers because they are likely to provide interconnected service as part of their service offering. It further proposes that such presumption may be overcome by demonstrating that their service does not fall within the CMRS definition. In addition, the Further Notice proposes not to apply this presumption prior to August 10, 1996 in the case of any MTA licensee who was previously licensed in the SMR service as of August 10, 1993, and is therefore not subject to CMRS regulation for three years from the Budget Act's enactment date. It also seeks comment on whether the presumption of CMRS status should apply to licensees authorized for the 80 locally licensed channels.

25. The Commission believes that multiple bidding methodologies may be required for licensing of 800 MHz SMR service because the two proposed categories of licenses (MTA-based and local) will vary significantly from one another in terms of expected value and interdependence. In addition, it believes that competitive bidding in the 800 MHz SMR service presents a number of variables that have not been presented in other services for which auction rules have been developed. In particular, the proposed licensing of local SMR channels on a site-specific basis requires examination of how competitive bidding would work in a context where mutually exclusive applicants have applied for overlapping rather than identical authorizations.

26. The Commission tentatively concludes that simultaneous multiple round bidding is most likely to award MTA licenses to bidders who value them most highly. the Further Notice asks commenters whether any other competitive bidding designs might be more appropriate for the MTA-based licensing of 800 MHz SMR spectrum. Assuming simultaneous multiple round auctions are used, the Commission also seeks comment on which blocks should be auctioned together, the intervals between rounds in each auction, and the sequencing of each auction. Its tentative view is that all MTA licenses should be auctioned simultaneously because of the relatively high value and significant interdependence of the licenses. The Further Notice seeks comment on its view and on possible alternatives for grouping of licenses.

27. The Commission tentatively concludes that a simpler and less costly auction method, such as single round sealed bid auctions, should be used for licensing the 80 local SMR channels. The Further Notice also asks commenters to suggest alternative bidding designs. For example, if these channels are licensed on a site-specific basis, one alternative would be to allow

mutually exclusive applications to use negotiated settlements or coordination to minimize the number of overlapping applications that would require resolution by competitive bidding. Another alternative would be to divide the local 80 SMR channels into defined geographic areas (*e.g.*, BTAs) and small blocks of channels (*e.g.*, five or ten channels) and conduct a series of separate auctions for mutually exclusive applications within each area/block combination. The Commission seeks comment on the practicality of these alternatives, whether these auctions for the local licenses should be conducted separately or simultaneously, and how such licenses should be ordered for auction purposes.

28. The Commission also seeks comment on bidding procedures to be used in 800 MHz SMR auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. Assuming that simultaneous multiple round auctions are used for MTA-based SMR licenses, the Commission generally proposed to use the same or similar bidding procedures to those used in simultaneous multiple round bidding for MTA-based PCS licenses. In the case of locally licensed 800 MHz SMR channels, the Further Notice seeks comment on bidding procedures that would be appropriate depending on whether single round sealed bid auctions or an alternative auction methodology is used. It generally proposed to follow the procedural, payment, and penalty rules established in Subpart Q of Part 1 of the Commission's Rules, but seeks comment on whether any service-specific modifications of these rules are needed based on the particular characteristics of the 800 MHz SMR service.

29. As in the case of other auctionable services, the Commission proposes to require SMR auction participants to tender in advance to the Commission a substantial upfront payment as a condition of bidding. It seeks comment on whether the standard upfront payment formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding is appropriate for 800 MHz SMR services. The Commission also proposes to require that winning bidders for 800 MHz SMR licenses supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).

30. The Commission further proposes to adopt bid withdrawal, default, and disqualification rules for 800 MHz SMR licensing based on its general competitive bidding rules and seeks comment on these proposals. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, would be required to reimburse to the Commission the difference between its high bid and the winning bid amount the next time the license is offered by the Commission, if the subsequent winning bid is lower. A defaulting auction winner would be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. In the event that an auction winner defaults or is otherwise disqualified, we propose to re-auction the license either to existing or new applicants. The Commission would retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding.

31. The Further Notice also proposes to adopt the transfer disclosure requirements contained in Section 1.211(a) of the Commission's rules for all 800 MHz SMR licenses obtained by competitive bidding and specific rules governing unjust enrichment by designated entities. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

32. The Commission also proposes to apply its previously adopted special rules prohibiting collusive conduct in the context of competitive bidding to the 800 MHz SMR service and seeks comment on this proposal.

33. The Further Notice proposes specific measures and eligibility criteria for designated entities, *i.e.*, businesses owned by minorities and/or women, small businesses, and rural telephone companies. The Commission seeks comment on these proposals, and specifically on identifying special provisions that will create meaningful incentives and opportunities for such entities that are tailored to the unique characteristics of the 800 MHz SMR service.

34. The Commission proposes to utilize bidding credits and a tax certificate program to encourage participation by businesses owned by women and minorities in auctions for the 800 MHz SMR service. It seeks comment on whether the likely value of MTA-based SMR licenses would support a 40 percent bidding credit, but proposes a bidding credit of 25 percent for the "lower 80" channel licenses given their expected lower value. To prevent unjust enrichment by women and minorities trafficking in licenses acquired through the use of bidding credits, the Further Notice proposes imposition of a forfeiture requirement on transfers of such licenses to entities that are not owned by women or minorities.

35. The Commission also proposes to establish a tax certificate program under which tax certificates would be issued to: (a) non-controlling initial investors in minority and women-owned 800 MHz SMR applicants and licensees, upon the sale of their non-controlling interests; and, (b) 800 MHz SMR licensees who assign or transfer control of their licenses to minority and women-owned entities. It also proposes to impose a one-year holding requirement on the transfer or assignment of 800 MHz SMR licenses obtained through the benefit of tax certificates.

36. In terms of eligibility criteria, the Commission proposes that in order to be deemed a business owned by minorities and/or women, minorities or women must have at least 50.1 percent equity ownership and a 50.1 controlling interest in the designated entity. For limited partnerships, the general partner must be a minority and/or a woman (or an entity 100 percent owned and controlled by minorities and/or women) that owns at least 50.1 percent of the partnership equity. In the PCS context, the Commission established an alternative definition for minority- and female-owned businesses whereby women and/or minority principals control the applicant and own at least 25 percent of the equity and 50.1 percent of the voting stock (in the case of corporations). The Further Notice seeks comment on which of these definitions is most appropriate for purposes of determining designated entity eligibility in the 800 MHz SMr service, or whether both definitions should be adopted in the alternative. It also proposes to apply to the 800 MHz SMR applicants the same affiliation and attribution rules for calculating equity and stock ownership previously adopted in the PCS context.

37. The Commission proposes to adopt installment payments for small businesses bidding for 800 MHz SMR licenses. To ensure that large businesses do not become the unintended beneficiaries of installment payment provisions meant for small businesses,

the Commission also proposes to make the unjust enrichment provisions in its general competitive bidding rules applicable to installment payments by SMR applicants. The Commission seeks comment on this proposal including whether additional unjust enrichment provisions are necessary for the 800 MHz SMR service.

38. In terms of eligibility criteria, the Commission presents two alternatives for a small business definition. One alternative is the existing SBA net worth/net income size standard where an entity would qualify as a small business if its net worth is not in excess of $6 million with average net income after Federal income taxes for the two preceding years not in excess of $2 million. A second alternative is adoption of a gross revenue standard like that used in the broadband PCS context. The Further Notice requests commenters to address whether the SBA definition or a gross revenue standard should be used and the appropriate gross revenue threshold for the 800 MHz SMR context.

39. The Commission seeks comment on Whether bidding credits or other special provisions should be provided for rural telephone companies, but does not propose to adopt such special provisions.

40. In addition to the special provisions proposed above for designated entities, the Commission solicits comment on the following alternatives and related issues for the 800 MHz SMR service: (1) expansion of eligibility for installment payments to designated entities other than small businesses; (2) reduction in upfront payment for any class of designated entities; (3) the costs and benefits with respect to auction administration and designated entity participation associated with a reduced upfront payment in the 800 SMR service in the absence of a spectrum set-aside; and (4) whether the "lower 80" channels should be designated as an "entrepreneurs' block." The Commission tentatively concludes that it would not be feasible to designate an MTA channel block as an entrepreneur's block because the large number of incumbents already licensed throughout the proposed MTA band make it virtually impossible to identify a particular block that would be suitable. On the other hand, an entrepreneurs' block approach could be more feasible for the "lower 80" channels, which we contemplate will be used primarily, if not exclusively, for operation of local SMR systems.

41. In addition, if the Commission adopts an entrepreneurs' block approach, it seeks comment on how eligibility for the block should be defined. Specifically, commenters are asked to address whether applicants other than designated entities should be eligible to bid for entrepreneurs' block licenses, whether the same financial caps should be applied for determining eligibility for SMR entrepreneurs' block licenses, how designated entities should be treated within the entrepreneurs' block in terms of eligibility criteria and special provisions. The Further Notice also requests comment on whether the definitions for small businesses and business owned by minorities and/or women should be different for purposes of determining eligibility for the entrepreneurs' block, what specific special provisions should be afforded to designated entities within the entrepreneurs' block, what type of attribution and affiliation rules should apply, and what additional measures are needed to protect against unjust enrichment.

## Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IREA) of the expected impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rule Making. Written public comments are requested on the IRFA.

### *A. Reason for Action*

This rule making proceeding was initiated to secure comment on proposals for establishing a flexible regulatory scheme for the 800 MHz SMR service that would promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The proposals advanced in the Further Notice are also designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in Sections 3(n) and 332 of the Communications Act, 47 U.S.C. 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). The Commission also seeks to adopt rules regarding competitive bidding in the 800 MHz SMR service based on Section 309(j) of the Communications Act, 47 U.S.C. 309(J), which delegates authority to the Commission to use auctions to select among mutually exclusive applications in certain services, including 800 MHz SMR.

### *B. Objectives*

The Commission proposes changes to its rules for the 800 MHz SMR service that are intended to promote the growth of both traditional local SMR service and emerging wide-area SMR services, and to enhance the ability of all SMR providers to compete in the larger commercial mobile services market. Specifically, the Commission seeks to designate a block of contiguous spectrum in the 800 MHz SMR band for licensing to wide-area systems to enable them to use innovative wideband technologies and compete more effectively against Personal Communications Services and cellular, which also use contiguous spectrum. The Commission proposes to license non-contiguous spectrum in the 800 MHz SMR band on a local basis to provide opportunities for smaller SMR systems that seek to provide local niche services. It also seeks to encourage more efficient use of spectrum in congested areas and to accommodate technologically advanced systems. Finally, the Further Notice seeks to establish a new licensing mechanism for the 800 MHz SMR service that will significantly streamline the processing of applications, reducing the administrative burden for both applicants and the Commission.

### *C. Legal Basis*

The proposed action is authorized under the Budget Act, Pub. L. No. 103–66, title VI, Section 6002, and Sections 2(a), 3(n), 4(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. 152(a), 153(n), 154(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c) and 332(d), as amended.

### *D. Reporting, Recordkeeping, and Other Compliance Requirements*

Under the proposal contained in the Further Notice, SMR licensees who obtain MTA-based licenses may be required to report information regarding location of their facilities and coverage of their service areas. SMR applicants seeking treatment as "designated entities" may also be subject to reporting and recordkeeping requirements to demonstrate compliance with our competitive bidding rules.

### *E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules*

None.

### *F. Description, Potential Impact, and Number of Small Entities Involved*

The Further Notice potentially affects numerous small entities already

operating 800 MHz SMR systems on frequencies that would be designated for licensing on a wide-area bases. The Further Notice of proposed Rule making tentatively concludes that existing licensees on these frequencies should be allowed to continue operating under their existing authorizations, but also seeks to encourage voluntary frequency transfers or other arrangements to allow for efficient spectrum use. The competitive bidding proposals contained in the Further Notice also could affect small entities seeking initial licenses in the 800 MHz SMR service. The Further Notice proposes special provisions in the Commission's auction rules to benefit "designated entity" applicants, including small businesses. After evaluating comments filed in response to the Further Notice, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

*G. Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives*

This Further Notice solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

*H. IRFA Comments*

We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines specified in the summary above.

**List of Subjects in 47 CFR Part 90**

Radio.

**Amendatory Text**

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

**Authority:** Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Section 90.7 is amended by adding the following definitions in alphabetical order to read as follows:

**§ 90.7 Definitions.**

* * * * *

Major Trading Areas (MTAs). A total of 51 licensing regions based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the exceptions and additions set forth below. The *Guide* is available for public inspection at the Office of Engineering and Technology's Technical Information Center, Room 7317, 2025 M St. NW., Washington, DC.

(1) Alaska is separate from the Seattle MTA and is licensed as a single MTA-like area separately.

(2) Guam and Northern Mariana Islands are licensed as a single MTA-like area.

(3) Puerto Rico and the U.S. Virgin Islands are licensed as a single MTA-like area.

(4) American Samoa is licensed as a single MTA-like area.

* * * * *

MTA-based or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas.

* * * * *

3. Section 90.609 is amended by adding paragraph (e) to read as follows:

**§ 90.609 Special limitations on amendment of applications for assignment or transfer of authorizations for radio systems above 800 MHz.**

* * * * *

(e) Assignments and transfers of SMR Category stations in the 816–821/861–866 band licensed on or before August 9, 1994, must follow the procedures detailed in § 90.667.

4. Section 90.617 is amended by revising the introductory text of paragraphs (b), (c), (d), and Table 4A in paragraph (d) to read as follows:

**§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.**

* * * * *

(b) The channels listed in Table 2A are available to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Film and Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87.0 miles) from the U.S./Canada border. Specialized Mobile Radio Systems (SMRS) will not be authorized on these frequencies.

* * * * *

(c) The channels listed in Table 3A are available to eligible applicants in the Business Radio Category. This category does not include Specialized Mobile Radio Systems as defined in § 90.603(c). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87.0 miles) from the U.S./Canada border. Specialized Mobile Radio Systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(d) The channels listed in Tables 4A and 4B are available only to eligibles in the SMR category which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The frequencies listed in Table 4A are available to SMR eligibles desiring to be authorized on MTA service areas in accordance with Section 90.661. SMR licensees licensed on Channels 400–600 on or before August 9, 1994 may continue to utilize these frequencies within their existing service areas. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border. See § 90.619 for the assignment of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401–600 will be assigned in groups as outlined in Table 4C.

TABLE 4A.—SMR CATEGORY 806–821/851–866 MHZ BAND CHANNELS

[MTA-Based SMR Systems

| Group | Spectrum block |
|---|---|
| A | 816.0000/861.0000 to 817.2500/862.2500 (Channel Nos. 401–450) |
| B | 817.2500/862.2500 to 818.5000/863.5000 (Channel Nos. 451–500) |
| C | 818.5000/863.5000 to 819.7500/864.7500 (Channel Nos. 501–550) |
| D | 819.7500/864.7500 to 821.0000/866.0000 (Channel Nos. 551–600) |

LOCAL CHANNELS [1]

| Group No. | Channel Nos. |
|---|---|
| 201 | 201–241–281–321–361 |
| 202 | 202–242–282–322–362 |
| 203 | 203–243–283–323–363 |
| 204 | 204–244–284–324–364 |
| 205 | 205–245–285–325–365 |
| 206 | 206–246–286–326–366 |
| 207 | 207–247–287–327–367 |
| 208 | 208–248–288–328–368 |
| 221 | 221–261–301–341–381 |
| 222 | 222–262–302–342–382 |

LOCAL CHANNELS [1]—Continued

| Group No. | Channel Nos. |
|---|---|
| 223 | 223–263–303–343–383 |
| 224 | 224–264–304–344–384 |
| 225 | 225–265–305–345–385 |
| 226 | 226–266–306–346–386 |
| 227 | 227–267–307–347–387 |
| 228 | 228–268–308–348–388 |

[1] These frequencies are available to SMR eligibles on a local basis.

* * * * *

5. Section 90.619 is amended by revising the introductory text of paragraphs (a)(3) and (a)(5), Table 4A in paragraph (a)(5), (b)(8) Table 12, (b)(9) Table 16, (b)(10) Table 20, and (b)(11) Table 24 to read as follows:

**§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.**

(a) * * *

(3) Tables 2A and 2B list the channels that are available for assignment to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Video Production, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). Specialized Mobile Radio Systems (SMRS) will not be authorized in this category.

* * * * *

(5) Tables 4A and 4B list the channels that are available for assignment for the SMRS Category (consisting of Specialized Mobile Radio Systems (SMRS) as defined in § 90.603(c)). These channels are not available for inter-category sharing.

TABLE 4A.—UNITED STATES-MEXICO BORDER AREA, SMRS CATEGORY 806–821/851–866 MHZ BAND (95 CHANNELS)

| Group | Offset channel No. |
|---|---|
| MTA-Based SMR Category (30 Channels) | |
| A | 429–431–433–435–437–439 |
| B | 469–471–473–475–477–479 |
| C | 509–511–513–515–517–519–549 |
| D | 551–553–555–557–559–589–591–593–595–597–599 |
| SMR Category—Local Channels (65 Channels) | |
| 228 | 228–268–308–348–388 |
| 229 | 229–269–309–349–389 |
| 230 | 230–270–310–350–390 |
| 231 | 231–271–311–351–391 |
| 232 | 232–272–312–352–392 |
| 233 | 233–273–313–353–393 |

TABLE 4A.—UNITED STATES-MEXICO BORDER AREA, SMRS CATEGORY 806–821/851–866 MHZ BAND (95 CHANNELS)—Continued

| Group | Offset channel No. |
|---|---|
| 234 | 234–274–314–354–394 |
| 235 | 235–275–315–355–395 |
| 236 | 236–276–316–356–396 |
| 237 | 237–277–317–357–397 |
| 238 | 238–278–318–358–398 |
| 239 | 239–279–319–359–399 |
| 240 | 240–280–320–360–400 |

* * * * *

(b) * * *

TABLE 12.—SMRS CATEGORY—95 CHANNELS

[Regions 1, 4, 5, 6]

| Group | Channel No. |
|---|---|
| MTA-Based SMR Category (90 Channels) | |
| A | None. |
| B | 463 through 480, 493 through 500. |
| C | 501 through 510, 523 through 540. |
| D | 553 through 570, 583 through 600. |
| SMR Category—Local Channels (5 Channels) | |
| 30 | 30–60–90–120–150 |

* * * * *

(9) * * *

TABLE 16.—SMRS CATEGORY—60 CHANNELS

[Region 2]

| Group | Channel No. |
|---|---|
| MTA-Based SMR Category (55 Channels) | |
| A | None. |
| B | None. |
| C | 518 through 528, 536 through 546. |
| D | 554 through 564, 572 through 582, 590 through 600. |
| SMR Category—Local Channels (5 Channels) | |
| 18 | 18–36–54–72–90 |

(10) * * *

TABLE 20.—SMRS CATEGORY—135 CHANNELS

[Region 3]

| Group | Channel No. |
|---|---|
| MTA–Based SMR Category (120 Channels) | |
| A | 417 through 440. |
| B | 457 through 480, 497 through 500. |
| C | 501 through 520, 537 through 550. |

TABLE 20.—SMRS CATEGORY—135 CHANNELS—Continued

[Region 3]

| Group | Channel No. |
|---|---|
| D | 551 through 560, 577 through 600. |
| SMR Category—Local Channels (15 Channels) | |
| 38 | 38–78–118–158–198 |
| 39 | 39–79–119–159–199 |
| 40 | 40–80–120–160–200 |

(11) * * *

TABLE 24.—(REGIONS 7, 8) SMRS CATEGORY—190 CHANNELS

| Group | Channel No. |
|---|---|
| MTA–Based SMR Category (80 Channels) | |
| A | 425 through 440. |
| B | 465 through 480. |
| C | 505 through 520, 545 through 550. |
| D | 551 through 560, 585 through 600. |
| SMR Category—Local Channels (110 Channels) | |
| 35 | 35–75–115–155–195 |
| 36 | 36–76–116–156–196 |
| 37 | 37–77–117–157–197 |
| 38 | 38–78–118–158–198 |
| 39 | 39–79–119–159–199 |
| 40 | 40–80–120–160–200 |
| 225 | 225–265–305–345–385 |
| 226 | 226–266–306–346–386 |
| 227 | 227–267–307–347–387 |
| 228 | 228–268–308–348–388 |
| 229 | 229–269–309–349–389 |
| 230 | 230–270–310–350–390 |
| 231 | 231–271–311–351–391 |
| 232 | 232–272–312–352–392 |
| 233 | 233–273–313–353–393 |
| 234 | 234–274–314–354–394 |
| 235 | 235–275–315–355–395 |
| 236 | 236–276–316–356–396 |
| 237 | 237–277–317–357–397 |
| 238 | 238–278–318–358–398 |
| 239 | 239–279–319–359–399 |
| 240 | 240–280–320–360–400 |

* * * * *

6. Section 90.621 is amended by revising paragraphs (e)(2) and (e)(4) to read as follows:

**§ 90.621 Selection and assignment of frequencies.**

* * * * *

(e) * * *

(2) Channels in the Industrial/Land Transportation and Business categories will not be available to SMR systems for inter-category sharing.

* * * * *

(4) Channels in the SMRS category will not be available to Industrial/Land Transportation and Business category systems for inter-category sharing.

* * * * *

7. Section 90.629 is amended by adding a new paragraph (e) to read as follows:

**§ 90.629 Extended implementation period.**

* * * * *

(e) SMR Systems licensed after August 9, 1994 will not be eligible for extended implementation periods under this section.

8. Subpart S is amended by adding a new heading following § 90.659 to read as follows:

**Policies Governing the Licensing and Use of MTA-Based SMR Systems in the 816–821/861–866 Band**

9. A new § 90.661 is added to subpart S to read as follows:

**§ 90.661 MTA-based SMR service areas.**

MTA licenses for SMR spectrum blocks in the 816–821/861–866 band listed in Table 4A of § 90.617(d) are available in 51 Major Trading Areas (MTAs) as defined in § 90.7.

10. A new § 90.663 is added to subpart S to read as follows:

**§ 90.663 MTA-based SMR system operations.**

(a) MTA-based licensees authorized in the 816–821/861–866 MHz band pursuant to section 90.661 may construct and operate base stations using any frequency identified in their spectrum block anywhere within their authorized MTA, provided that:

(1) The MTA licensee affords protection, in accordance with § 90.621(b), to all previously authorized co-channel stations that are not associated with another MTA license.

(2) The MTA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of section 90.619 relating to U.S./Canadian and U.S./Mexican border areas.

(3) The MTA licensee limits its field strength at any location on the border of the MTA service area in accordance with § 90.771.

(b) In the event that the authorization for a previously authorized co-channel station within the MTA licensee's authorized spectrum block is terminated or revoked, the MTA licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's licensing record. The MTA licensee then will be able to construct and operate base stations using such frequency.

11. A new section 90.665 is added to subpart S to read as follows:

**§ 90.665 Authorization, construction and implementation of MTA licenses.**

(a) MTA licenses in the 816–821/861–866 MHz band will be issued for a term not to exceed ten years.

(b) MTA licensees in the 816–821/861–866 band will be permitted five years to construct their stations. This five-year period will commence with the issuance of the MTA-wide authorization and will apply to all of the licensee's stations within the MTA spectrum block, including any stations that may have been subject to an earlier construction deadline arising from a pre-existing authorization.

(c) MTA licensees in the 816–821/861–866 MHz band must, within three years, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of the MTA. Further, each MTA licensee must provide coverage to at least two-thirds of the population of the MTA within five years.

12. A new section 90.667 is added to subpart S to read as follows:

**§ 90.667 Special provisions regarding assignments and transfers of authorizations for incumbent SMR licensees in the 816–821/861–866 MHz band.**

An SMR licensee initially authorized on any of the channels listed in Table 4A of Section 90.617 on or before August 9, 1994 may transfer or assign its channel(s) to another entity subject to the provisions of Sections 90.153 and 90.609(b). If the proposed transferee or assignee is the MTA licensee for the spectrum block to which the channel is allocated, such transfer or assignment presumptively will be deemed to be in the public interest.

13. A new Section 90.771 is added to Subpart S to read as follows:

**§ 90.771 Field strength limits.**

The predicted or measured field strength at any location on the border of the MTA service area for MTA licensees shall not exceed 22 dBuV/m unless all bordering MTA licensees agree to a higher field strength. In the event that this standard conflicts with the MTA licensee's obligation to provide co-channel protection to incumbent licensees under Section 90.621(b), the requirements of Section 90.621(b) shall prevail.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–28760 Filed 11–21–94; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; 90-Day and 12-Month Findings for Eleven Petitions to List Three Blind Harvestmen, Three Micro-blind Harvestmen, One Spider, Two Butterflies, One Moth, Two Crickets, Three Katydids, and Five Grasshoppers

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

**ACTION:** Notice of petition findings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service), announces negative 90-day and 12-month findings on 11 petitions to list 20 invertebrates under the Endangered Species Act of 1973, as amended. After careful assessment of the best scientific and commercial information available regarding the present and future threats facing the petitioned species, the Service either finds that the petitioners have not presented substantial information indicating the requested actions may be warranted (90-day finding) or determines that the petitioned action is not warranted at this time (12-month finding).

**DATES:** These findings announced in this notice were made on November 3, 1994. Comments and materials related to these petition findings may be submitted to the Field Supervisor at the address below until further notice.

**ADDRESSES:** Comments, questions, or information concerning the status of the petitioned species should be submitted to the Field Supervisor, Sacramento Field Office, Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California, 95825–1846. The petitions, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Chris Nagano at the above address or at 916/978–4866.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. To the maximum extent practicable, this

finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the Service finds that a petition presents substantial information indicating the requested action may be warranted, then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires that for any petition that presents substantial scientific and commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals to list, delist, or reclassify species. Such 12-month findings are to be published promptly in the **Federal Register.**

The Service has made negative 90-day findings on 7 of the 11 petitions to list 16 invertebrates; the Marin blind harvestman, Anza Borrego blind harvestman, Silver Creek blind harvestman, Ross micro-blind harvestman, Ubick's gnaphosid spider, unsilvered fritillary butterfly, Jacalitos jerusalem cricket, Berkeley ground cricket, Jacalitos shield-backed katydid, splendid shield-backed katydid, Antioch shield-backed katydid, San Bernardino Mountains grasshopper, Lompoc grasshopper, Santa Monica Mountains grasshopper, Central Valley grasshopper, and Mexicali lubber grasshopper. The Service finds that the petitioners have not presented substantial information indicating the requested actions for these 16 taxa may be warranted. In addition, the Service has made negative 12-month findings on 4 of the 11 petitions for 4 invertebrates; the Fairmont micro-blind harvestman, Edgewood Park micro-blind harvestman, Yontocket ringlet butterfly, and Opler's longhorn moth. The Service has been assessing the status of these four taxa since their designation as category 2 candidates. Minimal new information was received or available to the Service beyond that used to assign these invertebrates to category 2. As a result, the Service determines that the petitioned action is not warranted at this time. These four taxa will be retained in category 2.

On July 6, 1989, the Service received a petition from Dr. Thomas Briggs of the California Academy of Sciences to list the Marin blind harvestman (*Calicina diminua*) as an endangered species. The letter, dated July 6, 1989, was clearly identified as a petition and contained the name, signature, institutional affiliation, and address of the petitioner.

The petition stated that the Marin blind harvestman is known only from a portion of Burdell Mountain in Marin County, California. This species was described from 18 specimens collected under rocks in serpentine grassland at this location (Ubick and Briggs 1989). The threat cited by the petitioner is the construction of the Buck Center for Research on Aging. The proposed project includes the designation of a 300-acre conservation area and a 188-acre development area. The proposed activities include a research center, a residential area, parking lots, and roadways. The Marin blind harvestman is only known from three locations, two occurring on the proposed Buck Center for Research on Aging site (EIP Associates 1992). Based on an analysis of the draft environmental impact report for the proposed project, one of two serpentine rock outcrops containing the species would be damaged or lost (EIP Associates 1992, Western Ecological Services Company 1990). The extent of adequate surveys for this species that have been conducted in suitable habitats in Marin County is not clear. A map displaying the geological features of Burdell Mountain and adjacent areas was also examined in conjunction with this review. The 1:250,000 geological base map for the Santa Rosa Quadrangle (California Division of Mines and Geology 1980) reveals other serpentine outcrops within the general vicinity of Burdell Mountain. Some of these outcrops appear to provide approximately the same combination of geographic features as the known habitats on Burdell Mountain. The petition and supporting documentation indicate that adequate surveys of these other potential habitats were not conducted for the Marin blind harvestman. Moreover, because the petition did not present information on whether the Marin blind harvestman may be declining, additional adequate surveys are needed to assess its distribution and population status. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

On July 17, 1990, the Service received a petition from Briggs and Mr. Darrell Ubick of the California Academy of Sciences to list the Anza Borrego blind harvestman (*Sitalcina borregoensis*) as an endangered or threatened species. The letter, dated July 14, 1990, was clearly identified as a petition and contained the names, signatures, institutional affiliation, and address of the petitioners.

According to the petition, the Anza Borrego blind harvestman is known only from an isolated palm grove at Mountain Palm Springs, a canyon in Anza Borrego State Park in San Diego County, California. Within this site, the petitioners reported that harvestmen have been found only at a "few moist spots near the palm trees." They stated the animal could be harmed by any development at this location. Mountain Palm Springs is an unimproved campground that is regularly patrolled by park rangers (Bill Tippets and Mark Jorgensen, California Department of Parks and Recreation, pers. comm., November 16, 1990). Off-road vehicle use, which has caused extensive habitat destruction in other areas of the southwestern United States, is not a problem at this location (Mark Jorgensen, *ibid.*). Six palm (*Washingtonia filifera*) groves occur in the immediate vicinity of the campground and 25 palm groves exist in Anza Borrego State Park, of which, five are located within 10 miles of Mountain Palm Springs. The petitioners did not indicate if surveys had been conducted at any of these other similar habitats. Moreover, because the petition did not present information on whether the Anza Borrego blind harvestman may be declining, additional adequate surveys are needed to assess its distribution and population status. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioners did not present substantial information that the requested action may be warranted.

On July 17, 1990, the Service received a petition from Briggs and Ubick to list the Silver Creek blind harvestman (*Calicina jungi*) as an endangered or threatened species. The letter, dated July 14, 1990, was clearly identified as a petition and contained the names, signatures, institutional affiliation, and address of the petitioners.

The petition stated that the Silver Creek blind harvestman is known only from rocky serpentine grassland, 0.9 miles southeast of the junction of Silver Creek and San Felipe Roads, near San Jose in Santa Clara County, California. The petitioners noted that urban development imperils this species and a pipeline was laid through its habitat on or before 1990. In a letter dated January 13, 1990, the petitioners stated they had searched for blind harvestmen and micro-blind harvestmen in the vicinity of Silver Creek and Metcalf Canyon Roads in the San Jose area during 4 days in 1966 and 1 day in 1983. The petition and supporting documentation indicate

that the surveys of these other potential habitats for the Silver Creek blind harvestman were inadequate. Though the Silver Creek blind harvestman may be declining, additional adequate surveys are needed to assess its distribution. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioners did not present substantial information that the requested action may be warranted.

On October 31, 1989, the Service received a petition from Briggs to list the Fairmont micro-blind harvestman (*Microcina lumi*) as an endangered species. The letter, dated October 26, 1989, was clearly identified as a petition and contained the name, signature, institutional affiliation, and address of the petitioner. The Fairmont micro-blind harvestman was designated a category 2 candidate species on November 21, 1991 (56 *FR* 58804).

The petitioner stated that the known distribution of the Fairmont micro-blind harvestman is limited to two serpentine outcrops on Fairmont Ridge, near the City of San Leandro in Alameda County, California. The petitioner stated that all other suitable habitats in this area have been searched without success. A proposed housing development and overgrazing by livestock were cited as the basis for the requested action. The Service reviewed the petition and supporting documents, including a scientific paper describing the genus *Microcina* and the species *M. lumi* (Briggs and Ubick 1989) and a map displaying the geological features of Fairmont Ridge and adjacent areas. This map, a 1:250,000 geological base map for the San Francisco quadrangle (California Division of Mines and Geology 1980), reveals other serpentine outcrops within the general vicinity of Fairmont Ridge. Some of these outcrops appear to provide approximately the same combination of geographic features as the known habitats on Fairmont Ridge. Though urban development and grazing remain a threat in the species' known habitat, other potential habitats remain unsurveyed for the Fairmont micro-blind harvestman. Moreover, no new information was received or available to the Service beyond that used to assign this species to category 2. As a result, the Service has carefully assessed the best scientific and commercial information available regarding the present and future threats facing the Fairmont micro-blind harvestman and determines that the petitioned action is not warranted at this time.

On March 22, 1990, the Service received a petition from Briggs and Ubick to list the Edgewood Park micro-blind harvestman (*Microcina edgewoodensis*) as an endangered species. The letter, dated March 20, 1990, was clearly identified as a petition and contained the names, signatures, institutional affiliation, and address of the petitioners. The Edgewood Park micro-blind harvestman was designated a category 2 candidate species on November 21, 1991 (56 *FR* 58804).

According to the petitioners, the Edgewood Park micro-blind harvestman is known only from Edgewood County Park and a site west of Interstate Highway 280 in San Mateo County, California known as the "Triangle" (these two localities were cited as three sites in the petition). This species was described from three male specimens collected at these two locations (Briggs and Ubick 1989). The animals were found beneath rocks in serpentine grassland adjacent to scrub oaks. The threat cited by the petitioners is unspecified development at the Triangle. The Service is not aware of any development currently proposed for this specific area. In addition, serpentine grassland in this area is being protected due to the presence of the threatened bay checkerspot butterfly (*Euphydryas editha bayensis*). A study commissioned by the County of San Mateo determined that it is not feasible to construct a golf course at Edgewood County Park (Thomas Reid Associates 1993). The County of San Mateo has designated Edgewood County Park as natural open space (Barrales and Huening 1993, San Mateo County Board of Supervisors 1993). In light of the above discussion and because no new information was received or available to the Service beyond that used to assign this species to category 2, the Service has carefully assessed the best scientific and commercial information available regarding the present and future threats facing the Edgewood micro-blind harvestman and determines that the petitioned action is not warranted at this time.

On December 3, 1991, the Service received a petition from Briggs to list the Ross micro-blind harvestman (*Microcina* sp.) as an endangered species. The letter, dated November 27, 1991, was clearly identified as a petition and contained the name, signature, institutional affiliation, and address of the petitioner.

The petition reported the Ross micro-blind harvestman is known only from specimens collected in February 1991 on a portion of Bald Hill in Ross, Marin County, California. The petitioner, a blind harvestmen specialist, stated that this is a valid species based on morphological characters. This undescribed species was collected under sandstone rocks in a grassland-oak and bay woodland ecotone directly east of the summit of Bald Hill at an elevation of 880 feet. The petitioner cited a proposed residential development as the threat to the Ross micro-blind harvestman. A residential development had been proposed for this site and a final environmental impact report was certified by the Ross Planning Commission (Gary Broad, Ross Planning Department, pers. comm., 1993). However, the project was denied by the City Council and court challenges by the project proponent were unsuccessful. Projects may be proposed for this location in the future but none have been made to date. As a result, the Service considers such threats to the Ross micro-blind harvestman to be of low magnitude and non-imminent. Because the petition did not present information on whether the Ross micro-blind harvestman may be declining or located elsewhere, additional adequate surveys are needed to assess its distribution and population status. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

On December 11, 1992, the Service received a petition from Ubick to list Ubick's gnaphosid spider (*Talanites ubicki*) as a threatened or endangered species. The letter, dated November 29, 1992, was clearly identified as a petition and contained the name, signature, institutional affiliation, address, and telephone number of the petitioner.

The petition stated that Ubick's gnaphosid spider is only known from a single locality on the southern slope of Burdell Mountain in Novato, Marin County, California (Platnick and Ovtsharenko 1991). The habitat at the site consists of serpentine grassland. Gnaphosids are small, hunting spiders that construct a tubular retreat under stones and in debris and hunt at night from this location (Borror *et al.* 1976; Jones 1983). The petitioner cited urban development as the threat to this species and stated that part of the locality inhabited by Ubick's gnaphosid spider has been destroyed by a road that was constructed a few years ago. The proposed project, the Buck Center for Research on Aging, includes the designation of a 300-acre conservation area and a 188-acre development area. Proposed activities include a research

center, a residential area, parking lots, and roadways. The information provided by the petitioner indicates that the remaining portions of the serpentine rock outcrops inhabited by Ubick's gnaphosid spider are located within the conservation area. The petition from Ubick did not indicate if adequate surveys had been conducted at other similar habitats in the area. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

Ms. Katrin Snow of the Xerces Society in Portland, Oregon, petitioned the Service to list Opler's longhorn moth as an endangered species in a letter dated December 19, 1990, which was received on January 14, 1991. The letter, dated December 19, 1990, was clearly identified as a petition and contained the name, signature, institutional affiliation, address, and telephone number of the petitioner. Opler's longhorn moth was placed in category 2 on November 21, 1991 (56 *FR* 58804).

Opler's longhorn moth is a member of the longhorn moth family, the Adelidae (Davis 1987, Powell 1969). It is a small, dark bronze colored, day flying moth with long antennae. The adults have a wingspan ranging from approximately 9 to 14 millimeters. Opler's longhorn moth is recorded from 18 sites extending along the west side of the San Francisco Bay from 5 miles southeast of Nicasio in Marin County south to the Gilroy area of Santa Clara County and from the Oakland area on the inner Coast Ranges. A single population is known from central Santa Cruz County. Excepting the Santa Cruz County locality that consists of a grassland habitat derived from marine sand deposits, Opler's longhorn moth is restricted to sites within serpentine grassland. The extent of survey efforts that have been conducted in suitable habitat in the San Francisco Bay area is unclear. At least 13 areas with serpentine soils within the range of Opler's longhorn moth cover more than 40 acres each (McCarten 1986, 1987). The larvae of Opler's longhorn moth feeds on *Platystemon californicus* (cream cups), a widespread annual plant. In contrast to other invertebrate groups, such as butterflies and tiger beetles, whose biology, ecology, and biogeography are well known, few amateur or professional entomologists collect or study adelid moths and other microlepidoptera. Though urban development threaten a portion of the species' range of Opler's longhorn moth, additional status information (e.g., rangewide surveys) are needed prior to proposing the species. Moreover, no new information was received or available to the Service beyond that used to assign this species to category 2. As a result, the Service has carefully assessed the best scientific and commercial information available regarding the present and future threats facing Opler's longhorn moth and determines that the petitioned action is not warranted at this time.

On January 8, 1990, the Service received a petition from Dr. Dennis Murphy of the Stanford University Center for Conservation biology to list the Yontocket ringlet butterfly (*Coenonympha tullia yontocket*) as a threatened or endangered species. The petitioner stated that the insect merits protection under the Act because it is known only from a single coastal dune locality in Del Norte County, California. The area is used for target shooting, off-road vehicles, garbage dumping, and camping, all potentially damaging activities to this population. Invasive exotic vegetation and potential housing development also likely imperiled the area. Based on this information, the Service issued a 90-day finding on November 1, 1991, which found that the petition presented substantial information indicating that the requested action may be warranted (55 FR 46801). A status review of the Yontocket ringlet butterfly was initiated at the same time.

The Yontocket ringlet butterfly was described by Porter and Mattoon (1989) from 76 specimens collected at several sites extending from Lake Earl to the mouth of the Smith River in Del Norte County, California. These sites likely represent a single population. The animal was found in dunes with coniferous lee slopes and grassy exposed slopes, and among dunes on slightly elevated ground around seasonally marshy sphagnum bogs. Sterling Mattoon (*in litt.*, 1991) provided information regarding the range of the yontocket ringlet butterfly and presented data showing that the 11 known populations of this species range from Enderts Beach, 5 miles south of Crescent City, north along the coast to the mouth of the Pistol River, Curry County, Oregon. A population is known approximately 0.7 to 2.2 miles inland from the vicinity of the town of Carpenterville in Curry County. This substantially increases the number of populations and extends the range of the species approximately 22 miles north and 15 miles south of its previously known distribution. The type and degree of threats to these populations were not stated in the petition and other information available to the Service. In light of these data gaps, the Service has carefully assessed the best scientific and commercial information available regarding the present and future threats facing the yontocket ringlet butterfly and determines that the petitioned action is not warranted at this time.

On January 6, 1992, the Service received a petition from Drs. Dennis Murphy and Alan Launer of the Stanford University Center for Conservation Biology to list the unsilvered fritillary butterfly (*Speyeria adiaste adiaste*) as an endangered or threatened species. The letter, dated December 31, 1991, was clearly identified as a petition and contained the names, signatures, institutional affiliation, address, and telephone number of the petitioners.

The petition stated that the unsilvered fritillary butterfly has been recorded from San Mateo, Santa Clara, and Santa Cruz counties (Sterling Mattoon, pers. comm., 1992; C.D. Nagano, unpub. obs.). This species is now found primarily in areas along the crest of the Santa Cruz Mountains or east of the crest in the northern and central areas of Santa Cruz County (Steiner 1990). The petitioners reported that recent colonies are known from four general areas in this region. The biology, ecology, and biogeography of the unsilvered fritillary is not well known. The foodplant of the larvae, violets (*Viola* sp.), is found in fern-dominated grassland glades or wetland areas. A large population occurs within Big Basin Redwood State Park in Santa Cruz County. The potential threats include urban development and suppression of fire. Lack of fire may allow succession to proceed and eliminate suitable foodplant and larval habitat. Although, the unsilvered fritillary butterfly may be declining, existing information is not available to estimate the extent or rate of changes in habitat or population levels. Further surveys are needed to adequately assess its distribution and population status. Beyond the information described above, the petitioner few data presented little else on the status of the animal. Therefore, the Service determines that the petitioners did not present substantial information that the requested action may be warranted.

On March 3, 1993, the Service received a petition from David Weissman to list the Jacalitos Jerusalem cricket (*Stenopelmatus nigrocapitatus*), Berkeley ground cricket (*Neonemobius eurynotus*), Jacalitos shield-backed katydid (*Ateloplus joaquin*), splendid shield-backed katydid (*Ateloplus*

*splendidus*), Antioch shield-backed katydid (*Neduba extincta*), San Bernardino Mountains grasshopper (*Trimerotropis bernardi*), Lompoc grasshopper (*Trimerotropis occulens*), Santa Monica Mountains grasshopper (*Trimerotropis occidentaloides*), Central Valley grasshopper (*Conozoa hyalina*), and the Mexicali lubber grasshopper (*Spaniacris destricola*) as endangered species. The letter, dated February 28, 1993, was clearly identified as a petition and contained the name, signature, address, and telephone number of the petitioner.

The petitioned species are characterized by a substantial lack of information regarding their geographical range, ecological requirements, and population status. The Natural Diversity Data Base of the California Department of Fish and Game had no records of any of these animals.

The petition stated that the Jacalitos Jerusalem cricket is known from Jacalitos Canyon and the Panoche Hills in Fresno County, and Kettleman Hills in Kings County. Tinkham and Rentz (1969) reported records from two localities in Tulare County and three localities in western Fresno County. The Jacalitos Jerusalem cricket is restricted to areas containing sandstone and is found primarily under rocks at the bases of hillsides (Tinkham and Rentz 1969). No data are available on the specific localities or status of the Jacalitos Jerusalem cricket. The petitioner stated that the Jacalitos shield-backed katydid is known from two male specimens. No information was presented on the specific localities, habitat requirements, or status of the Jacalitos shield-backed katydid. Oil drilling and livestock grazing were cited as threats to these two animals. Jacalitos Canyon is included as a conservation area in the Coalinga Habitat Conservation Plan (Ron Rempel, California Department of Fish and Game, pers. comm. 1993). No urban development is proposed or likely in this area because of a lack of water. Indirect protection for the Jacalitos Jerusalem cricket and the Jacalitos shield-backed katydid may be provided by the presence of the endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard (*Gambelia silus*) in the area. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The splendid shield-backed katydid is only known from two localities, Barstow and 3 miles west of Essex, San Bernardino County, California. This species has been found in creosote bushes (Rentz and Birchim 1968). The petitioner stated that a female specimen reported from the Imperial Valley in Imperial County, California, is apparently a different species. No information was presented to the Service on the specific localities, habitat requirements, or population status of this animal. No threats to this species were cited in the petition or are otherwise known to the Service. Beyond the information described above, the petition presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The petition and other information available to the Service indicate that the Berkeley ground cricket is known from four localities in the San Francisco Bay area of California (Rehn and Hebard 1918, Weissman and Rentz 1977, Vickery and Weissman 1989). A population is protected at the Jasper Ridge Biological Preserve and another population is unprotected in a heavily grazed pasture on Stanford University (Weissman and Rentz 1977). The petitioner stated that grazing may benefit the species. Beyond the information described above, the petition presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The Antioch shield-backed katydid is known only from a single male specimen collected in 1937 at the Antioch sand dunes in Contra Costa County, California (Rentz 1977). Though the dunes historically covered an estimated 190 acres, only 70 acres remain (United States Fish and Wildlife Service 1984). The natural habitats in this area have been adversely effected by industrialization, sand mining, urbanization, agricultural land conversion, off-road vehicles, wildfire, and other human impacts. As suggested by its specific epithet, the Antioch shield-backed katydid is presumed extinct, given the extent of habitat loss and absence of any observations since 1937. Diligent searches for this animal have been conducted by numerous professional and amateur entomologists over a period of several decades but no further individuals have been located (Powell 1978, Rentz 1977). Conversely, if the species is still extant on the sand dunes, it likely would be protected because most of the remaining natural dunes are secured by the Service's ownership and management of the Antioch Dunes National Wildlife Refuge. This refuge was created to protect the endangered Lange's metalmark butterfly (*Apodemia mormo langei*), Contra Costa wallflower (*Erysimum capitatum* ssp. *angustatum*), and the Antioch Dunes evening primrose (*Oenothera deltoides* ssp. *howellii*). Beyond the information described above, the petitioner presented few data on the status of the animal, which is possibly extinct. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The San Bernardino Mountains grasshopper is known only from Vivian and High Creeks in the San Bernardino Mountains of San Bernardino County, California (Otte 1984, Rentz and Weissman 1984). The species inhabits ponderosa pine forest at altitudes of 1820 to 2743 meters (Rentz and Weissman 1984). Little information is available on the specific localities, habitat requirements, or status of this species. No threats to this animal were cited in the petition or are otherwise known to the Service. Beyond the information described above, the petition presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The Lompoc grasshopper is known from Lompoc in Santa Barbara County and Paso Robles in San Luis Obispo County during the month of August (Otte 1984). No data are available to the Service on the specific localities, habitat requirements, or status of this animal. No threats to this species were cited in the petition or are otherwise known to the Service. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The Santa Monica Mountains grasshopper is known only from the western Santa Monica Mountains in Los Angeles and Ventura Counties. This species has been found on bare hillsides and along dirt trails in chaparral (Rentz and Weissman 1981). The petitioner did not cite any threats, but noted that two locations inhabited by this species have been destroyed by development. Little information exists on the habitat requirements or status of this species. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The Central Valley grasshopper is known from four localities in the

Central Valley and the Delta region of California (Otte 1984, Strohecker *et al.* 1968). The petitioner stated that this species has not been collected since 1953. The Central Valley grasshopper has been found on low, dry desert flats during the months of July and August in the vicinity of Bakersfield, Ceres, and Turlock (Otte 1984). No data are available to the Service on the specific localities, habitat requirements, or status of the Central Valley grasshopper. No threats to this animal were cited in the petition or are otherwise known to the Service. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

The Mexicali lubber grasshopper is known from eastern Riverside and Imperial counties in California, and Baja California Norte in Mexico. According to Stohecker *et al.* (1968) and Helfer (1963), this animal is an inhabitant of low, silt or dry, sandy desert areas that are subject to extremely high temperatures. The petitioner did not cite any threats to this species, however, three populations have been eliminated by development in 1961 and 1972 (Tinkham 1975). Rehn and Grant (1961) and Tinkham (1975) provided information on the ecology and some populations of this animal. No current information is available on the status of the Mexicali lubber grasshopper. Beyond the information described above, the petitioner presented few data on the status of the animal. Therefore, the Service determines that the petitioner did not present substantial information that the requested action may be warranted.

**Petition Findings**

After careful assessment of the scientific and commercial information contained in the petitions, referenced in the petitions, and otherwise available to the Service at this time, the Service finds that 7 of the 11 petitions for 16 taxa do not present substantial information that listing the Marin blind harvestman (*Calicina diminua*), Anza Borrego blind harvestman (*Sitalcina borregoensis*), Silver Creek blind harvestman (*Calicina jungi*), Ross micro-blind harvestman (*Microcina* sp.), Ubick's gnaphosid spider (*Talanites ubicki*), unsilvered fritillary butterfly (*Speyeria adiaste adiaste*), Jacalitos jerusalem cricket (*Stenopelmatus nigrocapitatus*), Berkeley ground cricket (*Neonemobius eurynotus*), Jacalitos shield-backed katydid (*Ateloplus joaquin*), splendid shield-backed katydid (*Ateloplus splendidus*), Antioch shield-backed katydid (*Neduba extincta*), San Bernardino Mountains grasshopper (*Trimerotropis bernardi*), Lompoc grasshopper (*Trimerotropis occulens*), Santa Monica Mountains grasshopper (*Trimerotropis occidentaloides*), Central Valley grasshopper (*Conozoa hyalina*), and Mexicali lubber grasshopper (*Spaniacris destricola*) may be warranted. In addition, the Service determines that the petitioned action is not warranted at this time for 4 of the 11 petitions for four taxa involving the Fairmont micro-blind harvestman (*Microcina lumi*), Edgewood Park micro-blind harvestman (*Microcina edgewoodensis*), Yontocket ringlet butterfly (*Coenonympha tullia yontocket*), and Opler's longhorn moth (*Adela oplerella*). These four taxa will be retained in category 2. The Service will continue to accept information on the status of these 20 species until further notice. If information becomes available indicating that listing as endangered or threatened is appropriate, the Service would propose to list any such species.

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the office listed in the ADDRESSES section above.

**Author**

The primary author of this notice is Chris Nagano and Karen Miller (Sacramento Field Office), Art Davenport (Carlsbad Field Office), and Judy Hohman (Ventura Field Office) (see ADDRESSES).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

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

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

Dated: November 3, 1994.

**Mollie H. Beattie,**

*Director.*

[FR Doc. 94–28741 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 641

[Docket No. 941113–4313; I.D. 110194A]

### Reef Fish Fishery of the Gulf of Mexico

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

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), NMFS proposes to reduce the bag limit for red snapper to zero for the operator and crew of a vessel operating as a charter vessel or headboat; reduce the daily bag limit for red snapper to five for other persons subject to the bag limit; and increase the minimum allowable size of red snapper, currently 14 inches (35.6 cm), to 15 inches (38.1 cm) for persons subject to the bag limit. NMFS also proposes to delay the opening of the commercial fishery for red snapper until February 24, 1995. NMFS intends that these management measure adjustments, if adopted in final, become effective January 1, 1995, the beginning of the new fishing year. The intended effects of this rule are to prevent overfishing of red snapper and to ensure that the commercial red snapper fishery is open when demand for fresh fish is at its highest.

**DATES:** Written comments must be received on or before December 7, 1994.

**ADDRESSES:** Comments on the proposed rule must be sent to Robert Sadler, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment and a regulatory impact review, and for copies of a minority report submitted by five Council members, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609–2486. An initial regulatory flexibility analysis is available from the Southeast Regional Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813–570–5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery

Management Council (Council) and is implemented by regulations at 50 CFR part 641.

**Red Snapper Total Allowable Catch (TAC)**

The red snapper stock assessment completed by the Southeast Fisheries Science Center, NMFS, in September 1994 indicated that the spawning potential ratio (SPR) has increased from less than 1 percent in 1984 to about 2 percent in 1994. This increase is due to the conservation measures already in place. However, the FMP has a goal of 20 percent SPR for all reef fish, and a target date for recovery of the overfished red snapper stock by the year 2009. Based on data in the assessment and the FMP's rebuilding schedule, the Council's Reef Fish Stock Assessment Panel (SAP) calculated the allowable biological catch (ABC) as having an upper limit of 6.00 million pounds (m lb) (2.72 million kg (m kg)). The Council's Socioeconomic Panel (SEP) recommended that the ABC be established specifically at 6.00 m lb (2.72 m kg).

Based on the SAP's and SEP's reports, the Council recommends a continuation of TAC at the upper end of the ABC range, 6.00 m lb (2.72 m kg), for 1995. A 1995 TAC of 6.00 m lb (2.72 m kg) is consistent with the FMP's rebuilding program for red snapper, and is within the framework bounds established in the FMP. NMFS is requesting public comment on the Council's recommended TAC for 1995.

**Proposed Management Measures Associated With Red Snapper TAC**

The FMP's framework procedure requires that allocations of the red snapper TAC be based on a historical 51/49 commercial/recreational harvest ratio. A TAC of 6.00 m lb (2.72 m kg), therefore, results in a commercial quota of 3.06 m lb (1.39 m kg) and a recreational allocation of 2.94 m lb (1.33 m kg). The recreational fishery is managed by bag and minimum size limits, currently 7 fish and 14 inches (35.6 cm), respectively. The 1994 stock assessment showed that the recreational fishing harvest greatly exceeded the recreational fishery allocation in 1992, 1993, and is expected to do so in 1994.

To ensure that the recreational fishery does not exceed its 1995 allocation of 2.94 m lb (1.33 m kg), the recreational harvest must be reduced by about 43 percent from the 1993 harvest level, estimated at approximately 5.10 m lb (2.31 m kg). Preliminary estimates presented to the Council by its staff indicated that a 15-inch (38.1-cm) size limit and 5-fish bag limit together would achieve a 38-percent harvest reduction from the 1993 level, assuming the validity of a 33-percent release mortality utilized in the stock assessment. The remaining necessary harvest reduction of 5 percent is expected to result from the proposed catch restriction for charter vessel and headboat operators and crew. The Council heard extensive public testimony from charter vessel and headboat operators who claimed that severe adverse social and economic impacts would result from reduction of the red snapper bag limit, particularly if decreased to less than five fish per customer. Several of these operators suggested elimination of red snapper harvest by the charter vessel and headboat operators and crew to help achieve the necessary reduction in recreational harvest (compared to 1993 levels). Industry representatives who testified to the Council characterized that measure, considered as an alternative, as less disruptive than a severe reduction in the bag limit.

The Council, following its review of all available information, determined that more restrictive red snapper size and bag limits are necessary to avoid additional overruns of the recreational allocation that could lead to overfishing. Accordingly, the Council recommended, and NMFS is proposing: (1) A reduction of the bag limit for red snapper to zero for charter vessel and headboat operators and crew; (2) a reduction of the daily bag limit for red snapper to five for other persons; and (3) an increase in the minimum allowable size of red snapper to 15 inches (38.1 cm), applicable to red snapper taken under the bag limit. If adopted in final, these measures would be made effective January 1, 1995, the beginning of the new fishing year.

The proposed reduction in the red snapper recreational catch is designed to maintain allocations between the recreational and commercial sectors and to ensure that the total red snapper harvest in 1995 remains within the TAC level, thereby adhering to the FMP's stock rebuilding program.

Since the Council submitted its recommended 1995 management measures for red snapper, NMFS has completed a new evaluation of the probable magnitude of the 1994 and 1995 recreational red snapper harvests; this analysis assumes implementation of the proposed measures for 1995 contained in this rule. Based on this evaluation, NMFS is concerned whether these proposed measures will adequately constrain recreational catches to the level of the sector's allocation in 1995. This recent evaluation shows a clear increasing trend in the proportion of trips to offshore waters that are returning with red snapper that may, in part, result in recreational fishery catches well above the allocation. The Council is expected to review this recent information on anticipated recreational fishery catches. Comments are invited as to whether additional adjustments to bag limits and size limitations may be needed to meet stock recovery goals.

In addition to changes in recreational fishery measures, the Council recommended, and NMFS is proposing, a delay in the opening of the commercial fishery for red snapper until February 24, 1995. The proposed delayed opening date was requested by fishermen to help ensure that the fishery would remain open during the entire Lenten season when there is a higher demand for fresh fish.

The Council's recommended changes are within the scope of the management measures that may be adjusted by the framework procedure for adjusting management measures referred to at 50 CFR 641.28 and specified in the FMP. The Director, Southeast Region, NMFS, initially concurs that the Council's recommended changes are consistent with the objectives of the FMP, the national standards for fishery conservation and management and other provisions of the Magnuson Fishery Conservation and Management Act, and other applicable law. Accordingly, the Council's recommended changes are published by NMFS as a proposed rule for public comment.

**Minority Report**

A minority report signed by five Council members raises several objections to the proposed red snapper management measures, including alleged deficiencies in fishery data supporting the Council's recommendations and an alleged inadequate assessment of the impacts of bag limit reductions on headboat and charter vessel operators and crew. The report does not object to the delayed opening of the commercial red snapper season. Copies of the minority report are available (see **ADDRESSES**). NMFS is considering and reviewing the minority report. Any final rule implementing the approved measures in the regulatory amendment will respond to comments on the proposed rule received by NMFS during the 15-day comment period, including the issues raised in the Council's minority report.

**Classification**

This proposed rule was determined to be not significant under E.O. 12866.

NMFS has determined that the proposed change in the red snapper bag limit and the restriction on the allowable harvest of red snapper for headboat and charter vessel captains and crew could affect more than 5 percent of gross for-hire commercial revenues. As a result, the proposed action could cause a significant impact on a substantial number of small entities, and an initial regulatory flexibility analysis was prepared. A copy of this analysis is available (see ADDRESSES).

NMFS is proposing a 15-day comment period on this rule, as opposed to a maximum of 30 days allowed under the FMP's framework procedure, in order to provide an opportunity for participation by the public while ensuring that the proposed measures, if adopted in final, can be implemented by January 1, 1995, the beginning of the new fishing year.

**List of Subjects in 50 CFR Part 641**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 16, 1994.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 641 is proposed to be amended as follows:

## PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.4, new paragraph (o)(3) is added, effective from January 1, 1995, through February 23, 1995, to read as follows:

**§ 641.4 Permits and fees.**

* * * * *

(o) * * *

(3) Must abide by the red snapper closure provisions of § 641.30.

* * * * *

3. In § 641.7, new paragraph (x) is added, effective from January 1, 1995, through February 23, 1995, to read as follows:

**§ 641.7 Prohibitions.**

* * * * *

(x) Exceed the bag and possession limits for red snapper or purchase, barter, trade, or sell red snapper, or attempt to purchase, barter, trade, or sell red snapper, during the closure of the commercial fishery for red snapper, as specified in § 641.30.

* * * * *

4. In § 641.21, paragraphs (a)(1)(ii) and (a)(1)(iii) are redesignated as paragraphs (a)(1)(iii) and (a)(1)(iv), respectively; paragraph (a)(1)(i) is revised; and new paragraph (a)(1)(ii) is added to read as follows:

**§ 641.21 Harvest limitations.**

(a) * * *

(1) * * *

(i) Effective through December 31, 1995—14 inches (35.6 cm) total length for red snapper caught under the commercial quota specified in § 641.25(a);

(ii) Effective January 1, 1995, through December 31, 1995—15 inches (38.1 cm) total length for red snapper caught under the bag limit specified in § 641.24(b)(1);

* * * * *

5. In § 641.24, paragraph (b)(1) is revised to read as follows:

**§ 641.24 Bag and possession limits.**

* * * * *

(b) * * *

(1) Red snapper—5, except that the bag limit is zero for the operator and crew of a vessel that is operating as a charter vessel or headboat.

* * * * *

6. A new § 641.30 is added, effective from January 1, 1995, through February 23, 1995, to read as follows:

**§ 641.30 Closure of the commercial fishery for red snapper.**

Other provisions of this part 641 notwithstanding, the commercial fishery for red snapper is closed from January 1, 1995, through February 23, 1995. During this closure of the commercial fishery, red snapper harvested from or possessed in the EEZ, and each vessel for which a currently valid reef fish permit has been issued pursuant to § 641.4, is subject to the following:

(a) The bag and possession limits, as specified in § 641.24(b)(1) and (c); and

(b) The prohibition of purchase, barter, trade, or sale of red snapper taken under the bag limit, or attempted purchase, barter, trade, or sale of such red snapper, as specified in § 641.24(g).

[FR Doc. 94–28789 Filed 11–17–94; 3:00 pm]

BILLING CODE 3510–22–W

# Notices

Federal Register
Vol. 59, No. 224
Tuesday, November 22, 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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Governmental Processes and Committee on Administration

**ACTION:** Rescheduling of Meeting and Notice of Public Meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of two committees of the Administrative Conference of the United States: Committee on Governmental Processes and Committee on Administration. The meeting of the Committee on Governmental Processes is a rescheduling from 3:30 p.m., November 30th, to 2:30 p.m. on the same day.

**AGENCY:** Committee on Governmental Processes.

**DATES:** Wednesday, November 30, 1994, at 2:30 p.m.

**LOCATION:** Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Deborah S. Laufer, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

**AGENCY:** Committee on Administration.

**DATES:** Monday, December 19, 1994, at 9:30 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., Suite 500, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

**SUPPLEMENTARY INFORMATION:** The Committee on Governmental Processes will take place on November 30, 1994, at 2:30 p.m. instead of 3:30 p.m. The committee will meet to continue its discussion of the restrictions on the ability of government employees to engage in uncompensated public service. The Conference's consultant for this project is Professor Lisa G. Lerman, Columbus School of Law, the Catholic University of America.

The Committee on Administration will meet to begin discussion of a study by Professors Steven Yaffee and Julia Wondolleck of the University of Michigan, on the potential use of alternative dispute resolution techniques for resolving conflicts involving endangered species and development. The committee also will receive a report on the status of a study by Professor Mark Grunewald, on the applicability of the Freedom of Information Act to documents generated in ADR proceedings.

Dated: November 17, 1994.

**Jeffrey S. Lubbers,**

*Research Director.*

[FR Doc. 94–28879 Filed 11–21–94; 8:45 am]

BILLING CODE 6110–01–W

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### Housing Preservation Grants

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations found in 7 CFR Part 1944, Subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide public agencies, private nonprofit organizations, and other eligible entities notice of these dates. The HPG program will be available to provide repair and rehabilitation assistance to owner(s) of single or multi-unit rental properties and cooperative housing projects, as well as homeowners.

**DATES:** FmHA hereby announces that it will begin receiving preapplications on November 22, 1994. The closing date for acceptance by FmHA of preapplications is February 21, 1995. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before this date.

**ADDRESSES:** Submit preapplications to FmHA field offices; applicants must contact their FmHA State Office for this information.

**FOR FURTHER INFORMATION CONTACT:** Sue M. Harris-Green, Senior Loan Officer, Multi-family Housing Processing Division, FmHA, USDA, Room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1606. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** 7 CFR Part 1944, Subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic assistance under No. 10.443, Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V; 48 FR 29115, June 24, 1983). Applicants are also referred to 7 CFR Part 1944, Sections 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although based on fiscal year (FY) 1993 and FY 94 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for 1 year proposal. For FY 95, $22,000,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR Part 1940, Subpart L, "Methodology and Formulas for Allocation of Loan and Grant Funds."

Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: November 10, 1994.

**Michael V. Dunn,**

*Acting Administrator, Rural Housing and Community Development Service.*

[FR Doc. 94–28736 Filed 11–21–94; 8:45 am]

BILLING CODE 3410–07–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–549–502]

### Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to a request by the petitioners, domestic producers of standard pipe products, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review period is March 1, 1992, through February 28, 1993. This review involves one manufacturer/exporter of this merchandise to the United States, Saha Thai Steel Pipe Company, Ltd. (Saha Thai). As a result of the review, we have preliminarily determined that dumping margins exist with respect to this manufacturer/exporter.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** November 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sandra Yacura or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 11, 1986, the Department published in the **Federal Register** the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 12, 1993, the Department published a notice in the **Federal Register** notifying interested parties of the opportunity to request an administrative review of certain circular welded carbon steel pipes and tubes from Thailand (57 FR 13583). On March 30, 1993, the domestic producers (Allied Tube & Conduit Corporation, Sawhill Tubular Division of Armco, Inc., American Tube Company, Inc., Laclede Steel Company, Sharon Tube Company, Wheatland Tube Company, and Eagle Pipe Company) requested, in accordance with 19 CFR 353.22(a) of the Department's regulations, that we conduct an administrative review for the period March 1, 1992, through February 28, 1993. We published a notice of initiation of the antidumping duty administrative review on May 6, 1993 (58 FR 26960).

The Department is now conducting a review for this period in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Review

The products covered by this administrative review are shipments of certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inch or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. The item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers shipments made by Saha Thai from Thailand to the United States during the period of review March 1, 1992, through February 28, 1993 (POR).

#### United States Price

In calculating U.S. price (USP), the Department used purchase price, as defined in section 772(b) of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. Purchase price was based on the packed FOB or C&F price to unrelated purchasers in the United States. The review included all of Saha Thai's U.S. sales that entered the United States during the POR. We made deductions from the unit price, where applicable, for ocean freight, bank charges, foreign inland freight, foreign inland insurance, and customs clearing expenses (brokerage). We made an addition to USP for duty drawback. Additionally, we adjusted USP for taxes in accordance with our practice as outlined in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value,* 59 FR 31204, June 17, 1994.

No other adjustments to USP were claimed or allowed.

#### Foreign Market Value

In order to determine whether there were sufficient sales of pipe and tube in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales to the volume of third-country sales, in accordance with section 773(a)(1)(B) of the Act. Saha Thai had sufficient home market sales of the subject merchandise during the POR. Thus, we based FMV on Saha Thai's sales in the home market.

We did not include home market sales of pipe and tube made to the specifications of the American Society for Testing and Materials (ASTM pipe) in our FMV calculation because we determined that such sales were outside the ordinary course of trade. *See* 19 U.S.C. 1677(15) and 1677b(a)(1). Rather, we included only sales of pipe and tube made to British Standard specifications (BS pipe). In determining that Saha Thai's sales of ASTM pipe in the home market were outside the ordinary course of trade, we did not rely on one factor taken in isolation, but rather considered all the circumstances particular to the sales in question. In reviewing the evidence for this review, we based our decision upon (1) the different standards and product uses of ASTM pipes and BS pipes; and (2) the comparative volume of sales and number of buyers of ASTM pipes and BS pipes in the home market during the POR.

Saha Thai indicated that the ASTM pipes sold in the home market during the POR were produced on the basis of special orders or special projects in which the entire project was supplied with ASTM standard pipes. In addition, ASTM pipes and BS pipes cannot be coupled together. Therefore, ASTM pipe cannot be used in most pipe systems in Thailand and cannot be used to replace most existing pipe systems in Thailand. Finally, sales of ASTM pipe constituted a small volume of total Saha Thai's sales of pipe and tube in the home market, and the customers purchasing ASTM pipe in the home market were limited primarily to new, stand-alone government projects.

Accordingly, we determined that sales of ASTM pipe in the home market were outside the ordinary course of trade, and therefore did not use these sales in our calculation of FMV.

Based on findings in the 1988–89 review that home market sales of the subject merchandise were made by Saha Thai at prices below the cost of production (COP), the Department conducted a cost investigation in this review. In accordance with section 773(b) of the Act, and 19 CFR 353.51 of the Department's regulations, we examined whether home market sales were made below cost and in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade. We calculated Saha Thai's COP as the sum of all reported materials costs, labor expenses, factory overhead, and general and selling expenses for the three types of pipe and tube that were sold in the home market during the POR (galvanized plain-end, black plain-end, and galvanized threaded-and-coupled). We compared COP to home market prices net of discounts, foreign inland freight, and an adjusted business tax, or value-added tax, depending on the time of sale.

For each model where less than 10 percent, by quantity, of the home market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where 90 percent or more of the home market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model from our calculation of FMV and used the constructed value (CV) of those models as described below.

To determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular type of pipe and tube to the number of months in which that type was sold. If the type was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that type in each month sold. If a type was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the type was sold.

Since Saha Thai has not submitted any information indicating that any of its sales below cost were at prices which would have permitted "recovery of all costs within a reasonable period of time in the normal course of trade," as required by section 773(b)(2) of the Act, we are unable to conclude that the costs of production of such sales have been recovered within a reasonable period. As a result, we disregarded below-cost sales made over an extended period of time.

Using the remaining sales, the Department calculated FMV on a monthly weighted-average basis. Home market prices were based on the price to unrelated purchasers. Where applicable, we made adjustments for transportation discounts, foreign inland freight, packing expenses, and business tax, or value-added tax, depending on the date of sale. We also made adjustments to FMV for differences in the physical characteristics of the merchandise, packing, credit expenses, and warranty expenses.

We used CV as FMV to compare to those U.S. sales for which there were insufficient home market sales at or above the COP. Pursuant to section 773(e)(1) of the Act and 19 CFR 353.50(a) of the Department's regulations, CV consisted of the sum of materials, overhead, labor, U.S. packing, general and administrative expenses, and profit for each of the four types of pipe and tube sold in the United States during the POR (black plain-end, galvanized plain-end, galvanized threaded-and-coupled, and black threaded-and-coupled). Since Saha Thai's actual selling, general, and administrative expenses (SG&A) and actual profits were greater than the statutory minima for SG&A and profit as provided in section 773(e)(1)(B) of the Act, we used the SG&A and profit reported by Saha Thai. We adjusted CV for selling, credit, and packing expenses.

**Preliminary Results**

As a result of our review, we preliminarily determine the dumping margin to be:

| Manufacturer/ exporter | Time period | Margin (percent) |
|---|---|---|
| Saha Thai Steel Pipe Company, Ltd. ..... | 3/1/92–2/28/93 | 5.83 |

Parties to this proceeding may request disclosure within 5 days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs or comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of certain circular welded carbon steel pipes and tubes from Thailand, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Saha Thai will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or previous reviews, the cash deposit will continue to be the rate published in the final determination or the last final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, a previous review, or the original investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "all others rate" from the LTFV investigation.

On May 25, 1993, the Court of International Trade (CIT), in *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993), and *Federal-Mogul Corporation and the Torrington*

*Company v. United States*, 822 F. Supp. 782 (CIT 1993), decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that, in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 15.67 percent, the "all others" rate established in the Department's final determination of sales at LTFV (51 FR 3384, January 27, 1986).

There is a countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (50 FR 32751, August 15, 1985). In accordance with section 772(d)(1)(D) of the Act, entries subject to both antidumping duties and countervailing duties will not be assessed antidumping duties on the portion of the margin attributable to export subsidies. Because the amount of countervailing duties to be imposed on entries during the POR has yet to be determined, we cannot at this time make the appropriate adjustment. However, to ensure that the appropriate adjustment is made, upon issuing our final results of the administrative review, we will instruct U.S. Customs not to assess antidumping duties on the margin attributable to export subsidies for the POR.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary of the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 14, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94–28828 Filed 11–21–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–357–810, A–433–805, A–475–816, A–588–835, A–580–825, A–201–817, A–469–806]

## Postponement of Preliminary Determinations: Oil Country Tubular Goods from Argentina, et al.

**AGENCY:** Import Administration, International TradeAdministration, Department of Commerce.

**EFFECTIVE DATE:** November 22, 1994.

**FOR FURTHER INFORMATION CONTACT:** John Beck or William H. Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3464 or 482–0116, respectively.

*Postponement:* On July 27, 1994, the Department of Commerce (the Department) initiated antidumping duty investigations of oil country tubular goods (OCTG) from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (59 FR 37962, July 26, 1994). On November 10, 1994, the petitioners in the above-referenced investigations requested that the Department postpone the preliminary determinations in accordance with section 733(c)(1) of the Tariff Act of 1930, as amended (the Act)(19 U.S.C. 1673b(c)(1)), and 19 CFR 353.15(c). We find no compelling reasons to deny the request and are, accordingly, postponing the date of the preliminary determinations until no later than January 26, 1995.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: November 15, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94–28827 Filed 11–21–94; 8:45 am]

BILLING CODE 3510–DS–P

# DEPARTMENT OF DEFENSE

## Office of the Secretary

## Ballistic Missile Defense Advisory Committee

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, DC, on December 5–6, 1994.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with Section 10(d), as amended 5 U.S.C., Appendix II, it has been determined that this BMD Advisory Committee meeting concerns matters listed in (5 U.S.C. 552(c)(1)) and that accordingly this meeting will be closed to the public.

Dated: November 17, 1994.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–28795 Filed 11–21–94; 8:45 am]

BILLING CODE 5000–04–M

## Strategic Environmental Research and Development Program, Scientific Advisory Board

**ACTION:** Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: December 15, 1994 from 0800 to approximately 1730 and December 16, 1994 from 0800 to approximately 1130.

Place: The Arlington Renaissance Hotel, 950 North Stafford Street, Arlington, VA.

Matters To Be Considered: Research and Development proposals, and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Ann Maxwell 2200 Clarendon, Suite 900, Arlington, VA 22201, 703–525–9400.

Dated: November 17, 1994.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 94–28794 Filed 11–21–94; 8:45 am]

BILLING CODE 5000–04–M

## Defense Logistics Agency

## Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Energy and the Defense Manpower Data Center of the Department of Defense

**AGENCY:** Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

**ACTION:** Notice of a computer matching program between the Department of

Energy (DOE) and the Department of Defense (DoD) for public comment.

**SUMMARY:** Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between DOE and DoD that their records are being matched by computer. The record subjects are DOE delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by DOE so as to permit DOE to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

**DATES:** This proposed action will become effective December 22, 1994, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

**ADDRESSES:** Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and DOE have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that DOE can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between DOE and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Energy, Office of Financial Policy, 1000 Independence Agency, SW, Washington, DC 20585. Telephone (202) 856–4860.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 9, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated July 15, 1994 (59 FR 37906, July 25, 1994). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 15, 1994.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

## Notice of a Computer Matching Program between the Department of Energy and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Department of Energy (DOE) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DOE is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of an agreement, the DOE will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who may owe delinquent debts to the Federal Government under certain programs administered by the DOD. The DOE will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by the DOE of any employing Federal agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; Section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 10 CFR part 1015, Collection of Claims Owed the United States (DOE); and 10 CFR part 1018, Referral of Debts to the IRS for Tax Refund Offset (DOE).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

The DOE will use personal data from the record system identified as DOE-19, entitled, 'Accounts Receivable Financial System' last published in the **Federal Register** at 58 FR 39536 on July 23, 1993.

DMDC will use personal data from the record systems identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

Sections 5 and 10 of the Debt Collection Act authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above

contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *Description of computer matching program:* The DOE, as the source agency, will provide DMDC with a diskette which contains the names of delinquent debtors in programs the DOE administers. Upon receipt of the diskette file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the DOE file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to the DOE. The DOE is responsible for verifying and determining that the data on the DMDC reply diskette file are consistent with the DOE source file and for resolving any discrepancies or inconsistencies on an individual basis. The DOE will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The diskette provided by DOE will contain data elements of the debtor's name, Social Security Number, debtor status and debt balance, internal account numbers and the total amount owed on approximately 64 delinquent debtors.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide Federal civilian records of current and retired Federal employees.

DMDC will match the SSN on the DOE diskette by computer against the DMDC database. Matching records, hits based on SSN, will produce data elements of the member's name, SSN, service or agency, and current work or home address.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between DOE and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 94–28658 Filed 11–21–94; 8:45 am]

BILLING CODE 5000–04–F

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## Department of the Air Force

### USAF Scientific Advisory Board Meeting

The Intelligence Mission Panel of the USAF Scientific Advisory Board will meet on 7–8 December 1994 at The Air Intelligence Agency, Kelly AFB, San Antonio, TX from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to provide technical assistance to HQ AIA in the development of the "Airborne Needs in 2015".

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 94–28832 Filed 11–21–94; 8:45 am]

BILLING CODE 3910–01–M

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## Department of the Navy

### Record of Decision for Realignment of Carswell Air Force Base to Naval Air Station Fort Worth, Fort Worth, TX

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations for implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy announces its decision to implement realignment of Carswell Air Force Base (AFB) to Naval Air Station (NAS) Fort Worth Joint Reserve Base (JRB), Fort Worth, Texas. In accordance with the legislative requirements of the Defense Base Closure and Realignment Act of 1990 [Public Law (P.L.) 101–510], the 1993 Defense Base Closure and Realignment Commission (BRAC–93) recommended the closure of NAS Dallas, Texas, NAS Memphis, Tennessee, and NAS Glenview, Illinois. Assets and operations from each of these bases were directed to be relocated to the former Carswell AFB, which closed September 30, 1993 pursuant to a BRAC–91 decision. The former Carswell AFB is to be realigned to become the Naval Air Station Fort Worth Joint Reserve Base (JRB).

In compliance with the Council on Environmental Quality (CEQ) regulations, the Department of the Navy acted as a Cooperating Agency with the Department of the Air Force and had substantial involvement in drafting and reviewing an Environmental Impact Statement (EIS) for the disposal and reuse of Carswell AFB. The EIS presented a full description of the projects and environmental impacts associated with the Navy realignment actions. In addition, the Navy planned actions were presented at the Draft EIS Public Hearing hosted by the Department of the Air Force. The Department of the Navy has conducted an independent review of the EIS and adopts the EIS for purposes of its proposed actions. This Record of Decision announces Navy's decision to implement actions described in the FEIS for the realignment and operation of NAS Fort Worth JRB, Fort Worth, Texas.

A Draft EIS was prepared for the proposed reuse and disposal actions and distributed to federal, state, and local agencies and to interested individuals and groups in February 1993. The DEIS was revised to include the Navy as a cooperating agency when the BRAC–93 decision to realign Carswell AFB was made. The revised DEIS was published and distributed in March 1994. A public hearing was held on April 4, 1994 in the City of Fort Worth, Texas. Responses to all public comments received were incorporated in an FEIS that was distributed in July 1994. The proposed Navy realignment action would incorporate approximately 1,869 acres from the former Carswell AFB for reuse as NAS Fort Worth JRB. The realignment of the base would consist of renovation of approximately 120 buildings and new construction of an additional 25 facilities, in addition to

the demolition of some facilities that are not cost effective to reuse or renovate.

The realignment also includes upgrades of base utilities to accommodate JRB requirements. Upgrades to the airfield stormwater drainage will also be incorporated into the realignment plans. An estimated total of 24 acres of land will need to be distributed for new construction activities.

The proposed operations of the NAS Fort Worth JRB will be primarily air operations by reserve forces. Some smaller non-air units will also be attached to the base. Reserve units from the Navy, Marine corps, Air Force, Texas Air National Guard, and Army National Guard will be operating at the base. The various types of aircraft that will be normally at the base will include F–14s, F/A–18s, F–16s, KC–130s, C–130s, C–9s, C–12s, U–21s, CH–47s, UH–60s and a UH–1. An estimated 95,000 annual air operations are associated with the various proposed military aircraft, including transient military aircraft. All of the existing airspace and air traffic control services associated with previous Air Force operations will be retained for use by the JRB. The combination of closure and realignment will reduce military air traffic in the area and significantly reduce potential civilian-military aircraft conflicts.

Approximately 2,100 active duty military personnel are expected to be attached to the JRB. An additional 1,400 civilian personnel will be employed at the base. Approximately 8,500 reservists or guardsmen will drill at the JRB on schedules that will attempt to spread the numbers equally over three weekends each month.

The realignment and establishment of NAS Fort Worth JRB will occur, as mandated by P.L. 101–510, regardless of the disposal and reuse of the remaining portions of Carswell AFB. Therefore, these military land areas and reuse activities were incorporated as part of the No-Action alternative and all reuse alternatives for analysis in the EIS. Maximum consideration was given to the use of existing structures to minimize environmental impacts and construction costs for realignment. Sites considered at NAS Fort Worth JRB for the proposed new facilities avoided environmentally sensitive areas and were selected based on functional considerations, adequacy of existing structures for the proposed uses, availability of utilities, proximity to existing facilities, and observing all airfield safety and noise criteria. The proposed action will cause no significant impact to ambient air quality levels. Localized, temporary impacts would occur during construction and demolition activities. Compliance with state and federal regulations, including National Emission Standards for Hazardous Air Pollutants (NESHAPS), will be achieved during any removal of asbestos-containing materials.

NAS Fort Worth JRB is located in a non-attainment area for ozone. An applicability analysis was performed for air pollutant emissions of nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs) in compliance with the Clean Air Act Amendments of 1990 and the 1993 General Conformity Rule for determining conformity of federal actions to state or federal implementation plans (40 CFR Parts 6, 51, and 93). The analysis included construction-related emissions, mobile-source emissions, and stationary-source emissions associated with the proposed action. Neither $NO_X$ nor VOC emissions estimates for any year of the proposed action exceeded the de minimis levels of 100 tons per year established by the General Conformity Rule. The proposed action was determined to conform to the State Implementation Plan (SIP) and is exempted from any further requirements of the General Conformity Rule. The Texas Natural Resource Conservation Commission (TNRCC) has reviewed the applicability analysis presented in the FEIS and has approved the air permit application resulting in the issuance of a construction permit to the Navy.

An aircraft noise study was conducted to analyze the effects of noise patterns associated with JRB operations as compared to the previous operations at Carswell AFB. The area exposed to sound level DNL 65 dB or greater is expected to decrease by approximately 2,605 acres and affect 2,300 fewer residents than the previous Air Force aircraft noise impacts.

No significant degradation of levels of service for on-base or off-base road systems are expected as a result of the proposed action. Current utilities to the base are of sufficient capacity to provide anticipated services. Utility lines within the base infrastructure will be upgraded in some locations where additional fire protection, natural gas, sanitary sewer, or electrical services are required.

The local economy will not encounter any significant impacts from the proposed action. NAS Forth Worth JRB will initially reuse 83 units of family housing on-base. An estimated 3,939 housing units within the local communities will be vacated as a result of the closure of Carswell AFB. An estimated 1,196 housing units will be required to accommodate the in-migration of permanent personnel associated with the JRB. Based on this projected in-migration, 281 new students will enroll in the area's various school districts; this number is less than the decreases experienced in each of the last three years as a result of the Carswell AFB closure.

Clean-up on identified installation restoration program (IRP) sites will continue regardless of the reuse or disposal plans. The Departments of the Navy and Air Force have entered into a Memorandum of Agreement to identify which department will continue the management of the clean-up program and provide the funding requirements. The two Departments have agreed to finalize program arrangements by October 1, 1995. In the interim, the Air Force Base Conversion Agency (AFBCA) will continue to administer the program. New construction and renovations requiring excavations will be closely coordinated with the IRP project manager to avoid any impacts to IRP sites or construction plans and maintain the health and safety of contractor personnel.

The Navy will institute a hazardous material minimization program at NAS Fort Worth JRB by issuing hazardous materials in increments for daily consumption to the various departments and users on base. The hazardous waste storage facility currently permitted under a Part B permit by the State of Texas will continued to be used as a permitted facility for the storage of generated hazardous wastes.

The AFBCA has identified all underground storage tanks that were in place at Carswell AFB. Navy design teams are evaluating what tanks are required for continued support to facilities planned for reuse. These tanks will be inspected and certified for use in accordance with all applicable underground storage tank regulations. The AFBCA is continuing with efforts to remove all other tanks not planned for reuse.

The proposed action would result in no significant impacts to plant or animal species listed as threatened or endangered by either federal or state agencies. The U.S. Fish and Wildlife Service has concurred in this conclusion. No impacts to wetlands will be experienced as a result of new construction. Minor impacts to floodplains will be mitigated through the construction of improved storm water drainage and handling systems. The estimated 24 acres of disturbance from new construction will have minimal impacts to biological resources because of adjacencies to current airfield/industrial operations and the already existing built-up conditions.

Potential impacts to cultural resources at NAS Fort Worth JRB have been evaluated in compliance with Section 106 of the National Historic Preservation Act (NHPA). Renovations are proposed for two buildings (Building 1430 and 4175) that have been identified as eligible for the National Register of Historic Places. The exterior renovations to Building 1430 will include the installation of a new roof. Interior renovations will include movement of office walls added to the facility during earlier Air Force interior renovations. Building 4575 will undergo major interior renovations to adapt this alert crew facility to a squadron operations building. Exterior renovations will include removal and demolition of surrounding equipment, addition of some windows, and altering some facility points of ingress/egress. All proposed modifications to these buildings will be coordinated with the Texas Historical Commission (THC) during project design. The Navy is proposing to the THC, a Memorandum of Agreement (MOA) for the acknowledgment, operation, and maintenance of eligible historic structures on NAS Fort Worth JRB. No significant archaeological, Native American, or paleontological resources have been identified on NAS Fort Worth JRB that would be adversely affected by the realignment activities. In the event that archaeological, paleontological, or Native American resources are discovered during the course of project activities, ground disturbing activities will cease in the immediate area and a qualified archaeologist will be consulted.

Questions regarding the Navy proposed actions for the realignment of Carswell AFB to NAS Forth Worth JRB addressed in the Draft and Final Environmental Impact Statement prepared for the Reuse and Disposal of Carswell AFB may be directed to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010 (Attn: Mr. Darrell Molzan, Code 203DM), telephone (803) 743–0796, fax (803) 743–0993.

Dated: November 14, 1994.

**Elsie L. Munsell,**

*Deputy Assistant Secretary of the Navy, (Environment and Safety).*

[FR Doc. 94–28701 Filed 11–21–94; 8:45 am]

BILLING CODE 3810–FF–M

## DEPARTMENT OF ENERGY

### Environmental Impact Statement; Dual Axis Radiographic Hydrodynamic Test Facility, Los Alamos National Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The United States Department of Energy (DOE) provides notice of its intent to prepare an environmental impact statement (EIS) on the DARHT facility at its Los Alamos National Laboratory (LANL), Los Alamos, New Mexico. The EIS will be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality NEPA Regulations (40 CFR Parts 1500–1508), and the DOE NEPA Regulations (10 CFR Part 1021). The EIS will analyze the impacts of completing construction and operating the DARHT facility at LANL, and reasonable alternatives.

With this Notice, DOE initiates a public comment period to solicit suggestions on the scope of analysis for this EIS. DOE also extends an invitation to attend public scoping meetings in Los Alamos and Santa Fe, New Mexico, and to provide suggestions for public participation opportunities for this NEPA review.

**DATES:** Written comments on the scope of the EIS are invited from the public. To ensure consideration, comments should be postmarked by Tuesday, January 10, 1995. Comments sent after that date will be considered to the fullest extent practicable. Public scoping meetings will be held as follows:

Wednesday, December 7, 1994, Los Alamos, 1:00 pm–4:30 pm, and 6:30 pm9:00 pm, Hilltop House, 400 Trinity Drive, Los Alamos, New Mexico.

Thursday, December 8, 1994, Santa Fe, 1:00 pm–4:30 pm, and 6:30 pm–9:00 pm, Sweeney Center, 201 West Marcy Street, Santa Fe, New Mexico.

The meetings will use a workshop format to facilitate dialogue among DOE, LANL, and the public and will provide an opportunity for individuals to provide written or oral statements.

**ADDRESSES:** Written comments on the scope of the DARHT EIS, or other matters regarding this environmental review, should be addressed to: Ms. Diana Webb, NEPA Compliance Officer, Los Alamos Area Office, Department of Energy, 528 35th Street, Los Alamos, NM 87544, Attn: DARHT EIS. Ms. Webb may be contacted by phone at (505) 665–6353, facsimile (505) 665–4872.

**FOR FURTHER INFORMATION CONTACT:** For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

One of the most urgent and difficult technical tasks facing the DOE is to assess the effects of aging on the weapons that remain in the nation's nuclear stockpile, and to ensure the continuing safety of those weapons. Because the President has decided not to build any new nuclear weapons for the foreseeable future, but instead to continue to rely upon a smaller stockpile of existing but aging weapons as a nuclear deterrent, DOE must ensure that the weapons remaining in the stockpile are safe, secure and reliable. Under the Atomic Energy Act, this mission rests with DOE and essentially requires DOE to certify that the weapons will not accidentally detonate during storage and handling, that the weapons would thwart any attempts for unauthorized use, and that they would function as designed in the event of authorized use.

To fulfill this mission, DOE needs to collect diagnostic information regarding the condition of the weapons which remain in the enduring stockpile. Some of these weapons are approaching the end of their design life, and DOE is not certain how they may be affected by the aging process. One important type of information that is currently lacking concerns the three-dimensional condition of the various internal components of aging weapons. These are often shielded by thick and dense materials. Multiple view hydrodynamic testing (experiments to look at the flow of adjacent materials as they are driven by high explosives) and dynamic testing (experiments to study other effects of high explosives), combined with computer modeling, provide the only means of obtaining this data in the absence of nuclear testing. The President has endorsed hydrodynamic testing as the preferred means of conducting experiments in support of stockpile stewardship and maintenance. Hydrodynamic testing has become more important since the United States moratorium on nuclear testing was extended. A future Comprehensive Test

Ban Treaty, moreover, would foreclose the acquisition of additional performance and safety data through nuclear testing.

**Proposed Action**

DARHT would be a specialized high energy X-ray machine that would take three-dimensional, sequential and high-resolution X-ray pictures of the dynamic behavior of dense materials that are being shocked and compressed by high explosives. DARHT would be used to evaluate the nonnuclear behavior of nuclear weapons components and would provide the nation with a significantly improved diagnostic capability to evaluate and assess the safety and reliability of the existing nuclear weapons stockpile. DARHT would consist of an existing support lab, a new firing site, and the necessary infrastructure, all located at Technical Area 15 at LANL. DARHT would be used to detonate high explosives, and to use very high-speed, tightly-focused radiographic (X-ray) photography to determine the motions (dynamic experiments) or flow (hydrodynamic tests) of the explosive-driven materials. Two X-ray machines at right angles to each other (dual-axis lines of sight) would be powered by two 16 million electron volt (MeV) electron accelerators, each housed in a building about 225 feet long. By using two machines, DARHT would be able to provide three-dimensional, sequential information on occurrences within millionths of a second during a test. The accelerators' small beam size would allow DARHT to provide a very high-quality resolution of the radiographic image. This resolution is necessary to resolve the fine details of the material flowing in these experiments.

DARHT experiments would variously involve radioactive materials (primarily depleted uranium), beryllium and other hazardous materials, and other metals. Additionally, experiments involving plutonium contained in steel vessels may be conducted. DARHT would not test materials that could result in nuclear yield, or a nuclear detonation. Experiments at DARHT would be expected to result in metal fragments and other airborne debris being deposited up to 750 meters from the open-air explosives testing (standard operating procedures would require the evacuation of this area before any experiments were conducted).

In addition to testing the nonnuclear behavior of nuclear weapons components, DARHT would be used to evaluate conventional weapons systems, explosives-driven materials for non-weapons uses, and high-velocity impact phenomena. The facility would also be used to support non-proliferation and counter-proliferation efforts, such as experiments intended to disable a terrorist-designed or proliferant-designed nuclear weapon. Although DARHT could be used to collect information relevant to the design of new weapons, no new weapons are anticipated to be designed in the foreseeable future.

Design of DARHT began in the early 1980's. Memoranda to File, describing the environmental impacts of constructing and operating DARHT, were completed in 1983 and 1987. DARHT construction began in 1988 with the Radiographic Support Laboratory, which was completed in 1990. The Radiographic Support Laboratory is currently being used to support the development of the accelerator equipment that is planned to be used in DARHT. In May 1994, DOE began construction of the Hydrodynamic Firing Site. Approximately 20 percent of the Hydrodynamic Firing Site construction work (e.g., site preparation, foundation pouring) has been completed. Current schedules call for the Hydrodynamic Firing Site construction to be completed, and the first X-ray machine to be operating, in 1997 at a cost of approximately $86 million, and the second X-ray machine, if approved, would begin operation in 2000. The total estimated project cost of DARHT in its final two-axis configuration is $124 million; to date, approximately $44 million has been spent or obligated on the project.

In response to public concern, the DOE has decided to prepare this EIS at this time to allow for a full dialogue between DOE and the State, tribes, other agencies and the general public regarding the environmental impacts of completing and operating DARHT, and the impacts of other alternatives. The EIS will also assist in ensuring that appropriate mitigation measures are developed if DARHT is completed and put into operation. Construction and related work on the facility will continue during the preparation of the EIS.

**Proposed Alternatives**

DOE has tentatively identified the following alternatives for analysis in the EIS and seeks public comment on their adequacy, inclusiveness, and reasonableness:

*(1) Proposed action*

Under this alternative, DOE would complete construction and operate the DARHT facility as currently planned. This alternative would provide a state-of-the-art diagnostic capability for ensuring the safety, security and reliability of the aging nuclear weapons stockpile. If DARHT becomes operational, operation of the Pulsed High Energy Radiation Machine Emitting X-Rays (PHERMEX) facility, an existing facility at LANL also located at Technical Area 15, near the DARHT site, will be phased out.

*(2) No Action (status quo) Alternative*

Under this alternative, DARHT would not be completed and DOE would continue to operate the Pulsed High Energy Radiation Machine Emitting X-Rays and the Flash X-Ray facility at the Department's Lawrence Livermore National Laboratory Site 300 located near Livermore, California. The Pulsed High Energy Radiation Machine Emitting X-Rays, a single-axis radiographic facility, was built in the mid-1960's and has been used continuously since that time. It uses a pulsed power accelerator to power the X-ray machine, and does not have the small beam size (tight focus) planned for DARHT, thereby precluding the high-resolution images that DARHT would provide. Flash X-Ray, also a single-axis radiographic facility, was built in 1982 and has been used continuously since that time. It uses a linear induction accelerator to power the X-ray machine and also does not have the small beam size planned for DARHT.

*(3) Containment Alternative*

Under this alternative, DOE would modify the construction and/or operation of DARHT to contain some or all airborne emissions of fragments or other debris. Under one approach, the X-ray pictures would be taken through the walls of a containment vessel. Another approach would be to construct a building to enclose and contain the explosive experiments; X-ray pictures would be taken within the containment building. These two approaches may be considered separately or together, for some tests or for all tests.

*(4) Institutional Control Alternative*

Under this alternative, DOE would complete and operate DARHT, but would limit use of the facility to exclude any applications involving experiments with plutonium.

*(5) Single-Axis Alternative*

Under this alternative DOE would complete construction of the Hydrodynamic Firing Site but would operate only a single axis of DARHT with one accelerator. This alternative would provide an improved technical

capability over present accelerators with a single view (i.e., the Pulsed High Energy Radiation Machine Emitting X-Rays and Flash X-Ray).

*(6) Upgrade Alternative*

Under this alternative DOE would upgrade the present Pulsed High Energy Radiation Machine Emitting X-Rays capability with the new technology developed for DARHT.

DOE does not intend, in this EIS, to analyze alternatives or issues beyond the construction and operation of DARHT that relate to the nation's nuclear weapons policies, the DOE mission of stockpile stewardship and management, the need for hydrodynamic testing or dynamic testing that are part of the stockpile stewardship and management program, the mission of LANL, or continued operation of other facilities at LANL. To the extent that these matters are under the purview of DOE, they will be considered in the Programmatic EIS on Stockpile Stewardship and Management or the LANL Sitewide EIS, as discussed below in the section on related NEPA reviews.

**Proposed Issues**

The EIS will identify and analyze the direct, indirect and cumulative effects resulting from the completion and operation of DARHT. DOE has tentatively identified the following environmental and socioeconomic issues for consideration in the EIS and seeks public comment on the adequacy and inclusiveness of these issues:

- Natural ecosystems, including air quality, surface and groundwater quality, and plants and animals.
- Cultural resources, including archeological sites, historic resources, other facilities and infrastructure at LANL, and actual and potential uses of the site including Native American cultural, traditional and religious uses; DOE has previously identified Native American archeological sites in the vicinity of DARHT and has conducted mitigating activities.
- Economic impacts, including those from constructing, equipping and operating DARHT.
- Socioeconomic impacts, including any disproportionately high and adverse impacts on minority and low income populations.
- Health and safety impacts to on-site workers, other LANL personnel, local communities and tribes, and the general population of northern New Mexico.
- Other construction and operational impacts, such as transportation of people and materials.
- Waste management considerations, including the eventual decontamination and decommissioning of the facility after the end of its useful life (approximately 30 years).
- Health and safety, environmental, and other impacts related to the transport, storage and use of hazardous and radioactive materials and generation of X-ray radiation.
- Other relevant issues identified by DOE or the State, tribes, other agencies, or the public through this scoping process.

**Related NEPA Reviews**

The Department is currently preparing to undertake two related NEPA reviews. The planned LANL Sitewide EIS (59 FR 40889, August 10, 1994) will consider the cumulative impacts of operations and planned activities foreseen within the next 5 to 10 years. The planned Stockpile Stewardship and Management Programmatic EIS (59 FR 54175, October 28, 1994) will evaluate activities required to maintain a high level of confidence in the safety, reliability, and performance of nuclear weapons in the absence of nuclear testing, and to be prepared to test weapons if so directed by the President.

**Classified Material**

The Department will review classified material while preparing this EIS. Within the limits of classification, DOE will provide to the public as much information as possible. If DOE needs to generate classified material to explain the purpose and need, use, materials, or impacts from this project, that material will be segregated into a classified appendix.

**Public Involvement Opportunities**

DOE will develop a stakeholder involvement plan to guide the public review aspects of this EIS. To assist with developing the stakeholder involvement plan, DOE requests suggestions by the public on how this EIS process should be conducted, including suggestions regarding the type, format and conduct of public involvement opportunities.

Through this Notice, DOE formally invites the State, tribes, other government agencies and the public to comment on the scope of the EIS. DOE will offer informational briefings to tribal governments, local (county and municipal) governments, and the State of New Mexico.

A second formal opportunity for comment will be provided after DOE issues the draft EIS, expected in mid-1995. Public hearings will be held in conjunction with that comment period. DOE will inform the State, tribes, local governments, other agencies and the general public of its final decisions at the time the Record of Decision is issued, expected in October 1995.

In addition to formal opportunities for comment, any person may submit comments at any time during the NEPA review process; however, to ensure that comments are considered at specific points in the NEPA review, and to best assist DOE, the public is encouraged to comment during the formally established comment periods.

Copies of DARHT design and other background documents, written comments, records of public meetings, and other materials related to the development and analyses of the EIS have been and are being placed in the Los Alamos National Laboratory Community Reading Room, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87544. For information on the availability of specific documents and hours of operation, please contact the reading room at (505)665–2127 or (800)543–2342.

Signed in Washington, D.C., this 18 day of November 1994, for the United States Department of Energy.

**Tara O'Toole,**

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 94–28889 Filed 11–18–94; 11:46 am]

BILLING CODE 6450–01–P

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## Environmental Management Site Specific Advisory Board, Nevada Test Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Nevada Test Site.

**DATES:** Wednesday, December 7, 1994: 5:30 p.m.–10:00 p.m.

**ADDRESS:** Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586–7633.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The EM SSAB provides input and

recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

**Tentative Agenda**

*Wednesday, December 7, 1994*

5:30 p.m.
Call to Order
Review Agenda
Minutes Acceptance
Financial Report
Correspondence
Reports from Committees, Delegates and Representatives
Unfinished Business
New Business
Evaluation of Board and Environmental Restoration and Waste Management Programs
Announcements
10:00 p.m. Adjournment

If needed, time will be allotted after public comments for old business, knew business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting Wednesday, December 7, 1994.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on November 17, 1994.

**Rachel Murphy Samuel,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 94–28849 Filed 11–21–94; 8:45 am]

BILLING CODE 6450–01–M

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## Environmental Management Site Specific Advisory Board, Idaho National Engineering Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory (INEL).

**DATES:** Tuesday, December 6, 1994 from 7:30 a.m. Mountain Standard Time (MST) until 6:00 p.m. MST and Wednesday, December 7, 1994 from 7:30 a.m. MST until 5:00 p.m. There will be a public comment availability session Tuesday, December 6, 1994 from 5:00 to 6:00 p.m. MST.

**ADDRESS:** Ameritel Inn, Teton Room, 900 Lindsay Blvd., Idaho Falls, ID 83401 (208) 523–6000.

**FOR FURTHER INFORMATION CONTACT:** Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The Board will continue to develop operating procedures and identify and prioritize possible Department of Energy, Environmental Protection Agency, and State of Idaho issues for Board recommendations.

**Tentative Agenda**

*Tuesday, December 6, 1994*

7:30 a.m.—Sign-in and Registration
8:00 a.m.—Miscellaneous Business:
- Agenda Review/Revision/Acceptance

8:05 a.m.—Training: Consensus Building, CDR Associates
10:30 a.m.—Break
10:45 a.m.—Training: Consensus Building continued, CDR Associates
12:05 p.m.—Lunch
1:05 p.m.—Old Business:
- Deputy Designated Federal Officer (DDFO) Report (3 minutes)
- Chair Report (3 minutes)
- Committee Reports, Member Reports
- Other
- Standing Committee Reports
- Public Communication (10 minutes)
- Budget
- Amendment
- Member Selection
- Training

1:30 p.m.—Draft Site Treatment Plan: Terry Perez, Chair, Chuck Rice, Chuck Broscious, Dieter Knecht
2:45 p.m.—Break
3:00 p.m.—Draft Site Treatment Plan continued
5:00 p.m.—Public Comment Availability (continuation of Draft Site Treatment Plan)
6:00 p.m.—Adjourn Day 1

*Wednesday, December 7, 1994*

7:30 a.m.—Sign-In and Registration
8:00 a.m.—Miscellaneous Business
Day Two Agenda review, revision, acceptance (5 minutes)
Public Comment from Day 1 (5 minutes)
Old Business from Day 1 (5 minutes)
8:15 a.m.—Agenda Development for February meeting in Boise
- Action Plan

8:45 a.m.—Board input to draft Communications Plan (Public Communication Committee)
9:15 a.m.—Draft Site Treatment Plan continued
10:30 a.m.—Break
10:45 a.m.—Draft Site Treatment Plan Recommendation Preparation
12:00 p.m.—Lunch
1:00 p.m.—INEL Site-Strategic Plan
3:00 p.m.—Break
3:15 p.m.—DOE-wide SNF Strategic Plan—Mike Bonkoski, Brian Edgerton, DOE
4:15 p.m.—Environmental Impact Statement (EIS) decision-making process—Tom Wichman, DOE
4:45 p.m.—Miscellaneous Business
- Action Items

5:00 p.m.—Adjourn Day 2

A final agenda will be available at the meeting.

*Public Comment Availability:* The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, December 6, 1994 from 5:00 p.m. to 6:00 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. to 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on November 17, 1994.

**Rachel Murray Samuel,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 94–28848 Filed 11–21–94; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

[Docket No. CP95–55–000, et al.]

## Equitrans, Inc., et al.; Natural Gas Certificate Filings

November 15, 1994.

Take notice that the following filings have been made with the Commission:

### 1. Equitrans, Inc.

[Docket No. CP95–55–000]

Take notice that on November 3, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 152752, filed in Docket No. CP95–55–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization under its blanket certificate issued in Docket No. CP86–676–000 to construct and operate certain facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans proposes to install one delivery point tap on Line F–1153 in Doddrige County, West Virginia. Equitrans states that the tap would be used to permit Equitable Gas Company (Equitable) to provide service to a residential customer. Equitrans estimates the quantity of gas delivered through the tap would be 1 Mcf on a peak day. Equitrans asserts that it would charge Equitable the applicable rate contained in Equitrans' tariff on file with the Commission.

*Comment date:* December 30, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 2. Columbia Gas Transmission Corporation

[Docket No. CP95–61–000]

Take notice that on November 4, 1994, Columbia Gas Transmission Corporation (Columbia) filed an abbreviated application in Docket No. CP95–61–000 pursuant to section 7 of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's regulations for permission and approval for a flexible, blanket type authorization for temporary deactivation of storage facilities and operations as well as minor construction at its storage fields in the Majorsville-Heard Storage Complex. Columbia requests that any authorization granted be ongoing, and notes that the coal mining activities affecting its storage operations and necessitating this application will continue for at least the next 13 years. Columbia's proposal is more fully described in its application which is on file with the Commission and open to public inspection.

Columbia states that authorization is necessary in order for it to have the flexibility to respond appropriately to active long wall coal mining in the Majorsville-Heard Storage Complex by Consol Pennsylvania Coal Company and/or its affiliates (Coal Companies). Columbia says it must fulfill the requirements of the Agreements negotiated between itself and the Coal Companies which state their respective rights, duties, and obligations and liabilities relating to the temporary deactivation of the Storage Complex to accommodate mining operations.

Columbia is filing an application for expansion of its Crawford Storage Field, contemporaneously with the instant application, to offset lost capabilities at the Storage Complex.

*Comment date:* December 6, 1994, in accordance with Standard Paragraph F at the end of this notice.

### 3. K N Interstate Gas Transmission Co.

[Docket No. CP95–63–000]

Take notice that on November 8, 1994, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228 filed in Docket No. CP95–63–000 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 install and operate 9 new delivery taps and appurtenant facilities for K N Energy, Inc. (KN Energy), under K N Interstate's blanket certificate issued in Docket No. CP83–140–000 and CP83–140–001 pursuant to Section 7(c) 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.

K N Interstate states that the new delivery taps will be added as delivery points under an existing transportation agreement with KN Energy and will facilitate the delivery of gas to KN Energy for sale to new direct retail customers.

Specifically, K N Interstate proposes to install and operate new delivery points in the following locations:

(1) NW/4, Section 32, T7N, R38W in Chase County, NE at an estimated cost of $400 to serve a domestic customer;

(2) NE/4, Section 5, T13N, R36W in Keith County, NE at an estimated cost of $400 to serve a domestic customer;

(3) SW/4, Section 19, T18S, R21W in Ness County, KS at an estimated cost of $400 to serve a domestic customer;

(4) SE/4, Section 15, T31N, R48W in Dawes County, NE at an estimated cost of $400 to serve a domestic customer;

(5) SW/4, Section 33, T10N, R12W in Hall County, NE at an estimated cost of $870 to serve a grain dryer customer;

(6) SW/4, Section 4, T28N, R2E in Cedar County, NE at an estimated cost of $1,150 to serve a grain dryer customer;

(7) NE/4, Section 32, T2N, R15W in Franklin County, NE at an estimated cost of $2,500 to service a grain dryer customer;

(8) SW/4, Section 1, T30N, R3W in Knox County, NE at an estimated cost of $870 to serve direct retail customers; and

(9) SE/4, Section 17, T31N, R47W in Dawes County, NE at an estimated cost of $400 to serve a commercial customer.

K N Interstate states that the volumes of gas which will be delivered at each of these proposed delivery points will be within the current maximum daily transportation quantity set forth in its transportation service agreement with KN Energy.

*Comment date:* December 30, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 4. Northwest Pipeline Corporation

[Docket No. CP95–69–000

Take notice that on November 10, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a prior notice request with the Commission in Docket No. CP95–69–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by removal its retired Stauffer sales meter station in Lincoln County, Wyoming, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Northwest proposes to abandon by removal its Stauffer sales meter station in Lincoln County. Northwest states that it retired the Stauffer sales meter station in place on October 31, 1989, under the prior notice procedure in Docket No. CP91–2082–000. Northwest also states that at this time there appears to be no potential for future use as delivery facilities at the Stauffer sales meter station and the retired facilities are now obsolete. Northwest estimates that it

would cost $10,000 to remove the retired facilities.

*Comment date:* December 30, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28732 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. CP95–51–000, et al.]**

## Koch Gateway Pipeline Co. et al.; Natural Gas Certificate Filings

November 10, 1994.

Take notice that the following filings have been made with the Commission:

### 1. Koch Gateway Pipeline Company

[Docket No. CP95–51–000]

Take notice that on November 3, 1994, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP95–51–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a meter station formerly serving Arcadian Corporation in Calcasieu Parish, Louisiana under Koch's blanket certificate issued in Docket No. CP82–430–000 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.

Koch proposes to abandon a meter station formerly serving Arcadian Corporation in Calcasieu Parish, Louisiana, since it is no longer needed.

*Comment date:* December 27, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 2. NorAm Gas Transmission Company

[Docket No. CP95–57–000]

Take notice that on November 4, 1994, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–57–000 a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.212) for authorization to construct and operate certain facilities on its Line BT–14 in Yell County, Arkansas to deliver gas to Arkla, a division of NorAm Energy Corp., under NorAm's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 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.

Specifically NorAm proposes to construct and operate a 1-inch delivery tap on its Line BT–14 in Yell County, Arkansas. NorAm proposes to use the facility to deliver approximately 2,000 MMBtu annually and 20 MMBtu on a peak day to Arkla. It is stated that Arkla will use the deliveries to serve it's customer, the Dardanelle School in Yell County.

NorAm estimates that the cost of the construction will be approximately $1,450, and it is stated that Arkla will reimburse NorAm for all construction cost.

*Comment date:* December 27, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 3. Trunkline Gas Company

[Docket No. CP95–58–000]

Take notice that on November 4, 1994, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–58–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208) for authorization to operate an existing delivery point and appurtenant facilities, originally installed for Section 311 transportation, under Trunkline's blanket certificate issued in Docket No. CP83–84–000 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.

Trunkline proposes to operate the subject facilities in Fayette County, Tennessee as jurisdictional facilities in order to deliver a maximum 400,000 Mcf per day of natural gas to Memphis Light, Gas and Water Division (MLG&W).

*Comment date:* December 27, 1994, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

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 § 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28733 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–P

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[Docket No. CP93–564–002, et al.]

## ANR Pipeline Co., et al.; Natural Gas Certificate Filings

November 14, 1994.

Take notice that the following filings have been made with the Commission:

### 1. ANR Pipeline Company

[Docket No. CP93–564–002]

Take notice that on November 9, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an amendment pursuant to Section 7(c) of the Natural Gas Act to its July 19, 1993 application, as amended February 18, 1994, for authorization to construct and operate pipeline and related facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

ANR states that its project has been restructured. First, ANR states that two shippers, Michigan Consolidated Gas Company (MichCon) and The Consumers' Gas Company Limited (Consumers Gas), will now transport up to 75,000 Mcf per day. (Consumers Gas was the only shipper in the original application with a maximum transportation volume of 66,000 Mcf per day.) Second, Consumers Gas now intends to construct and operate the facilities in Canada necessary to transport gas delivered by ANR. Third, ANR has eliminated the ANR/Great Lakes Gas Transmission custody transfer measurement facilities proposed in the original application, included the cost of the ANR/MichCon Columbus Meter Station, and has reflected new pipe material specifications and 1995 cost adjustments in its cost of facilities. This results in an estimated cost of facilities of $15,298,000.

*Comment date:* December 5, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

### 2. National Fuel Gas Supply Corporation

[Docket No. CP95–56–000]

Take notice that on November 4, 1994, National Fuel Gas Supply Corporation (Natural), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP95–56–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain delivery point connections, under its blanket certificate issued in Docket No. CP83–4–000,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Natural seeks authorization to abandon various delivery point connections located in Clarion, Forest and Jefferson Counties, Pennsylvania. These delivery points currently serve 26 residential gas customers of National Fuel Gas Distribution Corporation (Distribution). Natural states that these delivery points are located along non-jurisdictional production pipelines that will be conveyed to G & G Gas, Incorporated, a local production company in Pennsylvania. Natural states that Clarion River Gas Company (CRG), a Pennsylvania public utility will assume service obligations to these 26 customers following the conveyance. Natural also states that Distribution and all 26 affected customers have consented to the abandonment. Natural states that the facilities were authorized in Docket Nos. CP73–294–000 and CP90–1399–000.

Pursuant to § 157.216(b), National confirms that it has provided notice of the proposed abandonments to the Pennsylvania Public Utility Commission (PaPUC), which is the state commission having jurisdiction over Distribution in this proceeding. In addition, the transfer of customers from Distribution to CRG will require approval of the PaPUC. Natural states that an application for such approval has been filed by Distribution.

*Comment date:* December 29, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 3. Columbia Gas Transmission Corporation

[Docket No. CP95–62–000]

Take notice that on November 4, 1994, Columbia Gas Transmission Corporation (Columbia) filed an abbreviated application in Docket No. CP95–62–000, pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas storage facilities at its existing Crawford Storage Field. Columbia seeks authorization to increase annual turnover by approximately 8.2 Bcf with an associated increase in design day deliverability of approximately 67 MMcfd. Columbia proposes to increase storage capacity of its Crawford Storage Field to offset the temporary deactivation of storage operations at Columbia's Majorsville Storage Complex located on the West Virginia and Pennsylvania border. Columbia's proposal is more fully described in its application which is on file with the Commission and open to public inspection.

Specifically, Columbia seeks a certificate of public convenience and necessity authorizing: (a) Increased operations at the Crawford Storage Field located in Hocking and Fairfield Counties, Ohio with a maximum storage capacity of 52 Bcf excluding 9 Bcf of native gas with 17.65 Bcf of annual turnover and 232.2 MMcfd of design day deliverability; (b) the construction and operation of four additional storage wells; and (c) the construction and operation of 5.01 miles of replacement and new pipelines and appurtenances if the Crawford Storage Field and at the Crawford Compressor Station in Hocking and Fairfield Counties, Ohio.

Columbia states that the increase in Crawford's storage capabilities is necessary due to the allocation of all Columbia's storage capacity to its customers as part of the implementation of Order No. 636. If Columbia does not replace the lost storage capability at Majorsville Storage Complex with an equivalent capability at Crawford, then it will have less storage to meet its long-term Firm Storage Service (FSS) commitments than was approved by the Commission in Columbia's Order No. 636 proceeding.

Columbia is filing an application for the Majorsville Storage Complex, contemporaneously with the instant application in a separate docket, seeking any and all authorizations necessary to temporarily deactivate the facilities.

*Comment date:* December 5, 1994, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraph:**

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, DC 20426, a motion to

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[1] *See*, 21 FERC ¶ 62,298 (1982).

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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28734 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–219–004]

## Columbia Gulf Transmission Co.; Withdrawal of Changes in FERC Gas Tariff

November 16, 1994.

Take notice that on November 10, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered a filing requesting to withdraw certain tariff sheets.

On October 31, 1994, Columbia Gulf tendered a revised filing in RP94–219–003, et al. which, among other things, motioned certain tariff sheets into effect that were originally filed on April 29, 1994 (motion rate filing).

It has come to Columbia Gulf's attention that the motion rate filing moved into effect tariff sheets in certain X-Rate Schedules, contained in Volume No. 2 of Columbia Gulf's tariff, that it has filed to cancel due to abandonment authorized in other dockets. Some of the tariff sheets cancelling the relevant X-Rate Schedules have been accepted by the Commission and others are pending before the commission. In addition, the tariff sheet for Rate Schedule X–35 should not have been part of the April 29th filing since its cancellation was approved March 21, 1991, to be effective November 28, 1990.

Therefore, Columbia Gulf requests to withdraw the Volume No. 2 tariff sheets listed below, which were motioned into effect in the October 31, 1994 filing:

Fourth Revised Sheet No. 71
Second Revised Sheet No. 91
Second Revised Sheet No. 317
Second Revised Sheet No. 384
Second Revised Sheet No. 565
Second Revised Sheet No. 593
Second Revised Sheet No. 817

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 23, 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 Columbia Gulf's filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28796 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–34–002]

## Florida Gas Transmission Co.; Tariff Filing

November 16, 1994.

Take notice that on November 14, 1994, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

Substitute Eighth Revised Sheet No. 8A

FGT states that on May 2, 1994, FGT filed in Docket No. TM94–4–34–000 (May 2 Filing) to suspend its Annual Unit Take-or-Pay Surcharge (TOP Surcharge) effective June 1, 1994. This filing was subject to a supplemental filing to be made by FGT to reflect actual balances pertaining to its collection of the take-or-pay buy-out and buy-down costs (Southern Fixed Charges) billed by Southern Natural Gas Company ("Southern") and to make any related tariff changes required. On May 18, 1994, the Commission issued an order (May 18 Order) accepting FGT's May 2 filing subject to the supplemental filing by FGT.

On September 12, 1994, FGT made the supplemental filing (September 12 Filing) in compliance with the Commission's May 18 Order which detailed the Southern Fixed Charge account balances by customer, proposed certain changes to Section 25 of FGT's General Terms and Conditions (GTC), and reinstated the TOP Surcharge to recover the outstanding Southern Fixed Charge account balances owed FGT by certain customers. Several parties protested FGT's September 12 filing[1] (protesting parties). On October 3, 1994, FGT filed an answer (October 3 Answer) to the protests in order to clarify certain misunderstandings and misrepresentations contained in the protests.

On October 28, 1994, the Commission issued its Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, and Granting Waiver (October 28 Order). The October 28 Order accepted the tariff sheets submitted wit FGT's September 12 Filing, subject to refund, and directed FGT to provide additional information and documentation regarding the determination of the remaining charges in response to the protesting parties' concerns. FGT is filing concurrently

[1] Florida Power & Light Company; Florida Power Corporation; Florida Cities; Industrial Gas Users of Florida (IGF); and filing collectively Coronet Industries, Inc., Georgia-Pacific Corporation, Rinker Materials Corporation, and the U.S. Agrichemicals Corporation.

herewith the information in compliance with the October 28 Order.

FGT states that in compiling the detailed information provided in the compliance filing FGT discovered certain minor errors which affected the recoveries from two customers, Consolidated Minerals (Consolidated) and Orlando Utilities Commission (OUC). Because recoveries affect the memorandum account balances and carrying charge calculations which affect the flowthrough cap calculations, FGT has recalculated all of the schedules submitted with the September 12 Filing. Because of the impact of the adjustments to the recoveries from Consolidated and OUC, the unit surcharge rate proposed to become effective December 1, 1994 changed from 12.73¢ per MMBtu to 12.72¢ per MMBtu.

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 and Regulations. All such protests should be filed on or before November 23, 1994. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28798 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. PR94–3–000]

## KansOK Partnership; Informal Settlement Conference

November 16, 1994.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Monday, November 21, 1994, at 2:00 P.M. in Room 3400–D at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Attendance will be limited to the parties and participants, as defined by 18 CFR 385.102(b) and (c). Persons wishing to become a party must move to intervene and receive intervenor status pursuant to § 385.214 of the Commission's regulations.

For additional information, please contact Mark E. Hegerle at (202) 208–0287.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28808 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER94–1384–000]

## Morgan Stanley Capital Group, Inc.; Issuance of Order

November 16, 1994.

On June 21, 1994, as supplemented on September 9, 1994, Morgan Stanley Capital Group, Inc. (MS Capital) filed an application requesting Commission approval to sell electricity at market-based rates. MS Capital is a wholly-owned subsidiary of Morgan Stanley Group Inc. (Morgan Stanley), a large, international investment banking company.[1] In its application, MS Capital sought waiver of certain of the Commission's regulations. In particular, MS Capital requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by MS Capital. On November 8, 1994, the Commission issued an Order Accepting Market-Based Rate Schedule For Filing, Granting And Denying Requests For Waivers And Authorizations, And Addressing Marketers' Annual Charge Obligations (order), in the above-docketed proceeding.

The Commission's November 8, 1994 Order granted the request for blanket approval under 18 CFR Part 34, subject to the following conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by MS Capital should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214 (1994).

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, MS Capital is hereby authorized, pursuant to section 204 of the Federal Power Act, to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of MS Capital, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order and to require a further showing that neither public or private interests will be adversely affected by continued Commission approval of MS Capital's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 8, 1994. Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28809 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Morgan Stanley operates in seven business lines (investment banking, equity products, fixed income products, merchant banking, asset management, foreign exchange trading, and commodities activities), many of which involve dealings with public utilities. Morgan Stanley acts as a securities underwriter, sometimes for utility securities, and as a market-maker in stocks and bonds, including utility stocks and bonds. Morgan Stanley also acts as an investment banker, advising utility clients on financial and capital matters. Morgan Stanley also holds securities of utilities for the accounts of its clients. Various subsidiaries provide merchant banking functions and own interests in electric power generation facilities such as qualifying facilities (OFs).

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[Docket No. RP91–47–012]

## National Fuel Gas Supply Corporation; Notice of Tariff Filing

November 16, 1994.

Take notice that on November 10, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, proposed Substitute Second Revised Sheet No. 216; Substitute First Revised Sheet No. 216A; Substitute Original Sheet No. 216B; and Original Sheet No. 216C.

National states that these tariff sheets are filed in an effort to address the concerns of its customers raised at the October 4, 1994, technical conference in this proceeding, and are related to the flowthrough of upstream pipeline take-or-pay (TOP) costs charged to National by its former upstream pipeline suppliers. In this regard, National states that it is (1) clarifying tariff language addressing refunds, (2) proposing additional tariff language to clarify Additional Adjustments made under Section 20.2(f) of the General Terms and

Conditions (GT&C) of its tariff, and (3) proposing GT&C subsection 20.2(g) to provide for a true up filing to be made subsequent to the final billing in each upstream pipeline's TOP proceeding. National proposes an effective date of July 29, 1994, to coincide with the effective date of its other tariff sheets addressing the flowthrough of TOP charges.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211. All such protests should be filed on or before November 23, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28807 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP95–42–000]

## Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 16, 1994.

Take notice that on November 14, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Ninth Revised Sheet No. 14 and Eighth Revised Sheet No. 25, to be effective December 1, 1994.

Natural states that the filing is submitted to commence recovering effective December 1, 1994, approximately $33.2 million in known and measurable gas supply realignment (GSR) costs which have been incurred by Natural as a consequence of Order Nos. 636, et seq. Natural states that these costs consist of:

(1) $20.4 million in pricing differential costs pertaining to the supply which Natural is obligated to purchase from Mitchell Energy Company and offsetting gains of $0.3 million for auctions of other gas supply;

(2) $6.8 million representing three (3) months' amortization of buyout/buydown costs previously claimed in Natural's GSR filings in Docket Nos. RP94–122–000 and RP94–249–000; and

(3) $6.3 million representing the costs associated with coal gasification supplies.

Natural requested whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective December 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 23, 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. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28799 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP95–41–000]

## Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 16, 1994.

Take notice that on November 10, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 24, to be effective December 1, 1994.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as a third semi-annual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under section 21 are not reflected in the filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit the tariff sheet to become effective December 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 23, 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. 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 in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28800 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–278–001]

## NorAm Gas Transmission Co.; Notice of Refund Report

November 16, 1994.

Take notice that on October 17, 1994, NorAm Gas Transmission Company (NGT), filed with the Commission a refund report made in compliance with Commission order dated July 29, 1994, in the above referenced docket.

NGT states that a total refund of $658,686 was sent to Arkansas Louisiana Gas Company and a total refund of $1,106 was sent to Greeley Gas Company. These refunds were made to refund the PGA balance as agreed to in Stipulation and Agreement filed June 1, 1994, and accepted by Commission order dated July 29, 1994. These refunds, for the period from November 30, 1993, to September 15, 1994, also included interest in accordance with § 154.67(c) 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, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 23, 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 the filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28806 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP90–109–014]

## Pacific Gas Transmission Co.; Refund Report

November 16, 1994.

Take notice that on November 14, 1994, Pacific Gas Transmission Company (PGT) filed a refund report documenting refunds paid October 14, 1994 to customers pursuant to final Commission Orders issued in these dockets on February 3, 1993 and August 4, 1994.

PGT states that the refund report provides the information necessary to support PGT's refund of $30,373,456.41 (inclusive of principal and interest as of October 14, 1994) representing amounts received from its customers over and above the final rates approved by the Commission for services rendered during the period November 1, 1990 through July 31, 1994.

PGT states that a copy of the refund report (without workpapers) has been sent to each party on the serrice list compiled by the Secretary in this proceeding and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 23, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28797 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket Nos. RP94–67–012, RP94–133–005 and RP94–165—005]

## Southern Natural Gas Co.; Notice of Change in Technical Conference

November 16, 1994.

Take notice that the technical conference scheduled for Thursday, November 17, 1994, at 10:00 a.m., has been changed to begin at 11:00 a.m.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28805 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket Nos. RP94–314–002 and CP93–565–003]

## Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

November 16, 1994.

Take notice that on November 9, 1994, pursuant to and in compliance with the "Order Granting Rehearing and Accepting Tariff Sheets" issued July 29, 1994 in Docket Nos. CP93–565–001 and RP94–314–000 (July 29 Order) [1] Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

**Proposed To Be Effective November 10, 1994**

1st Revised Ninth Revised Sheet No. 50
1st Revised Sixth Revised Sheet No. 75

**Proposed To Be Effective December 1, 1994**

Sub Eighth Revised Sheet No. 75

Texas Eastern states that it is filing tariff sheets to reflect rolled-in rates for Rate Schedules FTS–7 and FTS–8, to be effective November 10, 1994, as initial rates for the new firmed-up services and revised rates for previously firmed-up services.

Texas Eastern states that on October 27, 1994, it filed its "Annual ASA and Global Settlement Filing" in Docket No. TM95–2–17–000, to be effective December 1, 1994 (ASA Filing). Texas Eastern states that is filing tariff sheets, to be effective December 1, 1994, to update the ASA Filing to reflect the FTS–7 and FTS–8 initial rates.

Texas Eastern respectfully requests that the Commission waive all necessary rules and regulations to permit the above referenced tariff sheets to become effective on the dates listed above, the date service is scheduled to commence and the effective date of the ASA Filing.

Texas Eastern states that copies of the filing were served on the firm customers of Texas Eastern and interested state commissions.

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 and Regulations. All such protests should be filed on or before November 23, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28803 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Texas Eastern Transmission Corporation, 68 FERC ¶ 61,149 (1994).

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[Docket No. RP94–357–000]

## Texas Eastern Transmission Corp.; Notice of Technical Conference

November 16, 1994.

In the Commission's order issued on September 29, 1994 in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Wednesday, November 30, 1994, at 1:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28804 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP95–39–000]

## Transcontinental Gas Pipe Line Corp.; Notice of Filing

November 16, 1994.

Take notice that on November 9, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff Third Revised Volume No. 1, certain revised tariff sheets enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective as set forth in Appendix A.

TGPL states that the purpose of the instant filing is to revise certain delivery point entitlement (DPE) tariff sheets in accordance with the provisions of Section 19 of the General Terms and

Conditions of TGPL's Third Revised Volume No. 1 Tariff. TGPL states that Appendix B attached to the filing contains a schedule describing the nature of the change(s) to each respective tariff sheet included therein. Such tariff sheets also include certain revised system maps reflecting all additions or modifications to TGPL's system as of the date of this filing.

In accordance with the revised filing requirements in Commission order No. 568, and the provisions § 154.63(b)(1)(v) of the Commission's Regulations, TGPL submits in Appendix C attached to the filing a "redlined" version of the tariff sheets submitted to the filing a "redlined" version of the tariff sheets submitted in the instant filing.

TGPL states that is serving copies of the instant filing to its customers, State Commissions, and other interested parties.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 23, 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. 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 in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28801 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP95–3–002]

## Williams Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

November 16, 1994.

Take notice that on November 14, 1994, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 11 and Substitute First Revised Sheet No. 12. The proposed effective date of these tariff sheets is November 5, 1994.

WNG states that on October 5, 1994, it filed tariff sheets proposing to direct bill former PGA customers their proportionate share of $75 million, the agreed amount in a settlement between WNG and Amoco Production Company. By order issued November 4, 1994, the Commission accepted the tariff sheets to be effective November 5, 1994, subject to WNG filing revised sheets reflecting the $35 million in settlement costs actually paid to Amoco. Sheet Nos. 11 and 12 in the instant filing are being filed to comply with the order.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

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 and Regulations. All such protests should be filed on or before November 23, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28802 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. GT95–5–000]

## Williston Basin Interstate Pipeline Co.; Compliance Filing

November 16, 1994.

Take notice that on November 10, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets.

Williston Basin states that the revised tariff sheets are being filed to update its Master Receipt/Delivery Point List.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 23, 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 the filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 94–28810 Filed 11–21–94; 8:45 am]

BILLING CODE 6717–01–M

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# Office of Energy Efficiency and Renewable Energy

## Electric and Magnetic Field Effects Research and Public Information Dissemination; Solicitation for Non-Federal Financial Contributions for Fiscal Year 1995

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

**ACTION:** Notice.

**SUMMARY:** The Department of Energy today solicits financial contributions from non-Federal sources to at least match $8,000,000 in Federal funding, in support of the national, comprehensive Electric and Magnetic Fields (EMF) Research and Public Information Dissemination Program, described in the Notice of Intent to Solicit Non-Federal Contributions, published November 9, 1993 (58 FR 59461). Section 2118 of the Energy Policy Act of 1992 (42 U.S.C. 13475) requires the Department of Energy to solicit funds from non-Federal sources to offset at least 50 percent of the total funding for all activities under this program. Section 2118 also precludes the Department of Energy from obligating funds for program activities in any fiscal year unless funds received from non-Federal sources are available in an amount at least equal to 50 percent of the amount appropriated by Congress. Appropriations for expenditure under section 2118 have been enacted under the Energy and Water Development Appropriations Act, 1995 (Pub. L. 103–316) in the amount of $8,000,000 for fiscal year 1995.

**DATES:** Non-Federal contributions are requested as soon as possible in order to implement the fiscal year 1995 program in a timely manner. No portion of the $8,000,000 in appropriated funds may be expended for fiscal year 1995 program activities until DOE has received from non-Federal sources at least the aggregate sum of $4,000,000.

**ADDRESSES:** Contributions should be made in the form of a check payable to "U.S. Department of Energy" and should include the following annotation: "For EPAct 2118, EMF Program". Contributions are to be mailed to: U.S Department of Energy; Office of Headquarters Accounting Operations; Fiscal Operations Division, CR–54; P.O. Box 500; Germantown, MD 20875–0500.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Mr. Robert H. Brewer, Utility Systems Division, EE–141, U. S. Department of Energy, Washington, DC 20585, telephone (202) 586–2828.

Issued in Washington, DC, on November 14, 1994.

**Christine A. Ervin,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 94–28850 Filed 11–21–94; 8:45 am]

BILLING CODE 6450–01–P

## Office of Energy Research

### Fusion Energy Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Fusion Energy Advisory Committee (FEAC).

*Date and Time:* December 1, 1994—9:00 a.m.–5:00 p.m. December 2, 1994—9:00 a.m.–5:00 p.m.

*Place:* Stouffer Mayflower Hotel, 1127 Connecticut Avenue, NW., Room: New Hampshire, Washington, DC 20036.

*Contact:* Albert L. Opdenaker, III, U.S. Department of Energy (GIN), Office of Fusion Energy (ER–50), Office of Energy Research, Washington, DC 20584, telephone: 301–903–4941.

*Purpose of the Committee:* To provide advice on a continuing basis to the Department of Energy on the complex scientific and technical issues that arise in the planning, management, and implementation of its Fusion Energy Program.

*Tentative: Agenda:* Briefing of the Committee by key fusion program leaders on the background, status, and current plans for fusion development in order to give members the information necessary to carry out the purpose of the Committee.

*December 1, 1994*

- Presentations on Fusion Program.
- Public Comments (10-minute Rule).
- Presentation on Fusion Program (continued).
- Presentation of Fusing Policy Advisory Committee Findings and Recommendations.
- Presentation of Secretary of Energy Advisory Board Findings and Recommendations.
- Committee Discussion and Action Plan.
- Public Comments (10-minute Rule).

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Albert Openaker at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Transcripts:* The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 17, 1994.

This notice is being published less than fifteen days before the date of the meeting due to programmatic issues that had to be resolved before publication.

**Rachel Murphy Samuel,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 94–28847 Filed 11–21–94; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–5108–6]

### Access to Confidential Business Information by DPRA Incorporated and its Team Subcontractors

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

**ACTION:** Notice.

**SUMMARY:** EPA awarded Region VI Enforcement Support Services (ESS) Contract 68–W4–0016 to prime contractor, DPRA Incorporated (DPRA). EPA has authorized DPRA, including its team subcontractors, A.T. Kearney, Inc., Clarence M. Kelley and Associates, ISSI, Incorporated, Jacobs Engineering Group Inc., Life Systems, The Marasco Newton Group, Ltd. (MNG), Metcalf & Eddy, Inc. (M&E), and TechLaw Inc., access to information in Region VI Superfund files which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

**DATES:** Comments concerning CBI access will be accepted on or before November 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Karen Hartis, Project Officer, U.S. Environmental Protection Agency (6H-MM), 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733. Telephone (214) 655–6652.

**SUPPLEMENTARY INFORMATION:** Under contract no. 68–W4–0016, DPRA provides agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, DPRA employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which DPRA has access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR Part 2, Subpart B, EPA has determined that DPRA requires access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

DPRA is required by contract to protect confidential information. When DPRA's need for the documents is completed, DPRA will return them to EPA.

Dated: October 11, 1994.

**Jeanette Brown,**

*Acting Director of Office of Acquisition Management.*

[FR Doc. 94–28836 Filed 11–21–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5108–7]

### Access to Confidential Business Information by HydroGeoLogic, Inc. and its Team Subcontractors

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

**ACTION:** Notice.

**SUMMARY:** EPA awarded Region IV Enforcement Support Services (ESS) Contract 68–W4–0038 to prime contractor, HydroGeologic Inc. (HGL). EPA has authorized HGL, including its team subcontractors, ISSI, Inc. and TechLaw, Inc., access to information in Region IV Superfund files which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

**DATES:** Comments concerning CBI access will be accepted on or before November 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Fran Harrell, Contracting Officer, U.S. Environmental Protection Agency (4RMB), 345 Courtland Street, NE.,

Atlanta, GA 30365. Telephone (404) 347–6821.

**SUPPLEMENTARY INFORMATION:** Under contract no. 68–W4–0038, HGL provides agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, record centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, HGL employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which HGL has access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that HGL requires access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

HGL is required by contract to protect confidential information. When HGL's need for the documents is completed, HGL will return them to EPA.

Dated: October 11, 1994.

**Jeanette Brown,**

*Acting Director of Office of Acquisition Management.*

[FR Doc. 94–28837 Filed 11–21–94; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–5108–8]

## Access to Confidential Business Information by Booz-Allen & Hamilton, Inc. and its Team Subcontractors

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

**ACTION:** Notice.

**SUMMARY:** EPA awarded Region III Enforcement Support Services (ESS) Contract 68–W4–0010 to prime contractor, Booz–Allen & Hamilton, Inc. (BAH. EPA has authorized BAH, including its team subcontractors, CDM Federal Programs Corporation, Dynamac Corporation, CACI, Northeast Investigations, Inc., PRC Environmental Management, Inc., ICS Investigative Consultant Services, and Tri-State Enterprise, access to information in Region III Superfund files which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

**DATES:** Comments concerning CBI access will be accepted on or before November 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Bob Slaughter, Contracting Officer, U.S. Environmental Protecting Agency (3PM73), 841 Chestnut Building, Philadelphia, PA 19107. Telephone (215) 597–9909.

**SUPPLEMENTARY INFORMATION:** Under contact no. 68–W4–0010, BAH provides agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, BAH employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which BAH has access potentially include all documents submitted under the Resources Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR Part 2, Subpart B, EPA has determined that BAH requires access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

BAH is required by contract to protect confidential information. When BAH's need for the documents is completed, BAH will return them to EPA.

Dated: October 11, 1994.

**Jennette Brown,**

*Acting Director of Office of Acquisition Management.*

[FR Doc. 94–28838 Filed 11–21–94; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–5108–5]

## Access to Confidential Business Information by Dynamac Corporation and its Team Subcontractors

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

**ACTION:** Notice.

**SUMMARY:** EPA awarded Region V Enforcement Support Services (ESS) Contract 68–W4–0015 to prime contractor, Dynamac Corporation. EPA has authorized Dynamac, including its team subcontractors, CACI, Inc.-Federal (CACI), Booz-Allen & Hamilton, Inc. (BAH), Tri-State Enterprise, and Walcoff & Associates, Inc. (Walcoff), access to information in Region V Superfund files which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

**DATES:** Comments concerning CBI access will be accepted on or before November 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** Marshall McReynolds, Contracting Officer, U.S. Environmental Protection Agency (5–MCC), 77 West Jackson Boulevard, Chicago, IL 60604–3507. Telephone (312) 886–5858.

**SUPPLEMENTARY INFORMATION:** Under contract No. 68–W4–0015, Dynamac provides agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other officers. In performing these tasks, Dynamac employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which Dynamac has access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Dynamac requires access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

Dynamac is required by contract to protect confidential information. When Dynamac's need for the documents is completed, Dynamac will return them to EPA.

Dated: October 11, 1994.

**Jeanette Brown,**

*Acting Director of Office of Acquisition Management.*

[FR Doc. 94–28835 Filed 11–21–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL-5108-4]

## Access to Confidential Business Information by Science Applications International Corporation (SAIC) and its Team Subcontractor

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

**ACTION:** Notice.

**SUMMARY:** EPA awarded Region X Enforcement Support Services (ESS) Contract 68-W4-0014 to prime contractor, Science Applications International Corporation (SAIC). EPA has authorized SAIC and its team subcontractor, TechLaw, Inc., access to information in Region X Superfund files which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

**DATES:** Comments concerning CBI access will be accepted on or before November 28, 1994.

**FOR FURTHER INFORMATION CONTACT:** D.J. Lovelady, Contracting Officer, U.S. Environmental Protection Agency (MD-144), 1200 Sixth Avenue, Seattle, WA 98101. Telephone (206) 553-1770.

**SUPPLEMENTARY INFORMATION:** Under contract no. 68-W4-0014, SAIC provides agency-wide information management support services to the Environmental Protection Agency for the operation of dockets, records management support programs, records centers, and file rooms in certain Headquarters, Regional, Laboratory, and other offices. In performing these tasks, SAIC employees have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which SAIC have access potentially include all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act. Some of these documents may contain information claimed as CBI.

Pursuant to EPA regulations at 40 CFR Part 2, Subpart B, EPA has determined that SAIC requires access to CBI to perform the work required under the contract. These regulations provide for five days notice before contractors are given CBI.

SAIC is required by contract to protect confidential information. When SAIC's need for the documents is completed, SAIC will return them to EPA.

Dated: October 11, 1994.

**Jennette Brown,**

*Acting Director of Office of Acquisition Management.*

[FR Doc. 94-28834 Filed 11-21-94; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-5111-4]

## Dal-Tile Corporation De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for Public Comment.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of Dal-Tile Corporation for response costs addressed in the settlement which were incurred or may be incurred by the United States Environmental Protection Agency at the Hunterstown Road Site, Adams County, Pennsylvania.

**DATES:** Comments must be provided on or before December 22, 1994.

**ADDRESSES:** Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Hunterstown Road Site, Adams County, Pennsylvania, U.S. EPA Docket No. III-94-49-DC.

**FOR FURTHER INFORMATION CONTACT:** Daniel Isales (215) 597-4774, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

**NOTICE OF DE MINIMIS SETTLEMENT:** In accordance with Section 122(i)(1)of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement with Dal-Tile Corporation concerning the Hunterstown Road Site in Adams County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on September 30, 1994 and subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of the Interior.

Dal-Tile Corporation has agreed to pay $195,663.46 to the United States Environmental Protection Agency for response costs and $3,000.00 to the Department of the Interior for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with Dal-Tile Corporation at the Hunterstown Road Site. The grant of a covenant not to sue for damages to natural resources by the Department of the Interior is subject to agreement in writing by the Department of Interior pursuant to Section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Daniel Isales, Assistant Regional Counsel, at (215) 597-4774.

**Stanley Laskowsk,**

*Acting Regional Administrator, EPA, Region III.*

[FR Doc. 94-28841 Filed 11-21-94; 8:45 am]

BILLING CODE 6560-50-P

[IRL–5107–5]

## De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Renner Road Superfund Site, City of Shawnee, Johnson County, KS

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The United States Environmental Protection Agency (EPA) has entered into two separate *de minimis* administrative settlements to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). These settlements are intended to resolve the liability of Donivan and Ora Lee Ratliff and Don and Connie Fultz for the response costs incurred and to be incurred at the Renner Road Superfund Site, City of Shawnee, Johnson County, Kansas.

**DATES:** Written comments must be provided on or before December 22, 1994.

**ADDRESSES:** Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to: In the Matter of the Renner Road Shooting Range Superfund Site, City of Shawnee, Johnson County, Kansas, EPA Docket Nos. VII–94–F–0019 and VII–94–F–0020.

**FOR FURTHER INFORMATION CONTACT:** E. Jane Kloeckner, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7235.

**SUPPLEMENTARY INFORMATION:** The settling parties are Donivan and Ora Lee Ratliff (the Ratliffs) and Don and Connie Fultz (the Fultzs), former operators of the Renner Road Shooting Range, also known as Schroeder's Gun Club, which is the subject Superfund Site (the Site).

The Renner Road Shooting Range is located in Shawnee, Kansas in the north-central portion of Johnson County, approximately 12 miles southwest of Kansas City, Missouri. This Site is located in an area experiencing dramatic growth and development and the tract is expected to be developed for residential use. The 58 acre parcel was used as a gun club from the mid 1950's to 1976.

The firing of shot guns resulted in lead contamination at the Site. EPA Region VII issued an Action Memorandum on March 18, 1993 for conduct of a time-critical removal action. EPA Region VII began on-site removal activities in the Spring of 1994. The removal is complete. We excavated approximately 3,600 cubic yards of contaminated soil, solidified it and transported it off-site to an approved disposal facility. Clean up costs are approximately $1 million.

Region VII issued administrative orders on consent to the Fultzs and the Ratliffs for settlement of their responsibility through a *de minimis* waste contributor settlement. These settlements have been approved by the Department of Justice as required under section 122(g) of CERCLA, 42 U.S.C. 9622(g) because the response costs in this matter exceed $500,000. The terms of these settlements require the Fultzs to pay $11,250 and the Ratliffs to pay $30,000. EPA determined these amounts to be fair shares of liability based on the amount of hazardous substances contributed by each of the settling parties. These settlements include contribution protection from lawsuits by other potentially responsible parties as provided for under section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

The *de minimis* settlements provide that EPA covenants not to sue the Ratliffs or the Fultzs for response costs at the Site or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act of 1980, as amended (RCRA), 42 U.S.C. 6973. The settlements contain a reopener clause which nullifies the covenant not to sue if the parties fail to make the required payments or if any information becomes known to EPA that indicates that the parties: (1) Conducted or permitted the generation, transportation, storage, treatment or disposal of any hazardous substance at the Site after the effective date of the order; or (2) that the parties no longer meet the criteria for a *de minimis* settlement set forth in section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A).

The *de minimis* settlements will become effective upon the date which EPA issues a written notice to the parties that the statutory public comment period has closed and that comments received, if any, do not require modification of or EPA withdrawal from the settlements.

**Dennis Grams, P.E.,**

*Regional Administrator.*

[FR Doc. 94–28714 Filed 11–21–94; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL LABOR RELATIONS AUTHORITY

## Federal Employees; Criteria to be Applied in Determining Employer Successorship

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Notice of opportunity to file briefs as *amici curiae* in a proceeding before the Federal Labor Relations Authority in which the Authority is determining whether an activity established as part of an agency reorganization is a successor employer for collective bargaining purposes.

**SUMMARY:** The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as *amici curiae* on significant issues arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1988) and its regulations set forth at 5 CFR part 2422 (1994). The issues concern the criteria and analysis for determining whether an agency is a successor employer of an existing bargaining unit where the continued appropriateness of the unit is questioned and accretion is claimed.

**DATES:** Briefs submitted in response to this notice will be considered if filed by December 9, 1994. The date of filing shall be determined by the date of mailing as indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If filing is by personal delivery, it shall be considered filed on the date it is received by the Authority.

**ADDRESSES:** Mail or deliver briefs to Alicia N. Columna, Director, Case Control Office, Federal Labor Relations Authority, Suite 415, 607 14th Street, NW., Washington, DC 20424–0001.

**FORMAT:** All briefs shall be captioned "*Naval Facilities Engineering Service Center, Port Hueneme, California and National Association of Government Employees, Local R12–28*, No. SF–CU–40012, Amicus Brief" and shall contain separate, numbered headings for each issue discussed. Parties must submit an original and four (4) copies of each amicus brief, with any enclosures, on 8½ × 11 inch paper.

**FOR FURTHER INFORMATION CONTACT:** Alicia N. Columna, Director, Case Control Office, Federal Labor Relations Authority, Suite 415, 607 14th Street, NW., Washington, DC 20424–0001, Telephone: FTS or Commercial (202) 482–6540.

**SUPPLEMENTARY INFORMATION:** On November 18, 1994, the Authority granted, in part, an application for review of the Acting Regional Director's Decision and Order in *Naval Facilities Engineering Service Center, Port Hueneme, California and National Association of Government Employees, Local R12–28*, No. SF–CU–40012, and consolidated cases. A copy of the decision may be obtained in the Authority's Case Control Office at the aforementioned address; a copy will be forwarded (by mail or facsimile) to any interested person who so requests by contacting Alicia Columna at the same address. A brief summary of the case follows.

The union filed clarification of unit (CU) petitions requesting that certain recognized bargaining units be clarified to include employees who it claimed has accreted to the units as a result of a reorganization which (1) disestablished the employing entity in which the units were originally recognized (the previous entity) and (2) created a new entity (the current employing activity) encompassing the previous one as well as others in which no labor organizations held exclusive recognition. The union claimed that the new entity was the successor employer to the one in which recognition previously was granted. The current employing activity filed representative status (RA) petitions challenging the continued appropriateness of the units for which clarification was sought.

Applying the factors for determining successorship set forth in *Department of Energy, Western Area Power Administration*, 3 FLRA 77 (1980) (*DOE*), the Acting Regional Director (ARD) dismissed the CU petitions and directed that representation elections be conducted. These factors are: (1) The existing unit must be transferred substantially intact to the gaining employer; (2) the appropriateness of the unit must remain unimpaired in the gaining employer; and (3) a question concerning representation (QCR) may not be timely raised as to the representative status of the incumbent union. In the ARD's view, the second *DOE* factor was not met because the reorganization had substantially changed the character and scope of the former units so that the appropriateness of the units was impaired, and the third *DOE* factor was not met because the RA petitions filed by current employing activity raised a QCR.

The Authority granted review, under § 2422.17(c) of the Authority's Regulations, 5 CFR 2422.27(c), of the ARD's conclusions regarding both the second and third *DOE* factors. With regard to the second factor, the Authority found it unclear from precedent whether and/or how accretion principles are or should be applied to determine whether the appropriateness of bargaining units remains unimpaired as a result of a reorganization. The Authority questioned whether the continued appropriateness of a unit must be established before a finding is made as to whether other employees have accreted into it, or whether these determinations should be made in another way or sequence. With regard to the third *DOE* factor, the Authority found an absence of precedent on the issue of whether the filing of an RA petition raises a QCR so as to preclude a finding of successorship.

The Authority directed the parties to file briefs addressing the following questions:

1. In considering the second factor for determining successorship set forth in *DOE*, what criteria should be applied to determine whether appropriateness of a bargaining unit remains unimpaired as a result of a reorganization when accretion is claimed? How do those criteria apply in this case?

2. In considering the third factor for determining successorship set forth in *DOE*, does the filing of an RA petition questioning the continued appropriateness of an existing bargaining unit raise a QCR so as to preclude a finding that a successor relationship exists between an established bargaining unit and the gaining agency?

3. Should the factors for determining successorship set forth in *DOE* be modified or clarified in any other respect?

As these matters are likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing any or all of the aforementioned issues.

Dated: November 17, 1994.

For the Authority.

**Alicia N. Columna,**

*Director, Case Control Office.*

[FR Doc. 94–28817 Filed 11–21–94; 8:45 am]

BILLING CODE 0267–01–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 217–011478.

*Title:* HUAL-WLS Space Charter Agreement.

*Parties:*

Hoegh Ugland Auto Liners A/S ("Hual")

World Logistics Services (USA) Inc. ("WLS")

*Synopsis:* The proposed Agreement authorizes WLS to charter space from Hual in the trade from U.S. Atlantic Coast ports and points to Mediterranean and Middle East ports. The parties have requested a shortened review period.

Dated: November 17, 1994.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 94–28748 Filed 11–21–94; 8:45 am]

BILLING CODE 6730–01–M

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203–011476.

*Title:* Italia di Navigazione-Lloyd Triestino di Navigazione Trans-Pacific Joint Service/Evergreen Space Charter and Cooperative Working Agreement.

*Parties:*

Italia Italia di Navigazione-Lloyd Triestino di Navigazione Trans-Pacific Joint Service

Evergreen Marine Corporation (Taiwan) Ltd.

*Synopsis:* The proposed Agreement authorizes the parties to discuss and agree upon deployment and utilization of vessels, rationalization of sailings, the chartering of space from each other, and to discuss other matters of mutual concern in the trade between, on the one hand, ports in the Far East (Japan/Indonesia range inclusive), Indian Sub-Continent, Middle East and Australia and New Zealand and, on the other hand, ports on the U.S. Pacific Coast. In addition, the parties may discuss, agree upon, establish, cancel, maintain and revise all rates, charges, rules, regulations, classifications, practices and terms and conditions. The parties have requested a shortened review period.

*Agreement No.:* 232–011477.

*Title:* Kirk Line/SeaFreight Space Charter and Sailing Agreement.

*Parties:*

Kirk Line Ltd. ("Kirk Line")

Seafreight Line Limited ("Seafreight")

*Synopsis:* The proposed Agreement permits Seafreight to charter space to Kirk Line and rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points on the one hand, and ports and points in Aruba, Bonnaire and Curaçao on the other hand. The parties have requested a shortened review period.

*Agreeement No.:* 224–200576–006

*Title:* Jacksonville Port Authority/Blue Star (North America) Ltd. Terminal Agreement.

*Parties:*

Jacksonville Port Authority

Blue Star (North America) Ltd.

*Synopsis:* The proposed amendment increases the level of rates and extends the term of the Agreement.

Dated: November 16, 1994.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 94–28749 Filed 11–21–94; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### The Bank of Kentucky Financial 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 December 5, 1994.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. The Bank of Kentucky Financial Corporation*, Florence, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Boone County, Inc., Florence, Kentucky.

In connection with this application, Applicants has also applied to acquire Burnett Federal Savings Bank, Covington, Kentucky, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 15, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-28754 Filed 11-21-94; 8:45 am]

BILLING CODE 6210-01-F

### First Fidelity Bancorporation, 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 December 15, 1994.

**A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105, and the Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:**

*1. First Fidelity Bancorporation*, Lawrenceville, New Jersey, and Banco Santander, S.A., Santander, Spain, to

acquire 100 percent of the voting shares of First State Bank, Wilmington, Delaware.

**B. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Laurel Capital Group, Inc.*, Allison Park, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Laurel Savings Bank, Allison Park, Pennsylvania. **Comments should be received not later than December 5, 1994.**

*2. Merchants Bancorp of Pennsylvania, Inc.*, Kittanning, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Merchants National Bank of Kittanning, Kittanning, Pennsylvania. **Comments should be received not later than December 12, 1994.**

*3. Rockcastle Bancorp, Inc.*, Brodhead, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Brodhead, Kentucky. **Comments should be received not later than December 12, 1994.**

**C. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Philipps Investment Company Limited Partnership*, Spring Hill, Florida; to become a bank holding company by acquiring 53 percent of the voting shares of Gratiot Bancshares, Inc., Gratiot, Wisconsin, and thereby indirectly acquire Gratiot State Bank, Gratiot, Wisconsin.

*2. Philipps Investments Limited Partnership*, Wapiti, Wyoming; to become a bank holding company by acquiring 13 percent of the voting shares of Gratiot Bancshares, Inc., Gratiot, Wisconsin, and thereby indirectly acquire Gratiot State Bank, Gratiot, Wisconsin.

*3. Rantoul Bancorp, Inc.*, Rantoul, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bancorp of Rantoul, Inc., Rantoul, Illinois, and thereby indirectly acquire Bank of Rantoul, Rantoul, Illinois.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. First Banks, Inc.*, Clayton, Missouri; to acquire 100 percent of the voting shares of CCB Bancorp, Inc., Santa Ana, California, and thereby indirectly acquire Commercial Center Bank, Santa Ana, California.

**E. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. First National of Nebraska, Inc., Omaha, Nebraska, and First National of Colorado, Inc., Omaha, Nebraska; to acquire 100 percent of the voting shares of Union Colony Bancorporation, Inc., Greeley, Colorado, and thereby indirectly acquire Union Colony Bank, Greeley, Colorado.* **Comments should be received not later than December 5, 1994.**

**F. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Mission-Heights Management Company, LTD.*, Channelview, Texas; to acquire 1.66 percent of the voting shares of Prime Bancshares, Inc., Channelview, Texas, and thereby indirectly acquire Prime Bank, Channelview, Texas.

Board of Governors of the Federal Reserve System, November 15, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-28752 Filed 11-21-94; 8:45 am]

BILLING CODE 6210-01-F

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## Minnesota Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

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 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1994.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Minnesota Bancshares, Inc.*, Newport, Minnesota; to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit for its account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

*2. Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its wholly-owned subsidiary Norwest Investment Services, Inc., Minneapolis, Minnesota, in providing financial and investment advisory services; providing investment advice to individuals, businesses, and organizations; providing financial advice to state and local governments; furnishing general economic information and advice; and furnishing general economic statistical forecasting services, and industry studies, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 15, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-28753 Filed 11-21-94; 8:45 am]

BILLING CODE 6210-01-F

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## Philippine National Bank, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 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 for the application or the offices of the Board of Governors not later than December 5, 1994.

**A. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Philippine National Bank*, Manila, Philippines; to acquire PNB Remittance Centers, Inc. (formerly Century Finance and Remittance Centers, Inc.), West Covina, California; and thereby engage in money remittance services, pursuant to *Philippine Commercial International Bank*, 77 Fed. Res. Bulletin 271 (1991); foreign exchange transaction services, pursuant to *Hong Kong and Shanghai Banking Corporation*, 69 Fed. Res. Bull. 221 (1983); issuing and selling U.S. dollar and foreign currency money orders having a face value of not more than $1,000, pursuant to § 225.25(b)(12); and providing brokerage services, including acting as an agent, broker or advisor, with respect to residential mortgages, pursuant to *Bryn Mawr Bank Corporation*, 74 Fed. Res. Bull. 329 (1988), and *Sovran Financial Corporation*, 73 Fed. Res. Bull. 939 (1987).

Board of Governors of the Federal Reserve System, November 15, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94–28755 Filed 11–21–94; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

[Dkt. C–3537]

### Boulder Ridge Cable TV, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent Order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two California-based cable companies and their officers from enforcing any rights they may have under certain paragraphs of an agreement not to compete, entered into as part of Boulder Ridge's acquisition of Three Palms, Ltd., and prohibits the respondents from entering into similar agreements not to compete with the seller or buyer of a cable television system or cable television service in any geographic area in the future.

**DATES:** Complaint and Order issued October 19, 1994.[1]

**FOR FURTHER INFORMATION CONTACT:** Ronald B. Rowe, FTC/S–2105, Washington, D.C. 20580. (202) 326–2610.

**SUPPLEMENTARY INFORMATION:** On Friday, August 5, 1994, there was published in the **Federal Register**, 59 FR 40028, a proposed consent agreement with analysis In the Matter of Boulder Ridge Cable TV, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Donald S. Clark,**

*Secretary*

[FR Doc. 94–28785 Filed 11–21–94; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Correction of Location for December Meeting of the Commission on Research Integrity

Notice is hereby given of a change in the location of the December 1 and 2 meeting of the Commission. The meeting will take place at the Washington Dulles Airport Marriott Hotel, located on Dulles Airport property directly off Friday, December 2, from 8 a.m. to 3 p.m. The meeting room will be listed on the meeting board inside the front entrance.

The Commission invites whistleblowers and witnesses in alleged scientific misconduct cases and/or counsel who have advised them to present their views in person or in writing on the strengths and weaknesses of the ways in which the Public Health Service (PHS) and institutions pursue such allegations.

On the second day, the Commission will continue its discussion of specific issues in scientific misconduct and the promotion of the responsible conduct of research. The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services and the Congress on the administration of Section 493 of the PHS Act, as amended by and added to, by Section 161 of the NIH Revitalization Act of 1993.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, Rockwall II, Suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, and (301) 443–5351 (fax) will furnish a meeting agenda, the Commission charter, and a roster of the Commission members upon request. Persons wishing to make presentations should contact the Executive Secretary. Depending on the number of oral presentations and other considerations, the Executive Secretary will allocate a reasonable timeframe for each speaker.

Dated: November 15, 1994.

**Henrietta D. Hyatt-Knorr,**

*Executive Secretary, Commission on Research Integrity.*

[FR Doc. 94–28756 Filed 11–17–94; 2:01 pm]

BILLING CODE 4160–17–M

## Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 8:30 a.m.–5:30 p.m., December 8, 1994. 8:15 a.m.–3:30 p.m., December 9, 1994.

Place: CDC, Auditorium B, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: The agenda will focus on:

1. Implementing the CDC Plan on Emerging Infectious Diseases.
2. Epidemic Intelligence Service Program—Status report.
3. Cryptosporidiosis and Water Quality.
4. Guidelines for Prevention of Opportunistic Infections in HIV Infected Persons.
5. Infectious Diseases in Minority and Underserved Populations.
6. Pandemic Influenza Plan.
7. NCID Peer Review Policy.

Other agenda items include announcements/introductions; NCID update; and follow-up on actions recommended by the board (May 1994).

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0078.

Dated: November 15, 1994.

**William H. Gimson,**

*Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 94–28743 Filed 11–21–94; 8:45 am]

BILLING CODE 4163–18–M

## National Institutes of Health

### Notice of Meeting of the Alternative Medicine Program Advisory Council

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the NIH Alternative Medicine Program Advisory Council on December 7, 1994, from 8:30 a.m. to 4:30 p.m. in Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 12 noon and from 1:45 p.m. to 4:30 p.m. for a report from the Acting Director, Office of Alternative Medicine (OAM), discussion on the organization of standing subcommittees, reports from the following working groups: Research, Information Services, and Professional Liaison, and discussions on strategic planning and OAM Areas of Priority. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 522b(c)(4) and 522b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:15 p.m. to 1:45 p.m. for discussion of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Beth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 6120 Executive Blvd., Suite 450, Rockville, MD 20892–9904, phone (301) 402–2467, fax (301) 402–4741, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than December 1, 1994.

Dated: November 16, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–28788 Filed 11–21–94; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Dental Research; Notice of Meeting of NIDR Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 8–9, 1994, in the H. Trendley Dean Conference Room, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on December 8 and from 9:45 a.m. to 11:00 a.m. on December 9. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12:30 p.m. until adjournment on December 9 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Director, Office of Planning, Evaluation, and Communications, NIDR, NIH, Building 31, Room 2C34, Bethesda, Maryland 20892 (telephone: (301) 496–6705) will provide a summary of the meeting, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Dated: November 16, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–28786 Filed 11–21–94; 8:45 am]

BILLING CODE 4140–01–M

### Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

*Purpose/Agenda*: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: December 7, 1994.

Time: 3:00 p.m.

Place: NIH, Westwood Building, Room 349, Telephone Conference.

Contact Person: Ms. Jo Pelham, Scientific Review Administrator, 5333 Westbard Ave.,

Room 349, Bethesda, MD 20892, (301) 594–7254.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 14, 1995.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 238, Telephone Conference.

Contact Person: Dr. Martin Slater, Scientific Review Administrator, 5333 Westbard Ave., Room 238, Bethesda, MD 20892, (301) 594–7176.

Name of SEP: Biological and Physiological Sciences.

Date: December 14, 1994.

Time: 1:30 p.m.

Place: NIH, Westwood Building, Room A10, Telephone Conference.

Contact Person: Dr. Anne Clark, Scientific Review Administrator, 5333 Westbard Ave., Room A10, Bethesda, MD 20892, (301) 594–7115.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 16, 1994.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room A23, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 5333 Westbard Ave., Room A23, Bethesda, MD 20892, (301) 594–7175.

The meetings 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 less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 16, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–28787 Filed 11–21–94; 8:45 am]

BILLING CODE 4140–01–M

## Office of Inspector General

## Program Exclusions: October 1994

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of October 1994, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

| Subject, city, state | Effective date |
|---|---|
| **Program-Related Convictions** | |
| Aalai, Mehrdad, Potomac, MD | 11/17/94 |
| Adam Healthcare Equipment Corp., Yonkers, NY | 11/08/94 |
| Ahmad, Farooq, Parsippany, NJ | 11/08/94 |
| Alonso, Jose, Bronx, NY | 11/08/94 |
| Aronoff, Louis Larry, Birmingham, MI | 11/08/94 |
| Bowman, Laura Jane, Granbury, TX | 11/08/94 |
| County Ambulance Service, Inc., New Castle, PA | 11/08/94 |
| Daugherty, Patti Ingram, Keithville, LA | 11/08/94 |
| King, Jeffery J., Hillsboro, OR | 11/09/94 |
| Nance, William Arnol, Pueblo, CO | 11/09/94 |
| O'Donnell, Lorraine E., Temple, ME | 11/08/94 |
| Reinholz, Richard, Parma, OH | 11/08/94 |
| Sharma, Kusum, Monroeville, PA | 11/08/94 |
| Stowell, R. Jeremy A., Virginia Beach, VA | 11/08/94 |
| Vereb Ambulance Service, New Castle, PA | 11/08/94 |
| Wolfe, Gary E., Harrisburg, PA | 11/08/94 |
| **Patient Abuse/Neglect Convictions** | |
| Ake, Burton K., Eagle River, AK | 11/03/94 |
| Banks, Stacie Trenese, Mount Airy, LA | 10/06/94 |
| Bond, Brenda Stevens, St. Marys, OH | 11/08/94 |
| Brown, Paula, Endicott, NY | 11/08/94 |
| Dauzat, Coleen Marie, Vick, LA | 11/08/94 |
| Earnhart, Hazel, Fort Smith, AR | 11/08/94 |
| Gernand, Rebecca, Austin, TX | 11/08/94 |
| Givens, Queen Esther, Arkadelphia, AR | 11/08/94 |
| Johnson, Leslie, Baltimore, MD | 11/08/94 |
| Jones, Gregory, Decatur, GA | 11/08/94 |
| Kennon, Lisa Renea, Conway, AR | 11/08/94 |
| McGuire, Shalestra, Youngstown, OH | 11/08/94 |
| Mitchell, Carolyn Sue, Homer, LA | 11/08/94 |
| Murray, Crystal H., Meridian, MS | 11/08/94 |
| Nixon, Raymond E., Arvada, CO | 11/09/94 |
| Parks, Dorothy, Niagara Falls, NY | 11/08/94 |
| Sampleton, Betty June, Gonzales, TX | 11/08/94 |
| Sauceda, Louis M., Corpus Cristi, TX | 11/08/94 |
| Thompson, Estelle M., San Antonio, TX | 11/08/94 |
| Tison, Carolyn S., Evansville, IN | 11/08/94 |
| **Conviction for Health Care Fraud** | |
| Anderson, Amy Kathleen, Mesouite, TX | 11/08/94 |
| Awad, Ibraham, Dearborn, MI | 11/08/94 |
| Garfinkel, Barry, St. Louis Park, MN | 11/08/94 |
| Hale, Phyllis J., Hampton, VA | 11/08/94 |
| Navarro, Antonio, Bloomfield Hills, MI | 11/08/94 |
| Reddy, Bali, Troy, MI | 11/08/94 |
| Rogers, Tama, Decatur, AL | 11/08/94 |
| Shane, Ronald, Waterford, MI | 11/08/94 |
| **Controlled Substance Convictions** | |
| Nelsen, Lori J., Hutchinson, MN | 11/08/94 |
| Pease, David M., Florence, SC | 11/08/94 |
| Simpson, James V., Roseville, MI | 11/08/94 |
| Singh, Ram, Morton, VA | 11/08/94 |
| **License Revocation/Suspension/Surrender** | |
| Beardsley, Harold R., Philadelphia, PA | 11/08/94 |
| Blount, James J., San Bernardino, CA | 11/09/94 |
| Claudon, David, White Bear Lake, MN | 11/08/94 |
| Cohen, Enrique E., Dunlap, IA | 11/08/94 |
| Cooper, William I., Easton, PA | 11/08/94 |
| Duffy, John L., Cedar Rapids, IA | 11/09/94 |
| Flores-Vilar, Luis J., Hato Rey, PR | 11/08/94 |
| Folkerts, Annamaria Mazziotti, Hawthorne, NJ | 11/08/94 |
| Griffin, George E., Walpole, NH | 11/08/94 |
| Heavilin, Deborah A., West Hartford, CT | 11/08/94 |
| Kallas, Tiido, Dallas, PA | 11/08/94 |
| Malhomme, Bernard Emile, Kenmare, ND | 11/09/94 |
| Marler, Mary E., Lander, WY | 11/09/94 |
| Muir, Edward Allen, Frederick, MD | 11/08/94 |
| Myers, John G., Wilmington, DE | 11/08/94 |
| Rainey, Debra K., Wheatland, WY | 11/09/94 |

| Subject, city, state | Effective date |
|---|---|
| Rodgers, Joseph L., Staunton, VA | 11/08/94 |
| Sandler, Samuel, Cambridge, MA | 11/08/94 |
| Shenouda, Medhat F., Fishkill, NY | 11/08/94 |
| Snir, Arye, Tysons Corner, VA | 11/08/94 |
| Stirman, Jerry, Sante Fe, NM | 11/09/94 |
| Tran, Sueann, Springfield, VA | 11/08/94 |
| Vance, Ricardo, Bronx, NY | 11/08/94 |
| Wood, Jeffrey A., Grand Rapids, MI | 11/08/94 |
| **Federal/State Exclusion/Suspension** | |
| Benjamin, Martha Key Scoggins, Arlington, TX | 11/08/94 |
| Kellogg, William T., Summit, NJ | 11/08/94 |
| Kwon, Young Ho, Woodcliff Lake, NJ | 11/08/94 |
| **Default on Heal Loan** | |
| Anderson, Douglas W., Santa Ana, Ca | 11/09/94 |
| Andujar, Edward M., McKee City, NJ | 11/08/94 |
| Baldare, David R., Chicago, IL | 11/08/94 |
| Bishop, William B. Jr., Cartersville, GA | 11/08/94 |
| Blount, Ronnie, Nashville, TN | 11/08/94 |
| Bochniak, Marie L., Thousand Oaks, CA | 11/09/94 |
| Brody, Francee A., Youngstown, OH | 11/08/94 |
| Buskirk, Dayna E., Gainesville, FL | 11/08/94 |
| Butler, Charles E., Davenport, IA | 11/08/94 |
| Christy, Linda K., Liberty, MO | 11/08/94 |
| Conway, John A., Evansville, IN | 11/08/94 |
| Dehn, Donald C., Rockford, IL | 11/08/94 |
| Delsie, Carl, Santa Barbara, CA | 11/09/94 |
| Drotar, Christopher J., Toledo, OH | 11/08/94 |
| Dunn, Karen S., Ferndale, MI | 11/08/94 |
| Erkel, Thomas R., Bellevue, WA | 11/09/94 |
| Faber, Robert H., Heber, AZ | 11/09/94 |
| Fifield, Fred W., Modesto, CA | 11/09/94 |
| Frohlich, Douglas J., Chicago, IL | 11/08/94 |
| Gamble, Jeffrey G. Sr., San Diego, CA | 11/09/94 |
| Garrity, Michael J., Penn Yan, NY | 11/08/94 |
| Gibbs, David P., Boston, Ma | 11/08/94 |
| Harvey, Waldo E., Jr., Chicago, IL | 11/08/94 |
| Hernandez, Orestes M., Los Angeles, CA | 11/09/94 |
| Holloway, Milton G., Flint, MI | 11/08/94 |
| Jordan, Jeffrey E., Kearney, MO | 11/08/94 |
| Kaplan, David B., Chelsea, MA | 11/08/94 |
| Kay, John F., Westland, MI | 11/08/94 |
| Kosak, Jerome Edward, Fairfield, CA | 11/09/94 |
| Lee, Jeffrey K., Dearborn, MI | 11/08/94 |
| Li, Patrick P., San Gabriel, CA | 11/09/94 |
| Liston, Lawrence E., Bloomington, IL | 11/08/94 |
| Lyons, Kathryn R., Raleigh, NC | 11/08/94 |
| Mackey, Oliver G., Flushing, NY | 11/08/94 |
| Martin, Steven Alfred, Petaluma, CA | 11/09/94 |
| Mays-Good, Kathryn M., Reseda, CA, | 11/9/94 |
| McCune, Thomas Scott, Cleveland, OH | 11/08/94 |
| McKinney, Laurence T., Hilo, HI | 11/09/94 |
| Migdalewicz, Alan L., Ferndale, MI | 11/08/94 |
| Perrault, Mark D., Culver City, CA | 11/09/94 |
| Pope, David K., Downey, CA | 11/09/94 |
| Rico, David, Tucson, AZ | 11/09/94 |
| Rima, Russell A., Phoenix, AZ | 11/09/94 |
| Rodriguez, Jesus A., El Paso, TX | 11/08/94 |
| Rowe, Roger L., Longview, TX | 11/08/94 |
| Sackett, F. Maurice, Redlands, CA | 11/09/94 |
| Seymour, Gary S., Newburgh, NY | 11/08/94 |
| Simanonok, John P., Westminster, CA | 11/09/94 |
| Spadafora, Michael P., Cincinnati, OH | 11/08/94 |
| Swope, Karl A., Rolla, MO | 11/08/94 |
| Thiel, Margaret A., Cape Coral, FL | 11/08/94 |
| Vergote, Steven L., Warren, MI | 11/08/94 |
| Westermeyer, Scott A., Gainesville, GA | 11/08/94 |
| Williams, Pamela C., Antioch, TN | 11/08/94 |
| Young, Larry N., Mesa, AZ | 11/09/94 |
| Zipfel, Anthony R., Republic, WA | 11/09/94 |

Dated: November 9, 1994.

**James F. Patton,**

*Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.*

[FR Doc. 94–28738 Filed 11–21–94; 8:45 am]

BILLING CODE 4150–04–P

## Public Health Service

### Administration of National Awards Programs

**AGENCY:** The President's Council on Physical Fitness and Sports, PHS, DHHS.

**ACTION:** Notice of Opportunity to Administer Awards Program.

**SUMMARY:** The President's Council on Physical Fitness and Sports ("PCPFS") seeks an organization capable of administering a series of financially self-sustaining PCPFS awards, recognitions and activities.

**DATES:** To receive consideration, all proposals must be received by the close of business December 30, 1994, by Christine Spain, Director of Research, Planning and Special Projects, PCPFS at the address set out below. Proposals will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered requests must be received by 5:00 pm, December 30, 1994. Proposals that are received after the deadline date will be returned to the sender.

**FOR FURTHER INFORMATION CONTACT:** Christine Spain, Director of Research, Planning and Special Projects, President's Council on Physical Fitness and Sports, Suite 250, 701 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 272–3425.

**SUPPLEMENTARY INFORMATION:** The PCPFS seeks an organization capable of administering a series of financially self sustaining PCPFS awards which presently include the "President's Challenge", the "State Champion Award" and the "National Physical Fitness Demonstration Center Award."

*1. The President's Challenge Physical Fitness Awards Program*

This program recognizes students physical fitness achievement, ages 6–17, on five fitness test items.

(a) Students scoring at the 85th percentile or above (based on national norms) on all test items are eligible for the Presidential Physical Fitness Award and receive a Presidential certificate and emblem.

(b) The National Physical Fitness Award is available for boys and girls who score at the 50th percentile or above on the five test items and consists of an emblem *and/or* a certificate of recognition.

(c) The Participant Physical Fitness Award (PPFA) recognizes boys and girls who attempt all five test items on the "President's Challenge" fitness test but whose scores fall below the 50th percentile on one or more of them. Students earn an embroidered Participant emblem and/or a certificate of recognition for their accomplishments.

*2. The State Champion Award*

This award is granted to three schools in each state which qualify the highest percentage of eligible students for the Presidential Physical Fitness Award. Schools receive a certificate of recognition, and each student in the school who received the Presidential Physical Fitness Award receives a State Champion emblem.

*3. The National Physical Fitness Demonstration Centers*

This award focuses attention on individual schools, recognized by State Departments of Education, which have outstanding programs of physical education that contribute to students' physical fitness. Each Demonstration Center receives a certificate and a pennant distributed by the State Director.

Organizations (schools, youth and community groups, etc.) which participate in the PCPFS awards programs purchase the award and recognition materials directly from the administering organization.

The organization shall furnish the necessary personnel, materials, services and facilities to administer the PCPFS awards, recognitions and activities including purchase and/or production of all award materials; distribution of award materials; promotion; statistical evaluations of programs; quarterly and annual budget and demographic reports; and other administrative duties as will be determined in a Memorandum of Agreement and an annual plan. The organization will be expected to provide input regarding new activities or initiatives to support the program, recommendations to improve program usage and promotion. The organization also will work with the PCPFS to consider other recognitions bearing the President's Council on Physical Fitness and Sports and/or Presidential insignias.

Organizations interested in administering the programs should submit pertinent qualification information for evaluation purposes on each of the following areas: (1) Experience in administering national awards programs; (2) Discussion of specific work previously performed or currently being performed with particular emphasis on those projects dealing with physical fitness, sports or other physical activities of a similar nature, with emphasis on work with schools and organizations on a national basis; (3) Personnel: name, professional qualifications and specific experience of key personnel who would be available to work on these projects; (4) Facilities: availability and description of facilities required to administer the program as well as computer based telecommunication resources; (5) Collection Experience: discussion of experience in developing an annual budget and collecting and managing monies from organizations or individuals; (6) Proposed plan for managing the President's Council on Physical Fitness and Sports awards programs, including such financial aspects as cost of award materials, promotion, distribution and program management.

The organization will be selected by the PCPFS based on its qualifications and capability to administer a program of this nature.

Dated: November 16, 1994.

**Sandra Perlmutter,**

*Executive Director, President's Council on Physical Fitness and Sports.*

[FR Doc. 94–28723 Filed 11–21–94; 8:45 am]

BILLING CODE 4160–17–M

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## Social Security Administration (SSA)

## Privacy Act of 1974; Computer Matching Program (SSA/Department of Veteran Affairs C&P)

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Computer Matching Program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 966–5138, or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Program and Integrity Reviews as shown above.

**SUPPLEMENTARY INFORMATION:**

### A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements.

(3) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

### B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: November 3, 1994.

**Shirley S. Chater**

*Commissioner of Social Security.*

### Notice of Computer Matching Program, Department of Veteran Affairs (VA) With Social Security Administration (SSA)

*A. Participating Agencies*

SSA and VA.

*B. Purpose of the Matching Program*

To identify Supplemental Security Income (SSI) recipients who receive VA benefits and to update their records (SSR) for unearned income.

*C. Authority for Conducting the Matching Programs*

Section 1631(f) of the Social Security Act.

*D. Categories of Records and Individuals Covered by the Matching Program*

The VA will provide SSA with magnetic tapes containing compensation and payment (C & P) data from its system of records entitled C & P, Educational and Rehabilitation records. SSA will then match the VA data with SSI payment information maintained in the SSI Record, HHS/SSA/OSR, 09–60–0103 system of records.

*E. Inclusive Dates of the Match*

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data

Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 94–28718 Filed 11–21–94; 8:45 am]

BILLING CODE 4190–29–U

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Section 4(e) Conditions for the Kerr Hydroelectric Project; Montana

**AGENCY:** Department of the Interior.

**ACTION:** Notice of Availability; Request for Comment.

**SUMMARY:** The Department of the Interior, in compliance with the terms of the Kerr Hydroelectric Project license, *The Montana Power Company*, 32 FERC ¶ 61,070 (1985), announces the availability of its proposed Section 4(e) conditions for public review and comment. Pursuant to the Federal Power Act, 16 U.S.C. 797(e), the proposed conditions provide for the adequate protection and utilization of the Flathead Indian Reservation and the Fish and Wildlife Service administered Flathead Waterfowl Production Area.

**DATES:** Written comments regarding the Secretary's proposed Section 4(e) conditions will be accepted until close of business on or before December 22, 1994. All comments received will be considered in the preparation of the Secretary's final Section 4(e) conditions for the Kerr Hydroelectric Project.

**ADDRESSES:** Comments should be sent to Anne Crichton, Department of the Interior, Office of the Solicitor, 1849 C Street, NW., Mail Stop 6456, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Janice Schneider, Department of the Interior, Office of the Solicitor, 1849 C Street, NW., Mail Stop 6456, Washington, DC 20240, 202–208–6967.

**SUPPLEMENTARY INFORMATION:** The Kerr Hydroelectric Project ("Project") is located on the Flathead Indian Reservation, and in Flathead and Lake Counties, in northwestern Montana. The Kerr Dam and portions of the project works, including approximately one half of the Project's reservoir, are located within the exterior boundary of the Flathead Indian Reservation. The north half of the Project's reservoir is located in Flathead and Lake Counties. At the north shore of Flathead Lake, a portion of the Project is located within the Flathead Waterfowl Production Area, which is owned and administered by the Fish and Wildlife Service as part of the National Wildlife Refuge System.

On July 17, 1985, as the result of a negotiated settlement, the Federal Energy Regulatory Commission ("Commission") issued a new 50-year operating license for the Kerr Project, jointly to the Montana Power Company and the Confederated Salish and Kootenai Tribes as co-licensees. *The Montana Power Company*, 32 FERC ¶ 61,070 (1985). The specific terms of the license provide, *inter alia*, that

> [T]he Secretary [of the Interior] shall be allowed * * * to impose such reasonable license conditions with respect to fish [and wildlife] and related environmental concerns as the Secretary would be empowered under Section 4(e) [of the Federal Power Act] to require * * *.[1]

Articles 45(b) and 46(c).

The Kerr Project license requires that the Secretary provide for "notice and opportunity for hearing" in the formulation of the § 4(e) conditions for the Kerr Project. *Id.* Consistent with the terms of the Kerr Project license, the Secretary is providing interested parties with notice and an opportunity to comment on the proposed Section 4(e) conditions.

The proposed conditions for the Flathead Indian Reservation provide for the imposition of a base load operational scenario at the Kerr Project. This operational scenario precludes the use of Kerr Dam as a load regulating or peak power generation facility, and requires minimum flows, certain restrictions on flow fluctuations (ramping rates), and a two year ramping rate study. In addition, the proposed conditions provide for non-operational measures designed to protect and provide for adequate utilization of the Flathead Indian Reservation in conjunction with operational measures. The non-operational measures include the development of a Fish and Wildlife Implementation Strategy, development of an operational rule curve, habitat acquisition, habitat development, fishery supplementation and reintroduction, development of recreational resources, and the identification and protection of cultural resources on the Flathead Indian Reservation. The proposed conditions for the Flathead WPA provide for the imposition of erosion control on the north shore of Flathead Lake and the upper Flathead River, island restoration, and habitat acquisition and development. The costs of all measures will be borne by the project licensees.

The proposed conditions are available for review at the Department of the Interior, 1849 C Street, NW., Washington, DC in room 6443. Copies of the proposed Section 4(e) conditions are being sent to all individuals, agencies and organizations on the Commission's service list for the Kerr Project, and to those who have otherwise requested to be included on the Secretary's Kerr Project Section 4(e) mailing list. The document will be mailed to all interested parties requesting copies. The Secretary's final conditions will be informed by evidence and comments submitted within 30 days of the date of publication of this notice.

Dated: November 16, 1994.

**Willie R. Taylor,**

*Acting Director, Office of Environmental Policy and Compliance.*

[FR Doc. 94–28737 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–02–M

[1] Section 4(e) of the Federal Power Act (FPA) authorizes the Commission to issue licenses for hydroelectric projects "upon any part of the public lands and reservations of the United States." FPA Section 4(e), 16 U.S.C. 797(e) (1988 & Supp. 1992). Such licenses "shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls *shall deem necessary for the adequate protection and utilization of such reservation.*" *Id.* (emphasis added). The mandatory language of Section 4(e) requires the Commission to accept, without modification, Secretarial conditions reasonably related to the protection and adequate utilization of the reservation and its purposes, and which are supported by substantial evidence. *See Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765, 777, n. 18, 778 (1983).

## Bureau of Land Management

**[OR–120–00—6350–00–G5–018; 5–00151]**

### Resource Management Plans, etc.: Coos Bay District, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of Proposed Resource Management Plan/ Final Environmental Impact Statement for the Coos Bay District, Coos Bay, Oregon.

**SUMMARY:** In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a Proposed Resource Management Plan/ Final Environmental Impact Statement (PRMP/FEIS) has been prepared for the Coos Bay District, Oregon. The PRMP/ FEIS describes and analyzes future options for managing approximately

329,700 acres of mostly forested public land and 12,150 acres of non-federal surface ownership with federal mineral estate administered by the Bureau of Land Management in Coos, Curry, Douglas, and Lane counties in southwestern Oregon.

**DATES:** There will be a 30-day comment/protest period beginning when the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**, anticipated to be November 18, 1994. Anyone can comment on the PRMP/FEIS but only those persons or organizations who participated in the planning process leading to this PRMP/FEIS may protest. Protests must be postmarked within the 30-day comment/protest period.

A protesting party may raise only those issues which were submitted for the record during the planing process. Protests of proposed plan elements that merely adopt decisions made in the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning documents Within the Range of the Northern Spotted Owl (SEIS ROD) will be dismissed as the Director has no authority to overrule those decisions. Details of the protest process can be found in the PRMP/FEIS.

**ADDRESSES:** Copies of the PRMP/FEIS and a summary of it may be obtained from the Coos Bay District Office. Copies will be available for public reading and review at the public libraries in Brookings, Gold Beach, Bandon, Myrtle Point, Coquille, Coos Bay, North Bend, Reedsport, and Powers, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5647, 1849 C Streets, NW., Washington, DC 20240.

Public Room, Oregon State Office, 1515 SW. Fifth Avenue, Portland, Oregon 97201.

Public Room, Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459.

All other BLM offices in western Oregon

Background information and maps used in developing the PRMP/FEIS are available at the Coos Bay District Office.

Open houses with opportunity to discuss the PRMP/FEIS will be held at the Coos Bay District Office. The dates, times, and locations of all open house meetings will be announced in a separate mailer as well as in the local media.

Comments should be sent to: District Manager, Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459.

Protests should be sent to: Director (760), Bureau of Land Management, Chief, Planning and Environmental Coordination, Bureau of Land Management, 1849 "C" Street, NW., Washington, DC 20240.

At the end of the 30-day comment/protest period, the BLM may issue a Record of Decision approving implementation of any portion of proposed plan not under protest. Approval will be withheld on any portion of the plan under protest, until the protest has been resolved.

**FOR FURTHER INFORMATION CONTACT:** Bob Gunther, RMP Team Leader, Coos Bay District Office; phone (503) 756–0100.

**SUPPLEMENTARY INFORMATION:** Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** on August 28,1986 (Volume 51, number 167, page 30718). Since that time, numerous public meetings, mailings, and briefings were conducted to solicit comments and ideas. The Draft RMP/EIS was available for public review and comment from August 21, 1992 to December 21, 1992. Written comments were received from agencies, organizations, and individuals. Oral comments were also received at public meetings held in North Bend, Reedsport, and Gold Beach Oregon. All comments presented throughout the process have been considered in preparation of the PRMP/FEIS.

The PRMP/FEIS describes and analyzes seven alternatives to resolve the following issues: (1) Timber production practices; (2) Old-growth forests and habitat diversity; (3) Threatened and Endangered and other special status species habitat (including habitat for the northern spotted owl); (4) Special areas; (5) Visual resources; (6) Stream/riparian/water quality; (7) Recreation resources; (8) Wild and scenic rivers; (9) Land tenure; and (10) Rural interface areas. The issues are analyzed in seven distinct alternatives, with each alternative representing a complete management plan for the district.

The Proposed Resource Management Plan responds to the need for a healthy forest ecosystem with habitat that will support populations of native species (particularly those associated with late-successional and old-growth forests). It also responds to the need for a sustainable supply of timber and other forest products that will help maintain the stability of local and regional economies, and contribute valuable resources to the national economy, on a predictable and long-term basis. BLM-administered lands are primarily allocated to Riparian Reserves, Late-Successional Reserves, General Forest Management Areas, and Connectivity/Diversity Blocks. An Aquatic Conservation Strategy would be applied to all lands and waters under BLM jurisdiction.

Approximately 61,900 acres would be managed for timber production. The annual probable sale quantity would be 5.3 million cubic feet (32.1 million board feet). To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

Management would provide for a wide variety of recreation opportunities, with particular emphasis on enhancement of opportunities for dispersed recreational use.

Approximately 184 miles of river found eligible for designation and studied by BLM would be found not suitable for designation.

Most BLM-administered lands would remain available for mineral leasing and location of mining claims, but 1,600 acres would be closed to leasing for oil and gas and geothermal resources, and 12,500 acres would be closed to location of claims.

The PRMP/FEIS proposes continuation of designation of one Area of Critical Environmental Concern (ACEC), one Research Natural Area (RNA), and designation of nine new ACECs. The Proposed RMP would designate or redesignate the following ACECs and RNA with the noted restrictions.

| Area name | Approx. acres | Veg. harv. | OHV use | Min. loc. | Min. lease | R/W |
|---|---|---|---|---|---|---|
| Cherry Creek RNA/ACEC | 570 | NC | NC | NC | NC | NC |
| New River ACEC | 860 | NA | R | P | P | P |
| Wassen Creek ACEC | 3,440 | R | R | P | R | P |
| North Spit ACEC | 580 | NA | R | P | P | P |
| North Fork Coquille River ACEC | 290 | P | R | P | R | P |

| Area name | Approx. acres | Veg. harv. | OHV use | Min. loc. | Min. lease | R/W |
|---|---|---|---|---|---|---|
| Tioga Creek ACEC | 40 | P | P | P | R | P |
| China Wall ACEC | 240 | P | P | P | R | P |
| North Fork Hunter Creek ACEC | 1,730 | R | R | P | R | P |
| Hunter Creek Bog ACEC | 570 | P | R | P | R | P |
| North Fork Chetco River ACEC | 600 | P | R | P | R | P |
| Upper Rock Creek ACEC | 460 | P | R | P | R | P |

NC = No Change from existing situation.
P = Use is prohibited.
R = Use is allowed but with restrictions.
NA = Use is not applicable to this area.

There were no potential ACEC areas identified that met the Bureau ACEC criteria of relevance and importance that are not included in whole or in part in the PRMP/FEIS described above.

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs and the requirements of the final revised Department of the Interior—Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, pg. 39454).

Dated November 9, 1994.

**Mel Chase**

*District Manager*

[FR Doc. 94–28784 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–33–P

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## Bureau of Reclamation

**[DES 94–46]**

## Cachuma Project Contract Renewal, Santa Barbara County, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability and notice of public hearings on the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR).

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the Cachuma Project Authority (Authority) and the Santa Barbara County Water Agency (Agency) as lead agencies have prepared a joint DEIS/DEIR for the Cachuma Project contract renewal. The proposed action of the lead agencies is the continuation of the member units' entitlement to water from the Cachuma Project by means of a renewed water service or repayment contract. The proposed action exercises the provisions of several federal laws as applicable to Reclamation. Public hearings will be held in three sessions to receive written or verbal comments on the DEIS/DEIR from interested organizations and individuals on the environmental impacts of the proposal.

**DATES:** A 60-day public review period commences with the publication of this notice. Written comments on the DEIS/DEIR are to be submitted to the Project Coordinator, Cachuma Project Authority by January, 17, 1995.

Public hearings on the DEIS/DEIR will be held on the following dates at the locations indicated:

- January 10, 1995, Santa Barbara County Administration Building, Planning Commission Hearing Room, 123 E. Anapamu Street, Santa Barbara CA 93101, 2:00 p.m.
- January 10, 1995, Santa Barbara County Administration Building, Planning Commission Hearing Room, 123 E. Anapamu Street, Santa Barbara CA 93101, 7:00 p.m.
- January 11, 1995, City of Lompoc City Hall, Council Chambers, 100 Civic Center Plaza, Lompoc CA 93438, 7:00 p.m.

Send requests to speak at the hearings to the Project Coordinator, Cachuma Project Authority.

**ADDRESSES:** Written comments on the DEIS/DEIR, requests for copies of the DEIS/DEIR, and requests to speak at the hearings should be addressed to Chris Dahlstrom, Project Coordinator, Cachuma Project Authority, 3301 Laurel Canyon Road, Santa Barbara, CA 93105–2017; telephone: (805) 569–1391.

Copies of the DEIS/DEIR are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW., Washington, DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, Regional Director, Attn: MP–152 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5129.
- Bureau of Reclamation, South-Central California Area Office, Attn: SCC–412, 2666 N. Grove Industrial Drive, Suite 106, Fresno, CA 93727–1551; telephone: (209) 487–5137.
- Cachuma Project Authority, 3301 Laurel Canyon Road. Santa Barbara CA 93105–2017, telephone: (805) 569–1391.
- Santa Barbara County Water Agency, 123 E. Anapamu Street, Santa Barbara CA 93101–2058; telephone: (805) 568–3542.

*Libraries:*

Copies will also be available for inspection at public libraries located in Carpinteria, Montecito, Santa Barbara, Goleta, Santa Ynez, Solvang, Buellton, Vandenberg Village, Lompoc, and Santa Maria, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert May, Program Manager, SCC–412, Bureau of Reclamation, 2666 N. Grove Industrial Drive, Suite 106, Fresno CA 93727–1551, telephone: (209) 487–5137; or Mr. Chris Dahlstrom, Project Coordinator, Cachuma Project Authority, 3301 Laurel Canyon Road, Santa Barbara CA 93105–2017, telephone: (805) 569–1391, or Mr. Robert Almy, Santa Barbara County Water Agency, 123 E. Anapamu Street, Santa Barbara CA 93101–2058; telephone: (805) 568–3542.

**SUPPLEMENTARY INFORMATION:** The DEIS/DEIR considers the effects of renewing the Cachuma Project Contract under which water service has been provided to the member units. The existing Cachuma Project Contract (No. I75r-1802) was executed on September 12, 1949, for irrigation, and municipal and industrial purposes under the provisions of section 9(c)(2) and 9(e) of the 1939 Reclamation Project Act. The authority for contract renewal is pursuant to the Act of July 2, 1956, 70 Stat. 483, and the Act of June 21, 1963, 77 Stat. 68, requiring the Secretary of the Interior, upon request, to renew long-term contracts.

The Cachuma Project has been the principal water supply for the majority of the member units since initial deliveries began in 1955. These member units include the City of Santa Barbara.

Goleta Water District, Montecito Water District, Summerland Water District, Carpinteria County Water District, and the Santa Ynez River Water Conservation District, Improvement District No. 1. The original Cachuma Project Contract has a term of 40 years, and will expire on May 14, 1995.

A preferred alternative has not yet been identified for the DEIS/DEIR. Several alternatives, including the "no action" alternative, are evaluated in the DEIS/DEIR, and also describe the existing environment and environmental consequences of contract renewal. They consider the following issues: environmental improvement and restoration with respect to biological resources, including fisheries, wildlife, and riparian vegetation, surface water hydrology, ground-water hydrology, flood control, water supply and demand, water pricing and delivery practices, increased operational efficiency, increased conservation, conjunctive use, water exchanges and transfers, recreational enhancement and land use policies, agriculture, socioeconomic conditions, cultural resources, and Indian Trust Assets. Mitigation of impacts, where necessary, is also identified in the document.

The Santa Ynez Indian Reservation (Reservation), the Southern California Area Office of the Bureau of Indian Affairs (BIA), and the Sacramento Area Office of the BIA have been contacted by Reclamation regarding Indian Trust Assets (ITAs) that may be affected by the proposed action. No potentially affected ITAs have been identified by the BIA. Under certain alternatives, reduced ground-water levels in the Santa Ynez River Riparian Basin could affect streamflow in the Zanja de Cota Creek, to which the Reservation Indians have certain water diversion rights.

**Hearing Process Information**

Those wishing to request in advance a time to make comments prior to the hearing dates should write or call the Cachuma Project Authority, Santa Barbara, California. Requests should indicate at which session the speaker wishes to appear. Speakers will be called upon to present their comments in the order in which their requests were received by the Cachuma Project Authority. Requests to speak may also be made at each session and will be called after the advance requests. Oral comments will be limited to 10 minutes per individual.

Written comments, for inclusion in the hearing record, from those unable to attend the hearing or wishing to supplement their oral presentation should be received at the Cachuma Project Authority by January 12, 1995.

**Note:** If special assistance is required, contact Chris Dahlstrom at (805) 569–1391. Please notify Mr. Dahlstrom as far in advance of the hearings as possible and not later than January 3, 1995, to enable Cachuma Project Authority to secure the needed services. If a request cannot be honored, the requester will be notified. A telephone device for the hearing impaired (TDD) is available at (209) 487–5933.

Dated: November 7, 1994.

**Dan M. Fults,**

*Acting Regional Director.*

[FR Doc. 94–28695 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–94–P

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## Fish and Wildlife Service

### Aquatic Nuisance Species Task Force Meeting

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. A number of subjects will be discussed during the meeting including: the reauthorization of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, the Aquatic Nuisance Species Program, the Ruffe Control Program, ballast water management activities/legislation, the Brown Tree Snake Control Program, the black carp risk assessment, the Freshwater Foundation national newsletter on aquatic nuisance species, and upcoming events.

**DATES:** The ANS Task Force will meet from 8:00 a.m. to 4:00 p.m. on Friday, December 2, 1994.

**ADDRESSES:** The ANS Task Force meeting will be held at the U.S. Fish and Wildlife Building, Room 200AB, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Jay Troxel, ANS Task Force Coordinator, telephone (703) 358–1718.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 N. Fairfax Drive, Arlington, Virginia 22203, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting:

Dated: November 15, 1994.

**Gary Edwards,**

*Assistant Director, Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.*

[FR Doc. 94–28772 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–55–M

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## National Park Service

### Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, December 12, 1994.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene park headquarters, Acadia National Park, Rt. 233, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 20, 1994.
2. Report of the Conservation Easement Subcommittee.
   A. Proposed conservation easement on Long Island, Blue Hill, Maine
3. Report of the Acquisition Subcommittee.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: November 15, 1994.

**Robert McIntosh,**

*Acting Regional Director.*

[FR Doc. 94–28719 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–70–M

## Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 7:30 p.m. (PST) on Wednesday, December 7, 1994 at GGNRA Park Headquarters, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco, California to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Michael Alexander
Ms. Sonia Bolaos
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Naomi Gray
Mr. Redmond F. Kernan
Mr. Mel Lane
Ms. Yvonne Lee
Mr. Trent Orr
Ms. Lennie Roberts
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Ms. Jacqueline Young

The main agenda item at this meeting will be a presentation of a status report on the proposed mushroom collection policy of the National Park Service and the Golden Gate National Recreation Area.

Also on the agenda will be an annual report to the Advisory Commission from the Golden Gate National Park Association and a swearing-in of newly appointed advisory commissioners.

The meeting will also contain a Superintendent's Report from GGNRA Superintendent Brian O'Neill.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after December 30, 1994. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: November 15, 1994.

**Patricia L. Neubacher,**

*Associate Regional Director for Administration, Western Region.*

[FR Doc. 94–28791 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–70–P

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## Sudbury, Assabet and Concord Rivers Wild and Scenic Study; Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, December 1, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, December 1, 1994, at the Lincoln Town Hall, Lincoln, MA. Driving Directions: Lincoln Town Hall is located on the south side of Lincoln Rd., approximately 0.2 miles from the 5-way intersection of Bedford, Trapelo, Weston, Lincoln, and Sandy Pond Roads. From Rte. 2, take Bedford Rd. south to the 5-way intersection. Town Hall is straight ahead on the left. From Rte. 117, take Tower or Lincoln Rd. north. Town Hall is on the right, just past the Post Office.

The agenda is as follows:

1. Welcome and introductions, approval of minutes from 11/09/94 meeting
2. Brief questions and comments from public
3. Report: Town Meeting Outreach Strategy
4. Management Plan: Discussion
5. Issues of local concern
6. Opportunity for public questions and comments
7. Other Business—Next meeting dates and locations
8. Adjournment

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Further information concerning the meeting may be obtained from Cassie Thomas, Planner, National Park Service, 15 State Street, Boston, MA 02109 or call (617) 223–5014.

Dated: November 15, 1994.

**Robert McIntosh,**

*Acting Regional Director.*

[FR Doc. 94–28720 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–70–P

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## National Register of Historic Place; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 12, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 7, 1994.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**ARKANSAS**

**Desha County**

*Watts, Dr. J.D., House,* 205 W. Choctaw, Dumas, 94001460

**Faulkner County**

*Solomon Grove Smith—Hughes Building (Public Schools in the Ozarks MPS).* S of Co. Rd. 29, Twin Groves, 94001461

**Hempstead County**

*Ruggles, Nesburt T., House,* AR 32 E side, SE of Shover springs, Shover Springs vicinity, 94001463

**Little River County**

*New Rocky Comfort Jail,* Jct. of Third and Schuman Sts., SE corner, Foreman, 94001465

**Lonoke County**

*Eagle, Joe P., and D.R. Boone Building (Thompson, Charles L., Design Collection TR),* 105–107 W. Front St., Lonoke, 94001462

**Pulaski County**

*Mayer, Maxwell F., House,* 2016 Battery St., Little Rock, 94001464

*Veterans Administration Hospital,* 300 E. Roosevelt Rd., Little Rock, 94001466

**CONNECTICUT**

**Litchfield County**

*Deep River Freight Station,* 152 River St., Deep River, 94001445

*St. Andrew's Episcopal Church*, 247 New Milford Tnpk., Marbledale Township, Washington, 94001443

**New London County**

*Hadlyme Ferry Historic District*, 150, 151, 158, 159, 162–1, 162–2 Ferry Rd. and ferry slip, Hadlyme Township, Lyme, 94001444

**IDAHO**

**Bonner County**

*Lake Pend Oreille Lime and Cement Industry Historic District*, Roughly, discontiguous sites around Bayview and Lakeview, Bayview vicinity, 94001450

**Custer County**

*Idaho Rocky Mountain Club*, ID 75 S of Stanley, Stanley vicinity, 94001451

**Fremont County**

*Sherwood, Joseph, House and Store*, ID 87 W of jct. with US 20, Island Park vicinity, 94001452

**IOWA**

**Clayton County**

*St. Olaf Auditorium*, 118 S. Main St., St. Olaf, 94001446

**MICHIGAN**

**Cass County**

*Jones, G.W., House*, 180 W. Main St., Marcellus, 94001427

**Clare County**

*Clare Congregational Church*, 110 W. Fifth St., Clare, 94001424

**Houghton County**

*Hoatson, Thomas H., House*, 320 Tamarack St., Laurium, 94001426

**Jackson County**

*Paddock—Hubbard House*, 317 Hanover St., Concord, 94001429

**Kalamazoo County**

*Rickman Hotel (Kalamazoo MRA)*, 345 N. Burdick, Kalamazoo, 94001425

**Monroe County**

*Custer, George Armstrong, Equestrian Monument*,. Jct. of Elm Ave. and N. Monroe St., Monroe, 94001430

**Wayne County**

*Beverly Road Historic District*, 23–45 Beverly Rd., Grosse Pointe Farms, 94001428

**NORTH CAROLINA**

**Lincoln County**

*Emanuel United Church of Christ (Churches and Church-Related Cemeteries in Lincolnton MPS)*, 329 E. Main St., Lincolnton, 9400143

*Emmanuel Luthern Church (Churches and Church-Related Cemeteries in Lincolnton MPS)*, 216 S. Aspen St., Lincolnton, 94001454

*First Baptist Church (Churches and Church-Related Cemeteries in Lincolnton MPS)*, 403 E. Main St., Lincolnton, 94001456

*First Presbyterian Church (Churches and Church-Related Cemeteries in Lincolnton MPS)*, 114 W. Main St., Lincolnton, 9400145

*First United Methodist Church (Churches and Church-Related Cemeteries in Lincolnton MPS)*, 201 E. Main St., Lincolnton, 94001457

*Methodist Church Cemetery (Churches and Church-Related Cemeteries in Lincolnton MPS)*, Jct. of S. Aspen and W. Congress Sts., W corner, Lincolnton, 94001458

*Old White Church Cemetery (Churches and Church-Related Cemeteries in Lincolnton MPS)*, Jct. of S. Aspen and Church Sts., E corner, Lincolnton, 94001459

**UTAH**

**Box Elder County**

*Transcontinental Railroad Grade*, Roughly, from 6 mi. W of Corinne running approximately 13 mi. along UT 83, Corinne vicinity, 94001423

**VERMONT**

**Orange County**

*Ely Boston & Maine Railroad Depot*, US 5 S of jct. with VT 113, Fairlee, 94001448

**Windsor County**

*Hartford Library*, 217 Main St., Hartford, 94001447

*Marsh, Carles, Law Office*, 72 Pleasant St., Woodstock, 94001449

**WASHINGTON**

**Cowlitz County**

*Catlin, Adam, House*, 202 NW. Second Ave., Kelso, 94001434

**Douglas County**

*Schmidt, Christian, House*, 391 L NW., Waterville vicinity, 94001432

**King County**

*Agen, John B., House*, 645 137th St. NW., Seattle, 94001442

*Brandes House*, 2202 212th Ave. SE., Issaquah, 94001436

*Dunn Gardens*, 13533 Northshire Rd. NW., Seattle, 94001435

**Pierce County**

*Christ Episcopal Church*, 210 Fifth St., SW., Puyallup, 94001440

*Tacoma Narrows Bridge (Bridges and Tunnels MPS)*, Over the Takoma Narrows, Tacoma, 94001438

**San Juan County**

*Emmanuel Episcopal Church*, Main St., Eastsound vicinity, 94001431

*Port Stanley School*, Port Stanley Rd., Lopez Island, 94001437

**Spokane County**

*Schade Brewery*, E. 528 Trent Ave., Spokane, 94001441

*Spokane Fire Station No. 3*, 1229 N. Monroe St., Spokane, 94001439

**Whitman County**

*St. Boniface Church, Convent and Rectory*, 206 St. Boniface St., Uniontown vicinity, 94001433

[FR Doc. 94–28721 Filed 11–21–94; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of a loan to the Government of the Kingdom of Morocco ("Borrower") as part of USAID's development assistance program. The proceeds of this loan will be used to enhance land development for shelter projects for the benefit of low-income families in Morocco. At this time, the Borrower has authorized USAID to request proposals from eligible lenders for a loan under this program of 20 million U.S. dollars (US$20,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

**Kingdom of Morocco**

Project No.: 608–HG–004—$20,000,000
Housing Guaranty Loan No.: 608–HG–005 A01
Attention: Mr. Thami El Barki, Adjoint au Directeur du Tresor et de Finances Exterieures, Ministere de Finances
Mailing address: Direction du Tresor et des Finances, Exterioeures, Ministere de Finances, Boulevard Mohamed V, Rabat, Morocco
Telex No.: 36.860
Telefax No.: 212–7–764–950 (preferred communication)
Telephone No.: 212–7–762–717

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by *Tuesday, December 6, 1994, 12:00 noon Eastern Standard Time*. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Ms. Erna Kerst, Housing and Urban Development Office, RHO USAID/Rabat, Morocco, c/o American Embassy, PSC 74, Box 022, APO AE 09718 (Street address: USAID/Rabat, 137 Avenue Allal Ben Abdellah, B.P. 120, Rabat, Morocco
Telex No.: 31005M
Telefax No.: 212–7–707–930 (preferred communication)
Telephone No.: 212–7–762–265, ext. 2346

Mr. David Grossman/Mr. Peter Pirnie
Address: U.S. Agency for International Development, Office of Environment

and Urban Programs, G/ENV/UP, Room 401, SA–2, Washington, D.C. 20523–0214
Telex No.: 892703 AID WSA
Telefax No.: (202) 663–2552 or (202) 663–2507 (preferred communication)
Telephone No.: (202) 663–2530 or (202) 663–2547

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $20 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of fixed and variable rates, and variable rates with interest "caps", are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7½% U.S. Treasury Bond due November 15, 2024. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(c) *Variable Interest Rate With "Cap":* Offers should include a maximum (cap) rate ranging from 10% to 12% per annum, and are to be based on the six-month British Bankers Association LIBOR. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include any options for prepayment and mention prepayment premiums, if any, and specify the earliest date the option can be exercised without penalty.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees and Paying and Transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loan will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loan must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtain from: Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, D.C. 20523–0214, Fax Nos: (202) 663–2552 or 663–2507, Telephone: (202) 663–2530.

Dated: November 16, 1994.

**Michael G. Kitay,**

*Assistant General Counsel, Bureau for Global Programs, Field Support and Research, Agency for International Development.*

[FR Doc. 94–28740 Filed 11–21–94; 8:45 am]

BILLING CODE 6116–01–M

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## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 388 (Sub-No. 33)]**

## Intrastate Rail Rate Authority—Virginia

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of recertification.

**SUMMARY:** Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Virginia to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

**DATES:** Recertification will be effective on December 23, 1994 and will expire on December 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721]

Decided: November 9, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and commissioners Simmons, Morgan, and Owen. Vice Chairman Phillips recused herself in this proceeding.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 94–28815 Filed 11–21–94; 8:45 am]

BILLING CODE 7035–01–P

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**[Docket No. AB–290 (Sub-No. 161X)]**

## Norfolk and Western Railway Company—Abandonment Exemption—McDowell County, WV

Norfolk and Western Railway Company (NW) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.0-mile rail line between mileposts BZ–0.0 and BZ–1.0 at Buzzards Creek Junction, in McDowell County, WV.

NW has certified that:

(1) no local traffic has moved over the line for at least 2 years;

(2) any overhead traffic on the line can be rerouted over other lines;

(3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and

(4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective December 22, 1994 unless stayed or a

statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 2, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 12, 1994. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 25, 1994. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 9, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 94–28813 Filed 11–21–94; 8:45 am]

BILLING CODE 7035–01–P

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

**[Docket No. AB–12 (Sub-No. 153X)]**

## Southern Pacific Transportation Company—Abandonment Exemption—in Angelina County, TX

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Southern Pacific Transportation Company of 23.22 miles of rail line between milepost 108.90, at or near the Dolan rail station, and milepost 132.12, at or near the Dunagan rail station, in Angelina County, TX, subject to standard labor protective conditions, environmental conditions, and interim trail use conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 22, 1994. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[1] must be filed by December 2, 1994, petitions to stay must be filed by December 7, 1994, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by December 12, 1994, and petitions to reopen must be filed by December 19, 1994.

**ADDRESSES:** Send pleadings referring to Docket No. AB–12 (Sub-No. 153X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Karl Morell, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Ave., N.W., Washington, D.C. 20004.

**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, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: November 3, 1994

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, Morgan, and Owen. Vice Chairman Phillips recused herself in this proceeding.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 94–28814 Filed 11–21–94; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer *AND* the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

*Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.*

(1) National Judicial Reporting Program, Felony Sentence Program.

(2) NJRP–1. Bureau of Justice Statistics.

(3) Biennially.

(4) State and local governments. The purpose of the survey is to obtain national estimates of felony sentences by type of crime and by length and type of sentence. The respondents are personnel in the selected sample of state general jurisdiction courts and/or state's attorneys.

(5) 300 annual respondents at 12.61 hours per response.

(6) 3,783 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: November 16, 1994.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 94–28742 Filed 11–21–94; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

**ADDRESSES:** Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:**

**Regarding the Attestation Process**

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

**Regarding the Complaint Process**

Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR parts 655, subpart D, and 29 CFR part 504, (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 10th day of November 1994.

**John M. Robinson,**

*Deputy Assistant Secretary, Employment and Training Administration.*

DIVISION OF FOREIGN LABOR CERTIFICATIONS; HEALTH CARE FACILITY ATTESTATIONS

[Form ETA–9029]

| CEO—Name/facility name/address | State | Action date |
|---|---|---|
| **ETA Region 1 10/03/94 to 10/09/94** | | |
| Celia Strow, Grace Plaza of Great Neck, Inc., 15 St. Paul's Place, Great Neck, NY 11021, 516–466–3001 ..... ETA Control Number—1/215137 Action—Accepted | NY | 10/03/94 |
| **ETA Region 1 10/10/94 to 10/16/94** | | |
| Donald Goldberg, 150 York Street, N.E. Sinai Hospital & Rehab Center, Stoughton, MA 02072 ..... | MA | 10/13/94 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS; HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

| CEO—Name/facility name/address | State | Action date |
|---|---|---|
| ETA Control Number—1/215234 Action—Accepted | | |
| Nolan Pidor, Emma's Nurses, Inc., 246 Monroe Avenue, Paramus, NJ 07652, 201–986–1605 | NJ | 10/13/94 |
| ETA Control Number—1/215146 Action—Accepted | | |
| **ETA Region 1 10/17/94 to 10/23/94** | | |
| Alicia Erb, Atlantic Coast Rehabilitation Cntr, 485 River Ave., Lakewood, NJ 08701, 908–364–7100 | NJ | 10/17/94 |
| ETA Control Number—1/215148 Action—Accepted | | |
| Marilyn Pomerou, Cedar Grove Manor, 398 Pompton Ave., Cedar Grove, NJ 07009, 201–239–7600 | NJ | 10/17/94 |
| ETA Control Number—1/215369 Action—Accepted | | |
| Paul A. Hoyt, Christ Hospital, 176 Palisade Avenue, Jersey City, NJ 07306, 201–795–8355 | NJ | 10/17/94 |
| ETA Control Number—1/215233 Action—Accepted | | |
| Susan Grosser, Oakland Care Center, 20 Breakneck Road, Oakland, NJ 07436, 201–337–3300 | NJ | 10/17/94 |
| ETA Control Number—1/215262 Action—Accepted | | |
| Conrado N. Poblete, SJ Enterprises, Inc., 850 Hamilton Avenue, Trenton, NJ 08629, 609–369–7100 | NJ | 10/17/94 |
| ETA Control Number—1/215312 Action—Accepted | | |
| Susana Dugay, Associated Nurses Registry, Inc., 187–12 Hillside Ave., Jamaica Estates, NY 11432, 718–479–1100 | NY | 10/17/94 |
| ETA Control Number—1/215232 Action—Accepted | | |
| Dorothy S. De Castro, Best Care Agency, Inc., 249–12 Jericho Turnpike, Floral Park, NY 11001, 718–343–2900 | NY | 10/17/94 |
| ETA Control Number—1/215313 Action—Accepted | | |
| Eva Copeland, Golden Empire Home Care Services, 981 First Avenue, Suite 142, New York, NY 10022, 212–838–0556. | NY | 10/17/94 |
| ETA Control Number—1/215260 Action—Accepted | | |
| Dr. Renate Wack, Kirby Forensic Pyschiatric Center, Ward's Island, New York, NY 10035, 212–427–9003 | NY | 10/17/94 |
| ETA Control Number—1/215261 Action—Accepted | | |
| **ETA Region 1 10/24/94 to 10/30/94** | | |
| Lawrence J. Centella, REN Centers of Connecticut, Inc., 100 Church Street South, Suite C, New Haven, CT 06519, 203–785–0344. | CT | 10/28/94 |
| ETA Control Number—1/215568 Action—Accepted | | |
| Richard P. Binn, Great Barrington Healthcare, 148 Maple Avenue, Great Barrington, MA 01230, 413–528–3320 | MA | 10/27/94 |
| ETA Control Number—1/215468 Action—Accepted | | |
| Raymond Lemire, Villa Crest Inc., 1276 Hanover St., Manchester, NH 03104, 603–623–3262 | NH | 10/28/94 |
| ETA Control Number—1/215496 Action—Accepted | | |
| Robert Janizewski, BS Pollack Hospital/Hudson County, 100 Clifton Place, Jersey City, NJ 07304, 201–915–1035 | NJ | 10/27/94 |
| ETA Control Number—1/215486 Action—Accepted | | |
| Samuel Paneth, Newark Extended Care Facility, Inc., 65 Jay St., Newark, NJ 07103, 201–483–6800 | NJ | 10/28/94 |
| ETA Control Number—1/215516 Action—Accepted | | |
| Victor R. Kattak, Preakness Hospital (The), P.O. Box V, Paterson, NJ 07509–0320, 201–904–5000 | NJ | 10/27/94 |
| ETA Control Number—1/215485 Action—Accepted | | |
| Akef, Abadir, Queens Surgi-Center, 83–40 Woodhaven Blvd., Glendale, NY 11385, 718–849–8700 | NY | 10/27/94 |
| ETA Control Number—1/215478 Action—Accepted | | |
| Mitchell B. Teller, Surfside Nursing Home, 22–41 New Haven Avenue, Far Rockaway, NY 11691, 718–471–3400 | NY | 10/28/94 |
| ETA Control Number—1/215515 Action—Accepted | | |
| Richard A. Catallozzi, Roberts Health Centre, Inc., 990 Ten Rod Road, N. Kingstown, RI 02852, 401–884–6661 | RI | 10/27/94 |
| ETA Control Number—1/215462 Action—Accepted | | |
| **ETA Region 1 10/31/94 to 11/06/94** | | |
| Edward M. Rudow, Eastern Pines Convalescent Center, 29 No. Vermont Avenue, Atlantic City, NJ 08401, 609–344–8900. | NJ | 11/01/94 |
| ETA Control Number—1/215632 Action—Accepted | | |
| Berel D. Tennenbaum, Perth Amboy Nursing Home, 303 Elm St., Perth Amboy, NJ 08861, 908–442–9540 | NJ | 11/03/94 |
| ETA Control Number—1/215642 Action—Accepted | | |
| Estrella Krish, Professional Healthcare Associates, 66 Palmer Avenue, Bronxville, NY 10708, 914–337–0705 | NY | 11/03/94 |
| ETA Control Number—1/215674 Action—Accepted | | |
| Daniel P. Leahey, Terrence Cardinal Cooke Health Ctr., 1249 Fifth Avenue, New York, NY 10029, 212–360–3620 | NY | 11/01/94 |
| ETA Control Number—1/215604 Action—Accepted | | |
| Alexander Hartman, Wayne Nursing Home, 3530 Wayne Avenue, Bronx, NY 10467, 212–655–1700 | NY | 11/03/94 |
| ETA Control Number—1/215675 Action—Accepted | | |
| **ETA Region 10 10/03/94 to 10/09/94** | | |
| William A. Mathies, Beverly La Cumbre Conv. Hospital, 3880 Via Lucero, Santa Barbara, CA 93110, 805–687–6651 | CA | 10/06/94 |
| ETA Control Number—10/205416 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 1041 South Main Street, Burbank, CA 91506, 818–843–2330 | CA | 10/06/94 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS; HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

| CEO—Name/facility name/address | State | Action date |
|---|---|---|
| ETA Control Number—10/205418 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 2225 De La Vina Street, Santa Barbara, CA 93105, 805–682–7451. | CA | 10/06/94 |
| ETA Control Number—10/205417 Action—Accepted | | |
| William A. Mathies, Beverly Manor Convalescent Hospital, 1515 Oregon Street, Yreka, CA 96097, 916–842–4361 ..... | CA | 10/06/94 |
| ETA Control Number—10/205414 Action—Accepted | | |
| William A. Mathies, Beverly Manor Convalescent Hospital, 9541 Van Nuys Boulevard, Panorama City, CA 91402, 818–893–6385. | CA | 10/06/94 |
| ETA Control Number—10/205415 Action—Accepted | | |
| William A. Mathies, Beverly Manor Convalescent Hospital, 7940 Topanga Canyon Boulevard, Canoga Park, CA 91304, 818–347–3800. | CA | 10/06/94 |
| ETA Control Number—10/205420 Action—Accepted | | |
| William A. Mathies, Beverly Manor Convalescent Hospital, 188 Cohasset Lane, Chico, CA 95926, 916–343–6084 ..... | CA | 10/06/94 |
| ETA Control Number—10/205413 Action—Accepted | | |
| William A. Mathies, Beverly Manor Nursing & Rehab Cent, 6700 Sepulveda Boulevard, Van Nuys, CA 91401, 818–988–2501. | CA | 10/06/94 |
| ETA Control Number—10/205419 Action—Accepted | | |
| William A. Mathies, Beverly Manor of Petaluma, 101 Monroe Street, Petaluma, CA 94952, 707–763–4109 ..... | CA | 10/04/94 |
| ETA Control Number—10/205409 Action—Accepted | | |
| William A. Mathies, Broadway Care Center, 112 East Broadway, San Gabriel, CA 91776, 818–285–2165 ..... | CA | 10/04/94 |
| ETA Control Number—10/205379 Action—Accepted | | |
| William A. Mathies, Catered Manor, 4010 Virginia Road, Long Beach, CA 90807, 310–426–0394 ..... | CA | 10/04/94 |
| ETA Control Number—10/205378 Action—Accepted | | |
| William A. Mathies, Chowchilla Convalescent Hospital, 1010 Ventura Boulevard, Chowchilla, CA 93610, 209–665–4826. | CA | 10/04/94 |
| ETA Control Number—10/205407 Action—Accepted | | |
| William A. Mathies, College Oak Nursing & Rehab Center, 4635 College Oak Drive, Sacramento, CA 95841, 916–481–7434. | CA | 10/04/94 |
| ETA Control Number—10/205410 Action—Accepted | | |
| William A. Mathies, Community Convalescent Hospital, 3611 Imperial Highway, Lynwood, CA 90262, 310–537–2500 . | CA | 10/04/94 |
| ETA Control Number—10/205377 Action—Accepted | | |
| William A. Mathies, Fairmont Rehabilitation Hospital, 950 South Fairmount Avenue, Lodi, CA 95240, 209–368–0693 .. | CA | 10/05/94 |
| ETA Control Number—10/205406 Action—Accepted | | |
| William A. Mathies, London House Convalescent Hospital, 4650 Hoen Avenue, Santa Rosa, CA 95405, 707–546–0471. | CA | 10/04/94 |
| ETA Control Number—10/205412 Action—Accepted | | |
| William A. Mathies, London House Convalescent Hospital, 678 Second Street, West, Sonoma, CA 95476, 707–938–1096. | CA | 10/04/94 |
| ETA Control Number—10/205412 Action—Accepted | | |
| William A. Mathies, Montrose Convalescent Hospital, 2123 Verdugo Boulevard, Montrose, CA 91020, 818–249–3925 | CA | 10/04/94 |
| ETA Control Number—10/205383 Action—Accepted | | |
| Barbara Garner, Santa Monica Nursing Center, c/o Regency Health Services, Inc., 2742 Dow Avenue, Tustin, CA 92680–7245, 714–544–4443. | CA | 10/03/94 |
| ETA Control Number—10/205332 Action—Accepted | | |
| William A. Mathies, Sherman Oaks Convalescent Hospital, 14401 Huston Street, Sherman Oaks, CA 91423, 818–986–7242. | CA | 10/06/94 |
| ETA Control Number—10/205421 Action—Accepted | | |
| William A. Mathies, Sierra Vista Nursing & Rehabilitat, 705 Trancas Street, Napa, CA 94558, 707–256–6060 ..... | CA | 10/04/94 |
| ETA Control Number—10/205408 Action—Accepted | | |
| Pamela Cavil, The Home for Jewish Parents, 2780–26th Avenue, Oakland, CA 94601, 510–536–4604 ..... | CA | 10/06/94 |
| ETA Control Number—10/205375 Action—Accepted | | |
| **ETA Region 10 10/10/94 to 10/16/94** | | |
| Sharon Reece, Kingman Regional Medical Center, 3269 Stockton Hill Road, Kingman, AZ 86401, 602–757–0600 ..... | AZ | 10/14/94 |
| ETA Control Number—10/205512 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 421 East Mission Avenue, Escondido, CA 92025, 619–747–0430 . | CA | 10/13/94 |
| ETA Control Number—10/205434 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 35410 Del Ray, Capistrano Beach, CA 92624, 714–496–5786 ..... | CA | 10/12/94 |
| ETA Control Number—10/205431 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 23795 W.R. Holman Road, Monterey, CA 93940, 408–624–1875 .. | CA | 10/11/94 |
| ETA Control Number—10/205424 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 1477 Grove Street, San Francisco, CA 94117, 415–563–0565 ..... | CA | 10/12/94 |
| ETA Control Number—10/205425 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 24452 Via Wstrada, Laguna Hills, CA 92653, 714–837–8000 ..... | CA | 10/13/94 |
| ETA Control Number—10/205436 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 3000 Beverly Manor Road, Seal Beach, CA 90740, 310–598–2477 | CA | 10/13/94 |
| ETA Control Number—10/205435 Action—Accepted | | |
| William A. Mathies, Beverly Manor Conv. Hospital, 340 Victoria Avenue, Costa Mesa, CA 92627, 714–642–0387 ..... | CA | 10/13/94 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS; HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

| CEO—Name/facility name/address | State | Action date |
|---|---|---|
| ETA Control Number—10/205433 Action—Accepted | | |
| William A. Mathies, Beverly Manor Convalescent Hospital, 5696 Lake Murray Boulevard, La Mesa, CA 92041, 619–960–7871. | CA | 10/13/94 |
| ETA Control Number—10/205432 Action—Accepted | | |
| William A. Mathies, Beverly Manor Westminister, 240 Hospital Circle, Westminister, CA 92683, 714–892–6686 | CA | 10/12/94 |
| ETA Control Number—10/205430 Action—Accepted | | |
| Gerry Garcia, Cherry Valley Healthcare, 5800 W. Wilson, Banning, CA 92220, 909–845–1606 | CA | 10/14/94 |
| ETA Control Number—10/205527 Action—Accepted | | |
| William A. Mathies, Hy-Lond Convalescent Hospital, 797 East Fremont Avenue, Sunnyvale, CA 94087, 408–738–4880. | CA | 10/11/94 |
| ETA Control Number—10/205423 Action—Accepted | | |
| William A. Mathies, Julia Convalescent Hospital, 276 Sierra Vista Avenue, Mountain View, CA 94043, 415–967–5714 | CA | 10/12/94 |
| ETA Control Number—10/205427 Action—Accepted | | |
| Roger Policar, Nurses of Wellbest, 1602 Summitridge Drive, Diamond Bar, CA 91765, 909–860–0886 | CA | 10/14/94 |
| ETA Control Number—10/205526 Action—Accepted | | |
| William A. Mathies, Oak Meadows Convalescent Center, 350 Desoto Drive, Los Gatos, CA 95030, 408–356–9151 | CA | 10/12/94 |
| ETA Control Number—10/205428 Action—Accepted | | |
| William A. Mathies, San Jose Care & Guidance Center, 401 Ridge Vista Avenue, San Jose, CA 95127, 408–923–7232. | CA | 10/11/94 |
| ETA Control Number—10/205422 Action—Accepted | | |
| William A. Mathies, Terreno Gardens Convalescent Cent, 14966 Terreno De Flores Lane, Los Gatos, CA 95030, 408–356–8136. | CA | 10/12/94 |
| ETA Control Number—10/205429 Action—Accepted | | |
| William A. Mathies, Westgate Convalescent Center, 1601 Peterson Avenue, San Jose, CA 95129, 408–253–7502 | CA | 10/12/94 |
| ETA Control Number—10/205426 Action—Accepted | | |
| **ETA Region 10 10/17/94 to 10/23/94** | | |
| F. Beth Orenduff, University Medical Center, 1501 North Campbell Avenue, Tucson, AZ 85724, 602–694–6952 | AZ | 10/17/94 |
| ETA Control Number—10/205601 Action—Accepted | | |
| William A. Mathies, Beverly Manor—Redlands, 700 East Highland Avenue, Redlands, CA 92373, 909–793–2678 | CA | 10/19/94 |
| ETA Control Number—10/205658 Action—Accepted | | |
| Barbara Garner, Brookwood Care Center, 9300 Telegraph Road, Downey, CA 90240, 714–544–4443 | CA | 10/20/94 |
| ETA Control Number—10/205699 Action—Accepted | | |
| Solomon Goldner, Golden State Colonial Convalescent, 10830 Oxnard Street, North Hollywood, CA 91606, 818–986–1550. | CA | 10/17/94 |
| ETA Control Number—10/205657 Action—Accepted | | |
| David P. Chan, International Healthcare Recruiter, 110 West C Street Suite 2202, San Diego, CA 92101, 619–233–4037. | CA | 10/17/94 |
| ETA Control Number—10/205693 Action—Accepted | | |
| Harry S. Young, Nurse Providers, 3250 Wilshire Boulevard Suite 1314, Los Angeles, CA 90010, 213–385–0331 | CA | 10/19/94 |
| ETA Control Number—10/205661 Action—Accepted | | |
| William A. Mathies, Reedley Convalescent Hospital, 1090 East Dinuba Avenue, Reedley, CA 93654, 209–638–3578 | CA | 10/19/94 |
| ETA Control Number—10/205516 Action—Accepted | | |
| Martin G. Axel, Rio Hondo Convalescent Hospital, 273 East Beverly Blvd, Montebello, CA 90640, 213–724–5100 | CA | 10/20/94 |
| ETA Control Number—10/205759 Action—Accepted | | |
| Sidney R. Hewitt, S & V Health Care Recruit. Agency, 8686 Innsdale Lane, San Diego, CA 92114, 619–267–4603 | CA | 10/17/94 |
| ETA Control Number—10/205602 Action—Accepted | | |
| Kathleen J. Lovato, San Tomas Convalescent Hospital, 3580 Payne Avenue, San Jose, CA 95117, 408–248–7100 | CA | 10/17/94 |
| ETA Control Number—10/205695 Action—Accepted | | |
| Barbara Garner, Willowview Convalescent Hospital, 320 North Crawford Street, Willowview, CA 95988, 714–544–4443. | CA | 10/20/94 |
| ETA Control Number—10/205585 Action—Accepted | | |
| **ETA Region 5 10/03/94 to 10/09/94** | | |
| James Samatas, Lexington Health Care of LaGrange, 4735 Gilbert Avenue, LaGrange, IL 60525, 708–495–1700 | IL | 10/05/94 |
| ETA Control Number—5/231449 Action—Accepted | | |
| Joe Ann McClandon, Maxwell Manor, 4537 S. Drexel Blvd., Chicago, IL 60653, 312–268–8950 | IL | 10/05/94 |
| ETA Control Number—5/231446 Action—Accepted | | |
| Sally Somera, MedWest Home Health, 3525 W. Peterson, Suite 213 P.O., Box 1382, Chicago, IL 60605, 312–267–2474. | IL | 10/05/94 |
| ETA Control Number—5/231444 Action—Accepted | | |
| Teri Leschak, St. Matthew Lutheran Home, 1601 N. Western Avenue, Park Ridge, IL 60068 708–825–5531 | IL | 10/05/94 |
| ETA Control Number—5/231445 Action—Accepted | | |
| Lawrence Putz Windsor Manor Nursing & Rehab Cntr., 10426 S. Roberts Road, Palos Hill, IL 60465, 708–598–3460 | IL | 10/05/95 |
| ETA Control Number—5/231441 Action—Accepted | | |
| Paul Clements, Cedars (The)—Beverly Enterprises, 1242 Cedars Court, Charlottesville, VA 22903, 804–296–5611 | VA | 10/04/94 |
| ETA Control number—5/231410 Action—Accepted | | |
| Kenneth J. Lewis, IHS–I Inc., 5160 Partstone Drive, Suite 140, Chantilly, VA 22021, 703–222–3900 | VA | 10/05/94 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS; HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

| CEO—Name/facility name/address | State | Action date |
|---|---|---|
| ETA Control Number—5/231442 Action—Accepted | | |
| **ETA Region 5 10/10/94 to 10/16/94** | | |
| Mary Richardson, Belhaven Health Care Retirement, 11401 S. Oakley Avenue, Chicago, IL 60643, 312–233–6311 .... ETA Control Number—5/231832 Action—Accepted | IL | 10/14/94 |
| James Samatas, Lexington Health Care of Elmhurst, 420 Butterfield Road, Elmhurst, IL 60148, 708–495–1700 ..... ETA Control Number—5/231804 Action—Accepted | IL | 10/14/94 |
| James Samatas, Lexington Health Care of Chicago Ridge, 103 Southwest Highway, Chicago Ridge, IL 60415, 708–495–1700. ETA Control Number—5/231806 Action—Accepted | IL | 10/14/94 |
| Irma Realiza, M.D., Midwest Health Care Clinic, 1563 N. Milwaukee Avenue, Chicago, IL 60622, 312–342–3222 ..... ETA Control Number—5/231831 Action—Accepted | IL | 10/14/94 |
| Jacqueline L. Mason, Oak Brook Healthcare Centre, 2013 Midwest Road, Oak Brook, IL 60521, 708–495–0220 ..... ETA Control Number—5/231834 Action—Accepted | IL | 10/14/94 |
| Leo Feigenbaum, Wheaton Care Center, 1325 Manchester Road, Wheaton, IL 60187, 708–668–2500 ..... ETA Control Number—5/231811 Action—Accepted | IL | 10/14/94 |
| Marianne Athen, El Shaiddai Health Care, Inc., 7600 Clays Lane, Baltimore, MD 21224, 410–298–9800 ..... ETA Control Number—5/231814 Action—Accepted | IL | 10/14/94 |
| Suzie Kang, Randolph Hills Nursing Care Center, 4011 Randolph Hills Road, Wheaton, MD 20902, 301–933–2500 ... ETA Control Number—5/231830 Action—Accepted | MD | 10/14/94 |
| Kathy J. Koze, Hutzel Hospital, ATTN: Coleene Aiello, 4707 St. Antoine, Detroit, MI 48201, 313–745–7015 ..... ETA Control Number—5/231833 Action—Accepted | MI | 10/14/94 |
| Norma Adams, Milwaukee Jewish Home, 1414 N. Prospect Avenue, Milwaukee, WI 53202, 414–276–2627 ..... ETA Control Number—5/231813 Action—Accepted | WI | 10/14/94 |
| **ETA Region 5 10/24/94 to 10/30/94** | | |
| Monica N. Wolfe, Humana Group Health Plan, 4301 Connecticut Avenue, N.W., Washington, DC 20008, 202–364–2000. ETA Control Number—5/232212 Action—Accepted | DC | 10/26/94 |
| Anita C. Booth, Jackson Park Hosp. & Medical Cntr., 7531 S. Stony Island Avenue, Chicago, IL 60649, 312–947–7500. ETA Control Number—5/232215 Action—Accepted | IL | 10/26/94 |
| James Samatas, Lexington Hlth Care of Streamwood, 815 W. Irving Park Road, Streamwood, IL 60107, 708–495–1700. ETA Control Number—5/232216 Action—Accepted | IL | 10/26/94 |
| Pat Stanton, Medbridge Medical & Physical Rehab, 715 W. Central Road, Arlington Hghts., IL 60005, 708–392–2020 ETA Control Number—5/232363 Action—Accepted | IL | 10/27/94 |
| Wanda Jackson, South Shore Hospital, 8012 Crandon Avenue, Chicago, IL 60617, 312–768–0810 ..... ETA Control Number—5/232209 Action—Accepted | IL | 10/25/94 |
| Stewart Seitz, Charlotte Hall Veterans Home, Route 2, P.O. Box 5, Charlotte Hall, MD 20622, 301–884–8171 ..... ETA Control Number—5/232220 Action—Accepted | MD | 10/26/94 |
| Edgardo Fariscal, Advance Health Care Services, 195 White Street, Ecorse, MI 48229, 313–381–4272 ..... ETA Control Number—5/232352 Action—Accepted | MI | 10/27/94 |
| Doris Papandrea, Barton Nursing Home, 722 E. Grand Blvd., Detroit, MI 48207, 313–923–8080 ..... ETA Control Number—5/232353 Action—Accepted | MI | 10/27/94 |
| Romeo L. Nardo, Comprehensive Home Health Care Inc., 8252 Carlin Street, Detroit, MI 48228, 313–582–8837 ..... ETA Control Number—5/232218 Action—Accepted | MI | 10/26/94 |
| Angelina Gallant, Northland Nursing Center, 21630 Hessel, Detroit, MI 48219, 313–534–8400 ..... ETA Control Number—5/232199 Action—Accepted | MI | 10/25/94 |
| Sister Mary Michael Salviano, Srs. of St. Joseph of St. Mark, 21800 Chardon Road, Euclid, OH 44117, 216–531–7426. ETA Control Number—5/232214 Action—Accepted | OH | 10/26/94 |
| Margie Molitor, Southern Hills General Hospital, Castle Manor 209 North 16th Street, Hot Springs, SD 57747, 605–745–3159. ETA Control Number—5/232362 Action—Accepted | SD | 10/27/94 |
| **ETA Region 6 10/03/94 to 10/09/94** | | |
| Mr. Lionel Jadoo, Dania Nursing Home, 440 Phippen Road, Dania, FL 33004, 305–927–0508 ..... ETA Control Number—6/221673 Action—Accepted | FL | 10/06/94 |
| Mr. Denny DeNarvaez, Florida Medical Center, 5000 W. Oakland Park Blvd., Ft. Lauderdale, FL 33313, 305–730–2884. ETA Control Number—6/221500 Action—Accepted | FL | 10/06/94 |
| Mr. Rafael Fonseca, Heritage Nursing & Rehabilitation, 2201 N.E. 170th Street, N. Miami Beach, FL 33160, 305–945–1401. ETA Control Number—6/221495 Action—Accepted | FL | 10/06/94 |
| Ms. Ruth Jordan, Oak Manor Village, 3500 Oak Manor Lane, Largo, FL 34644–1299, 813–581–9427 ..... | FL | 10/06/94 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS; HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

| CEO—Name/facility name/address | State | Action date |
|---|---|---|
| ETA Control Number—6/221671 Action—Accepted | | |
| Mr. Samuel Leonor, Walker Memorial Medical Center, Highway 27, North, P.O. Box 1200, Avon Park, FL 33825, 813–453–7511. | FL | 10/06/94 |
| ETA Control Number—6/221698 Action—Accepted | | |
| Ms. Lynne Ashford, Nursing Management Services (USA), 3423 Piedmont Road, #500, Atlanta, GA 30305, 404–816–8678. | GA | 10/05/94 |
| ETA Control Number—6/221462 Action—Accepted | | |
| Mr. David Stallard, Heritage Manor of Mandeville, 1820 West Couseway Approach, Mandeville, LA 70448, 504–626–4798. | LA | 10/06/94 |
| ETA Control Number—6/221672 Action—Accepted | | |
| Mr. Noel Hart, King's Daughters' Hospital, 823 Grand Avenue, Yazoo City, MS 39194, 601–746–2261 | MS | 10/06/94 |
| ETA Control Number—6/221497 Action—Accepted | | |
| Mr. Walter Cross, Brian Center-Asheboro, 163 Stratford Court Suite 205, Winston-Salem, NC 27103, 910–629–1449 | NC | 10/06/94 |
| ETA Control Number—6/221670 Action—Accepted | | |
| Mr. Hugh H. Windham, Gray Nursing Home, 163 Stratford Ct., Winston-Salem, NC 27103 | NC | 10/05/94 |
| ETA Control Number—6/221494 Action—Accepted | | |
| **ETA Region 6 10/10/94 to 10/16/94** | | |
| Kingsley H. Shinner, Community Medical Cntr. W. Volusia, 1190 N. Stone Street, Deland, FL 32724, 904–738–1792 | FL | 10/11/94 |
| ETA Control Number—6/221717 Action—Accepted | | |
| Ms. Debi Lawrence, Crestview Nursing & Convalescent, 1849 E. First Street, Crestview, FL 32536, 904–682–5322 | FL | 10/13/94 |
| ETA Control Number—6/222016 Action—Accepted | | |
| Mr. Robert C. Meade, Dade City Hospital, 1550 Fort King Road, Dade City, FL 33528, 904–521–1165 | FL | 10/13/94 |
| ETA Control Number—6/221887 Action—Accepted | | |
| Mr. Lawrence J. Centella, REN Centers of Georgia, 1840 Southern Lane, Decatur, GA 30033, 404–325–8884 | GA | 10/13/94 |
| ETA Control Number—6/221856 Action—Accepted | | |
| Mr. Lawrence J. Centella, REN Centers of Georgia, Inc., 105 Collier Road, B-Level, Atlanta, GA 30309, 404–355–6055. | GA | 10/13/94 |
| ETA Control Number—6/221857 Action—Accepted | | |
| Mr. Lawrence J. Centella, REN Centers of Georgia, Inc., 400 Decatur Street, Atlanta, GA 30312, 404–577–9097 | GA | 10/13/94 |
| ETA Control Number—6/221858 Action—Accepted | | |
| Mr. Lawrence J. Centella, REN Centers of Georgia, Inc., 101 Bowens Mill Road, Douglas, GA 31533, 912–384–3439 | GA | 10/13/94 |
| ETA Control Number—6/221855 Action—Accepted | | |
| Mr. Ollie Hymel, Heritage Manor of Gonzales, 905 W. Cornerview Rd., Gonzales, LA 70737, 504–644–5358 | LA | 10/13/94 |
| ETA Control Number—6/221757 Action—Accepted | | |
| Myren Hughes, Attala County Nursing Home, 326 Highway 12 West, Koscuisko, MS 39090, 601–289–1200 | MS | 10/13/94 |
| ETA Control Number—6/221888 Action—Accepted | | |
| Mr. Scott Bell, Chateau Manor Nursing Center, 1108 Church Street, Drawer #7, Shelby, MS 38774, 601–398–5117 | MS | 10/11/94 |
| ETA Control Number—6/221712 Action—Accepted | | |
| Ms. Mena Duthu, Heritage Manor of Rolling Fork, 506 West Race Street, P.O. Box 279, Rolling Fork, MS 39159–0279, 601–873–6218. | MS | 10/13/94 |
| ETA Control Number—6/221886 Action—Accepted | | |
| Debra Griffin, Humphreys County Memorial Hospital, P.O. Box 510, Belzoni, MS 39032, 601–247–3831 | MS | 10/11/94 |
| ETA Control Number—6/221716 Action—Accepted | | |
| Mr. F.W. Ergle, Jr., Tallahatchie General Hospital, P.O. Drawer 230, Charleston, MS 38921, 601–647–5535 | MS | 10/13/94 |
| ETA Control Number—6/221806 Action—Accepted | | |
| Mr. William Hall, Brian Center Hendersonville, 163 Stratford Ct., Health Services International, Winston-Salem, NC 27103, 704–693–9796. | NC | 10/13/94 |
| ETA Control Number—6/221796 Action—Accepted | | |
| Ms. Pamela Butler, Century Care of Whiteville, 163 Stratford Ct., Health Services International, Winston-Salem, NC 27103, 910–642–7139. | NC | 10/13/94 |
| ETA Control Number—6/221800 Action—Accepted | | |
| Ms. Mary Smith, Maple Leaf Health Care, 163 S. Stratford Court, Suite 205, Winston-Salem, NC 27103, 704–871–0701. | NC | 10/13/94 |
| ETA Control Number—6/221801 Action—Accepted | | |
| Ms. Patricia Inman, Shoreland Health Care, 163 S. Stratford Court, Suite 205, Winston-Salem, NC 27103, 919–642–4300. | NC | 10/11/94 |
| ETA Control Number—6/221752 Action—Accepted | | |
| Mr. Rick Minter, Duncan Regional Hospital, 1407 Whisenant Drive, Duncan, OK 73533, 405–252–5300 | OK | 10/11/94 |
| ETA Control Number—6/221754 Action—Accepted | | |
| Mr. John McGinnis, Carolinas Hospital System, 513 South Dargan Street, P.O. Box 100550, Florence, SC 29501–0550, 803–667–3211. | SC | 10/11/94 |
| ETA Control Number—6/221713 Action—Accepted | | |
| Mr. J. Bruce Barragan, McLeod Regional Medical Center, 555 East Cheves Street, Florence, SC 29501, 803–667–2000. | SC | 10/13/94 |
| ETA Control Number—6/222015 Action—Accepted | | |
| Mr. Wade H. Jones, Pepper Hill Nursing Center, Inc., 3525 Augustus Drive, P.O. Box 3188, Aiken, SC 29802, 803–642–8376. | SC | 10/13/94 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS; HEALTH CARE FACILITY ATTESTATIONS—Continued

[Form ETA–9029]

| CEO—Name/facility name/address | State | Action date |
|---|---|---|
| ETA Control Number—6/221799 Action—Accepted | | |
| Luis G. Silva, AMI Mid-Jefferson Hospital, Highway 365 and 27th Street, Nederland, TX 77627, 409–985–0303 | TX | 10/13/94 |
| ETA Control Number—6/222019 Action—Accepted | | |
| Mr. Luis G. Silva, AMI Park Place Medical Center, 3050 39th Street, Port Arthur, TX 77642, 409–983–4951 | TX | 10/13/94 |
| ETA Control Number—6/222018 Action—Accepted | | |
| Mr. Don E. Miller, Free State Crestwood, 1448 Houston St., Wills Point, TX 75169, 214–873–2542 | TX | 10/13/94 |
| ETA Control Number—6/221808 Action—Accepted | | |
| Mr. Don E. Miller, Honey Grove Nursing Center, Rt. 2, Box 22, Honey Grove, TX 75446, 903–378–2293 | TX | 10/13/94 |
| ETA Control Number—6/221807 Action—Accepted | | |
| Ms. Roseanna Warren, Lakeview Manor, 4215 Armstrong, San Angelo, TX 76903, 915–655–8986 | TX | 10/11/94 |
| ETA Control Number—6/221753 Action—Accepted | | |
| Mr. Anton P. Zurbrugg, Memorial Hospital, 602 Hurst Street, P.O. Box 32, Center, TX 75935, 409–598–2781 | TX | 10/13/94 |
| ETA Control Number—6/221889 Action—Accepted | | |
| Mr. Don E. Miller, Mullican Care Center, 105 N. Main, P.O. Box 426, Savoy, TX 75479, 903–965–7109 | TX | 10/13/94 |
| ETA Control Number—6/221809 Action—Accepted | | |
| Ms. Linda Boggs, Park Place Nursing Home, 505 S. Sylvan Avenue, Palestine, TX 75801, 903–729–3246 | TX | 10/13/94 |
| ETA Control Number—6/221795 Action—Accepted | | |
| Mr. Arron Jewell, Pleasant Star Manor, 2700 Pleasanton Road, San Antonio, TX 78221, 512–924–8183 | TX | 10/11/94 |
| ETA Control Number—6/221715 Action—Accepted | | |
| Ms. Sherrill Slaton, Silver Haven, 1201 Highway 287 East, Henrietta, TX 76365, 817–538–5665 | TX | 10/13/94 |
| ETA Control Number—6/221885 Action—Accepted | | |
| Billy Jewell, Southern Manor, 4320 19th St., Lubbock, TX 79407, 806–795–7147 | TX | 10/13/94 |
| ETA Control Number—6/221985 Action—Accepted | | |
| **ETA Region 6 10/24/94 to 10/30/94** | | |
| Ms. Marian Shaw, Bowman's Health Care Center, 350 S. Ridgewood Avenue, Ormond Beach, FL 32174, 904–677–4545. | FL | 10/28/94 |
| ETA Control Number—6/222035 Action—Accepted | | |
| Ms. Mirian Cosio, Hialeah Hospital, 651 East 25th Street, Hialeah, FL 33013, 305–693–6100 | FL | 10/28/94 |
| ETA Control Number—6/222091 Action—Accepted | | |
| Mr. Fe A. Hanvivatpong, Regents Park, 131 South Federal Highway, Suite 4, 407–483–9282 | FL | 10/28/94 |
| ETA Control Number—6/222251 Action—Accepted | | |
| Mr. Michael J. Stenger, Spring Hill Regional Hospital, Inc., 10461 Quality Drive, Spring Hill, FL 34609, 904–544–6150 | FL | 10/28/94 |
| ETA Control Number—6/222141 Action—Accepted | | |
| Ms. Norma de la Cruz, Union House and Highland Manor, 1930 Union Street, Clearwater, FL 34623, 813–734–0594 | FL | 10/28/94 |
| ETA Control Number—6/222192 Action—Accepted | | |
| Mr. Edward Crow, Adams County Nursing Center, 587 John R. Junkin Drive, Natchez, MS 39120, 601–446–8426 | MS | 10/28/94 |
| ETA Control Number—6/222252 Action—Accepted | | |
| Mr. Jeff Finch, Dialysis Facilities, Inc., 1828 Raymond Rd., Jackson, MS 39204, 601–373–7897 | MS | 10/28/94 |
| ETA Control Number—6/222086 Action—Accepted | | |
| Ms. Linda Yarbough, Humphreys County Nursing Home, 500 CCC Road, Belzoni, MS 39038, 601–247–1821 | MS | 10/27/94 |
| ETA Control Number—6/222039 Action—Accepted | | |
| Ms. Teri Pkai, Heritage Health Center, 163 Stratford Court, Winston-Salem, NC 27103, 704–693–5849 | NC | 10/28/94 |
| ETA Control Number—6/222191 Action—Accepted | | |
| Mr. Bill Marshall, Regency Health Care Center, 163 Stratford Ct., Winston-Salem, NC 27103, 913–782–3350 | NC | 10/28/94 |
| ETA Control Number—6/222085 Action—Accepted | | |
| Ms. Marilyn Contreras, Crossover to Success, 421 Frederick, #205, El Paso, TX 79905, 915–772–5465 | TX | 10/28/94 |
| ETA Control Number—6/222142 Action—Accepted | | |
| Mr. Ed L. Lopez, Ed L. Lopez Corp. Medicus Rehab, 10202 Forest Lane, Dallas, TX 75243, 214–342–1003 | TX | 10/28/94 |
| ETA Control Number—6/222036 Action—Accepted | | |
| Mr. Ray Marcy, Interim HealthCare, 1501 Arizona Avenue, Bldg. 10, Suite A & B, El Paso, TX 79902, 915–544–7665 | TX | 10/28/94 |
| ETA Control Number—6/222253 Action—Accepted | | |

[FR Doc. 94–28793 Filed 11–21–94; 8:45 am]

BILLING CODE 4510–30–P–M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Draft Regulatory Guide DG–6002, "Establishing Quality Assurance and Control Programs for the Manufacture and Distribution of Sealed Sources and Devices Containing Byproduct Material"

3. The form number if applicable: Not applicable.

4. How often the collection is required: Information concerning quality assurance and control programs is submitted with an application for sealed source or device registration.

5. Who will be required or asked to report: All manufacturers or distributors of sealed sources or devices containing byproduct material who are applying for registration of the source or device.

6. An estimate of the number of responses annually: 134.

7. An estimate of the total number of hours needed annually to complete the requirement or request: The suggested recordkeeping provisions in the draft regulatory guide will require up to 160 hours per recordkeeper, for an industry burden of 21,440 hours.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: Draft Regulatory Guide DG–6002 specifies suggested details of a quality assurance program for the manufacture and distribution of sealed sources and devices containing byproduct material. NRC regulations in 10 CFR § 32.210 require persons applying to register sealed sources or devices to submit information about the quality control program under which the sealed source or device will manufactured and distributed. The information is needed to permit NRC to determine that there is a reasonable assurance that the source or device will be manufactured and distributed in accordance with NRC regulations and the conditions of the registration.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 10th day of November 1994.

For the Nuclear Regulatory Commission.

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 94–28759 Filed 11–21–94; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 8–10, 1994, in Conference Room T2B3, 11545 Rockville Pike, Rockville, Maryland. The dates for this meeting were published in the **Federal Register** on Monday, October 24, 1994.

*Thursday, December 8, 1994*

*8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

*8:45 a.m.–10:15 a.m.: Susquehanna Loss of Spent Fuel Pool Cooling Issues* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Staff regarding the proposed Staff position on the loss of spent fuel pool cooling issues associated with the Susquehanna nuclear power plant. Other interested persons will participate, as appropriate.

*10:30 a.m.–12:30 p.m.: Status of Issues Related to the Use of High-Burnup Fuel* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the issues related to the use of high-burnup fuel and the status of ongoing and proposed NRC staff and industry activities for resolving these issues.

A portion of this session may be closed to discuss proprietary information provided in confidence by a foreign source.

*1:30 p.m.–3:00 p.m.: Restart of Sequoyah Unit 1* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the licensee regarding the resolution of issues associated with the shutdown of the Sequoyah Unit 1 nuclear plant.

*3:00 p.m.–4:30 p.m.: Revisions to 10 CFR Part 71, "Packaging and Transportation of Radioactive Material"* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding revisions to 10 CFR Part 71.

*4:45 p.m.–5:15 p.m.: Election of ACRS Officers for CY 1995* (Open)—The Committee members will elect a Chairman and a Vice-Chairman to the ACRS and a Member-at-Large to the Planning and Procedures Subcommittee for CY 1995.

*5:15 p.m.–6:30 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on certain matters considered during this meeting, including a possible report on NRC Technical Training Center curricula.

*Friday, December 9, 1994*

*8:30 a.m.—8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

*8:35 a.m.—10:15 a.m.: Update on the BWR Core Shroud Inspections/Reactor Vessel Integrity* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding: the results of the core shroud inspections conducted at five BWR nuclear power plants (Monticello, Peach Bottom 2, Oyster Creek, Browns Ferry 2, and Fitzpatrick); the plans for future shroud inspections; and an update of European experience with this matter. Also, the Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the weld analysis performed by the Palisades nuclear power plant licensee in accordance with the requirements of the pressurized thermal shock (PTS) Rule.

*10:30 a.m.—12:00 Noon: Cracking in Nuclear Components* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the different types of cracking found in nuclear components, the associated cracking mechanisms, and ongoing and proposed research efforts in this area.

*1:30 p.m.—2:30 p.m.: Proposed Final Regulatory Guide, "Evaluation of Reactor Pressure Vessels With Charpy Upper-Shelf Energy Less Than 50 ft. lb."* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final version of the Regulatory Guide on Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less Than 50 ft. lb.

*2:30 p.m.—2:45 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to ACRS comments and recommendations included in recent ACRS reports.

*2:45 p.m.—3:15 p.m.: Future ACRS Activities* (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

*3:15 p.m.—4:00 p.m.: Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss matters that relate solely to internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

*4:15 p.m.—6:30 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on certain matters considered during this meeting.

*Saturday, December 10, 1994*

*8:30 a.m.–11:00 a.m.: Preparation of ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports on certain matters considered during this meeting.

*11:15 a.m.–12:00 Noon: Strategic Planning* (Open)—The Committee will hold strategic

planning discussions related to its future activities.

*12:00 Noon–12:30 p.m.: New Research Needs* (Open)—The Committee will discuss new research needs, if any, identified during this meeting.

*12:30 p.m.–1:00 p.m.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussions of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 1994 (59 FR 50780). In accordance with these procedures, oral or written statements may be presented by members of the public, electric recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, at least first days before the meeting if possible, 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 Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule of ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting noted above to discuss proprietary information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4) and 10 CFR 2.790(d)(2); information that involves the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Futher information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–415–7361), between 7:30 a.m. and 4:15 p.m. est.

Dated: November 16, 1994.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 94–28763 Filed 11–21–94; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal Hydraulic Phenomena; Postponement

A meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena scheduled to be held on December 1, 1994, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been postponed to a future date since the documents scheduled for discussion with the NRC staff and industry during this meeting have been delayed. Notice of this meeting was published in the **Federal Register** on Tuesday, November 15, 1994 (59 FR 58860).

For further information contact: Mr. Paul A. Boehnert, the cognizant ACRS staff engineer, (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: November 16, 1994.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 94–28764 Filed 11–21–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–237]**

## Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 2)

### Exemption

*I*

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License No. DPR–19, which authorizes operation of the Dresden Nuclear Power Station, Unit 2 (the facility), at a steady-state power level not in excess of 2527 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Grundy County, Illinois. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

*II*

By letter dated October 28, 1994, pursuant to 10 CFR 50.12(a), ComEd requested a schedular exemption for Dresden, Unit 2, from the 18-month test interval for a Type A Integrated Leak Rate Test (ILRT) as required by 10 CFR Part 50, Appendix J, Section III.A.6.(b). The exemption is requested to avoid a potential reactor shut down to perform the Type A test.

Due to two forced outages, ComEd has had to reschedule the Dresden, Unit 2, refueling outage from September 1994 to July 1995. Subsequently, ComEd requested a maximum extension of up to an additional 242 days for the 18-month Appendix J test interval for a Type A test. The Type A test can not be performed during power operation.

*III*

In its letter dated October 28, 1994, ComEd requested a one-time exemption from the 18-month Type A test interval requirement of Appendix J. ComEd has provided leakage test results and maintenance information for the past two outage testing programs. The two consecutive Type A ILRT failures that placed Dresden, Unit 2, on the accelerated test schedule were because of the addition of the Type B and C test leakage results to the Type A leakage rate—not problems with the Type A boundaries. The minimum pathway data from the last two Unit 2 refueling outages (D2R12 and D2R13) indicate that, on a minimum pathway basis, the quality of primary containment does not degrade excessively through the course of the fuel cycle. The total containment leakage rate minus the Type B and C leakages for the last two Type A test failures during D2R12 and D2R13 are 285.5 standard cubic feet per hour (scfh) and 302.62 scfh, respectively. These values are 47 percent and 50 percent of the Type A ILRT acceptance criteria of 610.56 scfh ($0.75L_a$). The acceptance criteria are from the Dresden, Unit 2, Technical Specification (TS) Section 3.7.A.2.b.(1). During the D2R13 refueling outage, the Type A ILRT failed due to a leak of the inboard flange of the reactor building to suppression chamber vacuum breaker valve (2–1601–20A). This leakage was quantified to be 12720.05 scfh. If this did not occur, the Type A ILRT results would have been 543.40 scfh, which is less than the TS limit of 610.56 scfh ($0.75L_a$). During the D2R13 refueling outage, the Type A test failed due to the as-found minimum pathway leakage of primary containment isolation valves found during Type B and C testing. The volumes that were the major contributors to this failure are as follows: The "B" feedwater line isolation check valves (2–220–58B and 2–220–62B), shutdown cooling isolation valves (2–1001–1A, 2–1001–1B, 2–1001–2A, 2–1001–2B and 2–1001–2C), reactor water clean-up isolation valves (2–1201, 2–1201–1A, 2–1201–3, 2–1299–004 and 2–1299–005), low pressure coolant injection containment spray isolation valves (2–1501–27B and 2–1501–28B), high pressure coolant injection drain pot to suppression chamber valves (2–2301–34 and 2–2301–71), traversing incore probe purge check valve (2–4799–514), electrical penetration X–202W, and drywell

bellow X–113. The total minimum pathway leakage for these volumes was 685.75 scfh. Each of the above valves and volumes were repaired during the refueling outage and subsequently passed post-maintenance Type B and C tests prior to restart of Unit 2 for the current operating cycle.

At the time the pertinent requirements of Appendix J were established (1973), the typical nuclear power plant fuel cycle lasted 12 months. Section III.A.6.(b) may have been written to require a Type A test at every refueling outage—specifying a numerical cap on the interval to prevent extreme cases of very long intervals (caused by extended shutdowns or operations at reduced power) between tests. An 18-month cap was reasonable for 12-month fuel cycles, but with the current 18- and 24-month fuel cycles, it clearly is not sufficient. The intent of Section III.A.6.(b) is to increase the testing frequency for a containment that exhibits leakage problems, but not to increase it so much that special shutdowns are required. Refueling outages are the only reasonable time to perform Type A test, since most plants do not have extended shutdowns at any other time.

In order to add an additional margin of safety and to account for the possible increase in the leakage of a containment penetration, the licensee has imposed an administrative limit for Dresden, Unit 2, on the total maximum allowable containment leakage rate until the completion of the current operating cycle. This limit will be 519.0 scfh, which is 85 percent of the TS limit of 610.56 scfh ($0.75L_a$). All additional minimum pathway leakage will be added to the current total as operational Type B and C leak rate tests are performed during the current operating cycle. These corrective measures taken should reduce the chances of D2R14 failing the "As Found" Type A ILRT test.

*IV*

The staff has reviewed ComEd's submittal regarding the Appendix J test interval exemption request. Based on the above, the staff concludes that the licensee's corrective action and administrative leakage limit have reduced the likelihood of excessive leakage during the proposed extension of the Type A test interval. Further, considering the intent of the 18-month interval cap and its relation to longer fuel cycles, the staff finds that the safety benefit to be derived from performing a Type A test at 18 months rather than 26 months does not justify the hardship of a forced plant shutdown. Therefore, the staff finds that the requested Type A interval extension should be granted.

This is a one-time exemption from the 18-month Type A test interval requirements as prescribed in 10 CFR Part 50, Appendix J, and is intended to be in effect until July 14, 1995.

In its October 28, 1994, letter, ComEd also identified special circumstances. As discussed above, the exemption request is for a short duration relative to the 18-month requirement. This meets a criterion for a special circumstance per 10 CFR 50.12(a)(2)(v), i.e., "The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation."

*V*

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that (1) this exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest, and (2) the Exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants an exemption as described in Section III above from 10 CFR Part 50, Appendix J, Section III.A.6.(b), to the extent that the 18-month interval for performing the Type A test may be extended for 242 days until July 14, 1995, on a one-time only basis, for Dresden, Unit 2.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this Exemption will have no significant impact on the environment (59 FR 56095).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 10th day of November 1994.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–28761 Filed 11–21–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–369 and 50–370]**

## Duke Power Company; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company (the licensee) to withdraw its June 23, 1993, application for the proposed amendment to Facility Operating License Nos. NPF–9 and NPF–17 for the McGuire Nuclear Station, Unit Nos. 1 and 2, located in Mecklenbury County, North Carolina.

The proposed amendment would have revised TS 3.6.1.2, containment leakage, penetration M–441 bellows.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 21, 1993, (58 FR 39048). However, by letter dated October 13, 1994, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 23, 1993, and the licensee's letter dated October 13, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte NC (UNCC Station) 28223.

Dated at Rockville, Maryland, this 10th day of November, 1994.

For the Nuclear Regulatory Commission.

**Victor Nerses,**

*Project Manager, Project Directorate 11–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–28762 Filed 11–21–94; 8:45 am]

BILLING CODE 7590–01–M

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Request for Public Comment: Deregulation Measures in Japan

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written comments regarding deregulation measures in Japan.

**SUMMARY:** The Government of Japan currently is in the process of preparing a five-year plan for deregulation measures in Japan, which it expects to finalize by the end of March, 1995. The United States Government has provided the Government of Japan with an initial list of comments and specific suggestions regarding the deregulation plan, and the United States Government intends to consult with the Government of Japan in various fora regarding the preparation and implementation of the plan and other deregulation issues. USTR solicits comments from interested parties regarding specific laws, regulations, or regulatory practices in Japan, the removal or modification of

which would improve market access for United States products or services.

**DATES:** Comments are due on or before noon on December 21, 1994.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Ira Wolf, Assistant United States Trade Representative, (202) 395–3900, or James Southwick, Assistant General Counsel, (202) 395–7203.

**SUPPLEMENTARY INFORMATION:** In the course of the past year, the United States has held three rounds of consultations with Japan addressing deregulation and competition policy issues in a working group established under the Joint Statement on the United States-Japan Framework for a New Economic Partnership (the "Framework"). In these consultations, the United States has proposed specific regulatory changes by the Government of Japan as well as more general changes in regulatory practices, administrative procedures, and competition policy enforcement. In addition, in other contexts the United States has held other consultations with Japan addressing deregulation issues in particular sectors or with respect to particular structural issues.

In March and June, 1994, Japan announced specific, initial deregulatory measures that it would take in the areas of housing construction; information and telecommunications; import promotion, market access, and distribution; and finance, securities, and insurance. The Government of Japan currently is in the process of preparing a five-year plan to follow up on these initial measures.

The Government of Japan invited interested foreign governments to submit specific deregulation requests and comments to be taken into consideration in preparing its five-year plan. On October 27, the European Union submitted a list of deregulation requests.

In response to the Government of Japan's invitation, the United States Government, under the coordination of the Office of the United States Trade Representative, prepared and presented to the Government of Japan, on November 15, 1994, an initial list of deregulation requests and comments for consideration in connection with Japan's five-year deregulation plan. The list was based on information gathered in the preparation of the annual National Trade Estimates Report (required by section 181(b) of the Trade Act of 1974, as amended (19 U.S.C. 2241)), information brought to the attention of various agencies of the United States Government by U.S. industry, and information gathered by the United States Government. The list is available for public inspection and copying in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. An appointment to review the list may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

The United States Government intends to consult with the Government of Japan in various fora regarding the issues in the list and regarding the preparation and implementation of the five-year plan. The United States Government intends to submit to Japan, as appropriate, additional requests or comments regarding the action plan and other deregulation issues.

**Request for Public Comment**

Interested persons are invited to submit written comments on specific laws, regulations, or regulatory practices in Japan, the removal or modification of which would improve market access for United States products or services. Comments need not be limited to the sectors covered by the deregulation measures identified by Japan in March and June, 1994, but may address any sector. Comments should identify and explain the laws, regulations, and regulatory practices in sufficient detail to allow a full understanding of the regulatory issues and market access concerns.

In addition to comments regarding specific laws, regulations, or regulatory practices, USTR is interested in receiving comments from interested persons regarding regulatory processes and procedures, for example regarding transparency or review of administrative actions, which affect market access.

Comments are due no later than noon on December 21, 1994. Comments must be in English and provided in twenty copies to: Office of Japan and China Affairs, Attn: Japan Deregulation Issues, Room 322, USTR, 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file open to public inspection, except confidential business information. Parties requesting that confidential business information they submit be exempt from disclosure must mark the confidential business information in the same manner as described in 15 CFR 2006.15(b), i.e., it must be clearly marked "BUSINESS CONFIDENTIAL" in contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file that is open to public inspection.

**Ira Wolf,**

*Assistant United States Trade Representative for Japan and China Affairs.*

[FR Doc. 94–28779 Filed 11–21–94; 8:45 am]

BILLING CODE 3190–01–M

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## 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, December 8, 1994, and Friday, December 9, 1994 at the Washington Marriott Hotel, 1221 22nd Street NW., Washington, DC, in the Dupont Room. The meetings are tentatively scheduled to begin at 9 a.m. each day. Among the topics to be discussed are antitrust issues, comments on the HHS Secretary's reports on Medicare beneficiary access and financial liability, Medicare risk contracting, state responses to market reform, practice guidelines, proposed analyses of causes for slowdown in Medicare spending growth, provider-driven integration activity in the health market, insurance market reforms, relationships between purchasers and health plans, Section 1115 Medicaid waivers, analysis of the use of report cards by purchasers, government, and health plans, and successful models of care for underserved populations. Several other topics may be added to the final agenda, which will be available on December 2, 1994.

**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 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, December 2, 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,**

*Executive Director.*

[FR Doc. 94–28739 Filed 11–21–94; 8:45 am]

BILLING CODE 6820–SE–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34980; File No. SR–ISCC–94–05]

## Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Eliminating the PORTAL Program

November 16, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 11, 1994, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change consists of the elimination of ISCC's PORTAL program.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, ISCC 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. ISCC 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*

(a) In 1989, ISCC obtained approval to provide a service which would permit ISCC to accept data from the National Association of Securities Dealers ("NASD") in connection with transactions in the National Securities Clearing Corporation's PORTAL system. ISCC would forward instructions regarding PORTAL transactions to the Centrale de Livraison de Valeurs Mobiliers ("CEDEL") and The Depository Trust Company's Institutional Delivery System for settlement.

ISCC has not processed any PORTAL transactions for over two and one half years. Because this service has not been used and because currently the NASD does not and in the future the NASD will not transmit information on PORTAL transactions directly to ISCC, ISCC has determined to discontinue the service. Broker-dealers will have alternative means of settling transactions in PORTAL securities, including the ability to send data on these transactions directly to ISCC for transmission to CEDEL.

(b) Since the filing will eliminate a service that has no volume and is therefore not cost effective to maintain, elimination is consistent with the requirements of Section 17A of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

ISCC 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*

ISCC has not solicited or received any comments. ISCC will notify the Commission of any written comments received by ISCC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(e)(4)[3] thereunder in that it effects a change in an existing service of ISCC that does not adversely effect the safeguarding of securities of funds in the custody or control of ISCC or for which ISCC is responsible and does not significantly effect the rights or obligations of ISCC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### 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 provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–ISCC–95–05 and should be submitted by December 13, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–28780 Filed 11–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20705; 812–9196]

## AFD Exchange Reserves, et al.; Notice of Application

November 15, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Exemption under the investment Company Act of 1940 (the "Act").

**APPLICANTS:** AFD Exchange Reserves, The Alliance Fund, Inc., The Alliance Portfolios, Alliance All-Asia Investment Fund, Inc., Alliance Balanced Shares, Inc., Alliance Bond Fund, Inc., Alliance Counterpoint Fund, Alliance Global Dollar Government Fund, Inc., Alliance Global Small Cap Fund, Inc., Alliance Growth and Income Fund, Inc., Alliance Income Builder Fund, Inc., Alliance International Fund, Alliance Mortgage Securities Income Fund, Inc., Alliance Mortgage Strategy Trust, Inc., Alliance Multi-Market Strategy Trust, Inc.,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[3] 17 CFR 240.19b–4(e)(4) (1994).

Alliance Municipal Income Fund, Inc., Alliance Municipal Income Fund II, Alliance New Europe Fund, Inc., Alliance North American Government Income Trust, Inc., Alliance Premier Growth Fund, Inc., Alliance Quasar Fund, Inc., Alliance Short-Term Multi-Market Trust, Inc., Alliance Technology Fund, Inc., Alliance Utility Income Fund, Inc., Alliance Worldwide Privatization Fund, Inc. (individually a "Fund" and collectively the "Funds"), Alliance Capital Management L.P. (the "Adviser") and Alliance Fund Distributors, Inc. (the "Distributor"). Applicants request that any order apply to all future series of the Funds, or any registered open-end investment companies that are part of the same group of investment companies and (a) whose investment adviser is Adviser or an investment adviser that is under common control with Adviser, (b) whose principal underwriter is Distributor or a principal underwriter that is under common control with Distributor, (c) which hold themselves out to investors as being related for purposes of investment and investor services, and (d) whose shares are divided into up to four classes of securities whose sales load, CDSC, rule 12b–1 fees, exchange privileges, conversion feature and differences in voting rights are identical to those in the application.[1]

**RELEVANT ACT SECTIONS:** Exemptions requested pursuant to section 6(c) of the Act for an order exempting applicants from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the Funds and future series of the Funds to issue up to four classes of shares and to impose a contingent deferred sales charge ("CDSC") in connection with the redemption of shares of the Funds.

**FILING DATE:** The application was filed on August 23, 1994 and amended on October 24, 1994 and November 14, 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 December 9, 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.

**ADDRESSES:** Secretay, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

**FOR FURTHER INFORMATION CONTACT:** Joseph G. Mari, Senior Special Counsel, at (202) 942–0567, or Barry D. Miller, Senior Special Counsel, 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 from the SEC's Public Reference Branch.

## Applicants' Representations

1. Each Fund is an open-end management investment company registered under the Act. Adviser serves as each Fund's investment adviser and manager and Distributor acts as the principal underwriter of each of the Fund's shares.

2. The Funds currently are permitted to offer up to three classes of shares and to impose a CDSC on certain redemptions of two classes of shares and to waive the CDSC in certain circumstances pursuant to prior exemptive orders (the "Prior Orders").[2]

3. Applicants seek on order, which will supersede the Prior Orders, to allow the Funds to issue and sell up to four classes of shares pursuant to a multiple distribution system (the "Multiple Distribution System"). Under the requested order, applicants may offer (i) "Class A" shares sold subject to a conventional front-end sales load and a rule 12b–1 fee which includes a service fee and, under certain circumstances, a CDSC; (ii) "Class B" shares sold subject to a CDSC (for a period typically within a range of three to six years) and a rule 12b–1 fee which includes a service fee; (iii) "Class C" shares sold subject to a rule 12b–1 fee which includes a service fee and a CDSC; and (iv) a class of shares (the "Class Y" shares) to be offered and sold without any front-end sales load, CDSC or rule 12b–1 fee payable by the Fund. Class Y shares will be sold to certain types of investors, including certain institutional investors, as described in a Fund's prospectus.

4. Each of the four classes of shares will represent interests in the same portfolio of investments of a Fund. Each of the four classes of shares will be identical except that

(i) the rule 12b–1 fees (which include a service fee within the meaning of Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD") ("service fee")) payable by the Fund to Distributor will be higher for Class B and Class C shares than they will be for Class A shares;

(ii) the transfer agency costs attributable to each class may differ;

(iii) each class may bear different Class Expenses, as defined in condition 1 below;[3]

(iv) the four classes will have different exchange privileges;

(v) only Class B shares will have a conversion feature; and

(vi) each affected class of shares will vote separately as a class with respect to the Fund's rule 12b–1 plan and on other matters for which separate class voting is appropriate under applicable law; provided that, if the Fund submits to a vote of both the Class A shareholders and the Class B shareholders an amendment to the Fund's rule 12b–1 plan that would materially increase the amount to be paid thereunder with respect to the Class A shares, the Class A shareholders and the Class B shareholders will vote separately by class.

5. The distribution structure for all classes of shares will comply with the applicable NASD Rules of Fair Practice relating to sales charges, including front-end, deferred and asset-based sales charges. Additionally, any service fees paid by the Funds will meet NASD requirements for the imposition of a service fee.

6. All Class B shares of the Funds will automatically convert to Class A shares a certain number of years after the end of the calendar month in which the

[1] A registered open-end investment company of the same group of investment companies as the Funds includes such a company organized in the future and such a company that is currently registered whose board of directors or trustees in the future determines to establish a distribution system pursuant to which up to four classes of shares may be offered and sold as described in the application. Any such series or companies will be subject to each of the conditions contained in the application.

[2] Investment Company Act Release Nos. 17295 (Jan. 12, 1990) (notice) and 17330 (Feb. 2, 1990) (order); *The Alliance Fund, Inc.*, Invsetment Company Act Release Nos. 18734 (May 27, 1992) (notice) and 18805 (June 23, 1992) (order); *The Alliance Fund, Inc.*, Investment Company Act Release Nos. 19203 (Dec. 31, 1992) (notice) and 19235 (Jan. 26, 1993) (order); and *The Alliance Fund, Inc.*, Invsetment Company Act Release Nos. 19328 (Mar. 11, 1993) (notice) and 19386 (Apr. 6, 1993) (order).

[3] Class expenses include fees under a non-rule 12b–1 shareholder services plan. None of the Funds currently has adopted a non-rule 12b–1 shareholder services plan. Any such plan adopted in the future would comply with condition 16 below.

shareholder's order to purchase was accepted. Such number of years, which will depend on the conversion schedule that applied at the time the Class B shares were originally purchased, may be up to eight. Shares purchased through the reinvestment of dividends and other distributions in respect of Class B shares will be treated as Class B shares for purposes of the higher rule 12b–1 fee. However, for purposes of conversion to Class A shares, all shares in a shareholder's account which are purchased through the reinvestment of dividends and distributions paid in respect of Class B shares (and which have not converted to Class A shares as provided in the following sentence) will be considered held in a separate sub-account. Each time any Class B shares in the shareholder's account (other than those in the sub-account referred to in the preceding sentence) convert to Class A shares, an equal pro rata portion of the Class B shares in the sub-account will also convert to Class A shares. The conversion of Class B to Class A shares may be suspended if the opinion of counsel obtained by the Funds that the conversion does not constitute a taxable event under current federal income tax law is no longer available.

7. Adviser or Distributor may choose to reimburse or waive rule 12b–1 fees, transfer agency costs or any Class Expenses on certain classes on a voluntary, temporary basis. The amount of rule 12b–1 fees, transfer agency costs or any Class Expenses waived or reimbursed by Adviser or Distributor may vary from class to class. Rule 12b–1 fees, transfer agency costs and any Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive rule 12b–1 fees, transfer agency costs or any Class Expenses at different levels for different classes of the same Fund.

8. In addition, Adviser or Distributor may waive or reimburse Fund expenses (with or without a waiver or reimbursement of rule 12b–1 fees, transfer agency costs or any Class Expenses) but only if the same proportionate amount of Fund expenses are waived or reimbursed for each class. Thus, any Fund expenses that are waived or reimbursed would be in turn credited to each class of shares of the Fund based on the relative net assets of the classes. Fund expenses apply equally to all classes of a Fund. Accordingly, it may not be appropriate to waive or reimburse Fund expenses at different levels for different classes of a Fund.

9. Adviser's or Distributor's ability to effect any of the waivers or reimbursements described above is subject to the Funds' receipt of a ruling of the Internal Revenue Service that the effecting of such waivers or reimbursements does not result in any Fund's dividends or distributions constituting "preferential dividends" under the Internal Revenue Code.

10. Under the Multiple Distribution System, each of the four classes may be given exchange privileges. Shares of each class generally will be permitted to be exchanged only for shares of a class with similar characteristics in another Fund. Class Y shares of a Fund may be exchangeable for Class Y shares of other Funds and shares of certain money market funds sponsored by Adviser. If the aggregate net asset value of shares of all Funds held by an investor reaches the minimum amount at which an investor in a Fund may purchase Class A shares of the Fund at net asset value without a front-end sales load or more on or before December 15 in any year, all Class B or Class C shares of the Fund held by the investor may be exchanged, at the investor's request, at net asset value, without any front-end sales load or CDSC, for Class A shares of the Fund. All exchanges that are made at other than relative net asset values of the respective securities to be exchanged will be made in accordance with rule 11a–3.

11. Applicants seek an order to permit the Funds to assess a CDSC on redemptions of Class A shares sold pursuant to a complete front-end sales load waiver applicable to large purchases in addition to a CDSC on certain redemptions of Class B and Class C shares and to waive such a CDSC in certain circumstances. The CDSC will not be imposed on redemptions of shares that were purchased more than a specified period (the "CDSC Period") prior to their redemption or that were derived from the reinvestment of distributions; or on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the period. Any CDSC will be imposed only on the lesser of the value of the shares redeemed (exclusive of reinvested distributions) or the total cost of such shares. In determining whether a CDSC is applicable, it is assumed, unless the shareholder otherwise specifically directs, that a redemption is made first of any shares in the shareholder's Fund account that are not subject to a CDSC, second of shares derived from reinvestment of dividends, third of shares held for a period longer than the CDSC Period, and fourth of shares held for a period no longer than the CDSC Period. In determining the rate of any applicable CDSC, it is assumed that shares held by the investor for the longest period of time within the CDSC Period are redeemed. No CDSC will be imposed on any shares issued by the Funds prior to the date of the order requested by this application except as allowed by the Prior Orders.

12. If a Fund waives or reduces the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified. In waiving or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act as if such CDSC were a sales load. If the Directors/Trustees of a Fund determine to discontinue a waiver of a CDSC, the disclosure in the Fund's prospectus will be appropriately revised. Any Class A, Class B or Class C shares purchased prior to the termination of such waiver would be able to have the CDSC waived as provided in the Fund's prospectus as in effect at the time of the purchase of such shares.

**Applicants' Legal Analysis**

1. Applicants request an exemptive order to the extent the proposed issuance and sale of any of the classes of shares might be deemed to result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act and to violate the equal voting provisions of section 18(i) of the Act. In addition, applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the Funds to implement the proposed CDSC arrangement.

2. Applicants believe that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. The proposed arrangement will not involve borrowing and will not affect the Funds' assets or reserves; it also will not increase the speculative character of the shares in a Fund, since all the shares will participate in all of the Fund's income and all of the Fund's expenses (with the exception of the differing rule 12b–1 fees, transfer agency costs and Class Expenses, if any) on the basis of the relative net assets of the classes.

3. Under the Multiple Distribution System, mutuality of risk will be preserved with respect to all classes of shares in a Fund. Further, since all

classes of shares will be redeemable at all times, no class of shares will have any preference or priority over any other class in a Fund in the usual sense (that is, no class will have distribution or liquidation preferences with respect to particular assets, no class will have any right to require that lapsed dividends be paid before dividends are declared on the class and no class will be protected by any reserve or other account).

**Applicants' Conditions**

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. The Class A, Class B, Class C and Class Y shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the Class A, Class B, Class C and Class Y shares of a Fund will relate solely to: (a) the impact of the disproportionate rule 12b–1 fees allocated to each of the Class A, Class B and Class C shares of the Fund and the fact that the Class Y shares will not bear any rule 12b–1 fees; (b) the impact of the disproportionate transfer agency costs attributable to each of the Class A, Class B, Class C and Class Y shares; (c) the different Class Expenses, if any, which shall be limited to the following expenses determined by the Directors/Trustees to be attributable to a specific class of shares:

(i) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxy statements to current shareholders of a specific class,

(ii) Commission registration fees incurred with respect to a specific class of shares,

(iii) blue sky registration fees incurred with respect to a specific class of shares,

(iv) the expenses of administrative personnel and services required to support the shareholders of a specific class,

(v) litigation or other legal expenses relating to a specific class of shares,

(vi) Directors/Trustees fees or expenses incurred as a result of issues relating to a specific class of shares,

(vii) accounting expenses relating to a specific class of shares;

(viii) any fees imposed pursuant to a non-rule 12b–1 shareholder services plan; and

(ix) any other incremental expenses subsequently identified that lawfully may be allocated to one class which shall be approved by the Commission pursuant to an amended order; (d) the fact that the Class A, Class B and Class C shares will each vote separately as a class with respect to the Fund's rule 12b–1 plan and that the Class A, Class B, Class C and Class Y shares will each vote separately as a class with respect to other matters for which separate class voting is appropriate under applicable law, provided that, if the Fund submits to a vote of both the Class A shareholders and Class B shareholders an amendment to the Fund's rule 12b–1 plan that would materially increase the amount to be paid thereunder with respect to the Class A shares, the Class A shareholders and the Class B shareholders will vote separately by class as provided in condition 2 below; (e) the different exchange privileges of the Class A, Class B, Class C and Class Y shares; (f) the fact that only Class B shares will have a conversion feature; and (g) the designation of each class of shares of the Fund.

2. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A unless the Class B shareholders, voting separately by a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shall be borne solely by the Adviser and the Distributor. Class B shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

3. The Directors/Trustee of each of the Funds, including a majority of the independent Directors/Trustees, shall have approved the Multiple Distribution System prior to the implementation of the Multiple Distribution System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for determining that the Multiple Distribution System is in the best interests of both the Funds and their respective shareholders.

4. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the four classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Adviser and Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. It a conflict arises, Adviser and Distributor at their own cost will remedy such conflict up to and including establishing one or more new registered management investment companies.

5. The Directors/Trustees of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or service fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors/Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to its Class A, Class B, Class C and Class Y shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that rule 12b–1 fee payments relating to each respective class of shares will be borne exclusively

by that class and any incremental transfer agency costs or Class Expenses relating to the Class A, Class B, Class C or Class Y shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the Class A, Class B, Class C and Class Y shares, and the proper allocation of income and expenses among the classes, have been reviewed by an expert (the "Expert"). The Expert has rendered a report to applicants, which has been provided to the staff of the Commission as Exhibit D to this application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate Substitute Expert, will monitor the manner in which the calculations and allocations are being made under the Multiple Distribution System and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to Sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon the written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation," as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants ("AICPA"), and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness," as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The initial determination of Class Expenses, if any, that will be allocated to a class and any subsequent changes thereto has been or will be reviewed and approved by the Directors/Trustees, including a majority of the independent Directors/Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Directors/Trustees, and the Directors/Trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the four classes of shares and the proper allocation of expenses among the four classes of shares. This representation has been concurred with by the Expert in the initial report referred to in condition 7 above, and will be concurred with by the Expert or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if the Expert or appropriate Substitute Expert does not so concur in the ongoing reports.

10. The prospectuses of the Funds relating to the Class A, Class B, Class C and Class Y shares will contain a statement to the effect that a salesperson and any other person may receive different levels of compensation for selling or servicing one particular class of shares over another in a Fund.

11. The Distributor will adopt compliance standards as to when Class A, Class B, Class C and Class Y shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Multiple Distribution System will be set forth in guidelines which will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A, Class B, Class C or Class Y shares, it will disclose the expenses and/or performance data applicable to the four classes. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present separately Class A, Class B, Class C and Class Y shares.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 or non-rule 12b–1 shareholder services plans in reliance on the exemptive order.

15. Class B shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. Any non-rule 12b–1 shareholder services plan adopted by a Fund will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

17. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–28735 Filed 11–21–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20707; 812–9298]

## Cash Assets Trust, et al.; Notice of Application

November 16, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Cash Assets Trust (the "Trust"), Hawaiian Trust Company, Limited (the "Adviser"), and Aquila Distributors, Inc. (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from sections 18(f), 18(g), and 18(i) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit the Trust to offer two classes of shares representing interests in the same investment portfolio.

**FILING DATE:** The application was filed on October 21, 1994. Applicants agree to file an additional amendment, the substance of which is incorporated herein, during the notice period.

**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 December 12, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's 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.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Cash Assets Trust, Hawaiian Trust Company, Limited, and Aquila Distributors, Inc., 380 Madison Avenue, Suite 2300, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Buescher, Law Clerk, at (202) 942–0573, 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 from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. Currently, the Trust is authorized to offer three separate investment portfolios (the "Portfolios"): Pacific Capital Cash Assets Trust, Pacific Capital Tax-Free Cash Assets Trust, and Pacific Capital U.S. Treasuries Cash Assets Trust. Each Portfolio holds itself out as a "money market fund" and therefore seeks to maintain a stable net asset value of $1.00 per share pursuant to rule 2a–7 under the Act. Aquila Distributors, Inc., a registered broker-dealer, serves as the distributor of the Trust's shares. Hawaiian Trust Company, Limited serves as investment adviser to the Trust. Applicants request that relief extend to any future trust, series or portfolio of a Trust that is advised by the Adviser or whose shares are distributed by the Distributor.

2. The Trust proposes to offer two classes of shares of each of its Portfolios: Original Shares and Service Shares (the "Dual Class System"). The currently outstanding shares of each Portfolio will be classified as Original Shares. If exemptive relief is granted, Original Shares will be sold solely to (1) financial institutions for the investment of funds for which they act in a fiduciary, agency, investment advisory or custodial capacity; (2) persons entitled to exchange into Original Shares under the exchange privileges of the Trust; and (3) shareholders owning shares of the Trust of record on the date that both classes of shares are first made available. Original Shares will be sold without the imposition of any sales charges and will not be subject to any asset-based distribution charges permitted by rule 12b–1 under the Act. However, Original Shares will continue to be subject to the normal and customary expenses of the Trust such as advisory and administrative fees and other normal operating expenses.

3. Service Shares will be offered to customers of banks and other financial institutions ("Service Organizations") that typically are compensated by service or distribution fees paid by the mutual funds offered to their customers rather than by transactions or other fees paid directly by such customers. The fees paid by this class could be in the nature of (1) a distribution fee payable in connection with a plan adopted pursuant to rule 12b–1 under the Act (a "Rule 12b–1 Plan"); (2) an administrative services fee payable pursuant to a non-rule 12b–1 administrative services plan (an "Administrative Services Plan"); or (3) a distribution fee and an administrative fee as a result of a combination of the two types of plans.

4. Each of the Portfolios has adopted a currently effective distribution plan under rule 12b–1, but neither the Trust nor the Portfolios make payments under this plan.

5. Under amended Rule 12b–1 Plans to be implemented with the Dual Class System, the Trust or each Portfolio, on behalf of the Services Shares, would typically enter into agreements with and pay the Distributor or the Service Organization for performing certain services, some of which could be construed as distribution assistance. The expenses of such payments would be borne entirely by the Service Shares shareholders. Services provided in accordance with the terms of the Rule 12b–1 Plan would not be duplicative of any services to be provided to the Trust or its Portfolios by the administrator, distributor or transfer agent.

6. Under an Administrative Services Plan, the Trust or the Portfolios, on behalf of the Service Shares, would have the ability to enter into agreements with Service Organizations in which each organization will agree to provide certain services to its clients, members or customers, who purchase shares. The provision of services under the Administrative Services Plan would not be duplicative of any services to be provided to the Trust or a Protfolio by its administrator, distributor, or transfer agent. Each Portfolio would pay a Service Organization for its service in accordance with the terms of its particular Administrative Services Plan, and the expense of such payment will be borne entirely by the beneficial owners of the Service Shares.

7. Under the Dual Class System, each share in a Portfolio, regardless of class, will represent an interest in the Portfolio and will have identical voting rights, powers, qualifications, terms and conditions, and, in proportion to each Share's net asset value, liquidation rights and preferences. Each class will differ in that: (a) Each class will have a different class designation; (b) only the Service Shares will bear the expenses applicable to an Administrative Services Plan or Rule 12b–1 plan; (c) each class would bear certain other expenses that are directly attributable only to that class ("Class Expenses"), as set forth in condition 1; (d) classes will vote separately with respect to matters relating to the Fund's Rule 12b–1 Plan; and (e) the exchange privileges could vary among the classes.

8. The classes of shares of the Portfolios will differ with respect to

exchange privileges among the Portfolios and the portfolios of certain other investment companies advised by the Adviser. All exchanges of shares will be effected in accordance with the provisions of rule 11a–3 under the Act.

9. Portfolio expenses (such as advisory fees) will be allocated *pro rata*, to each class on the basis of the relative net asset values of the respective classes. Rule 12b–1 Plan payments, Administrative Plan payments, and Class Expenses which are attributable to a particular class of shares will be allocated to that particular class. As a result, the net income and net asset value per share of a class may be different than the new income and net asset value per share of another class of shares in the same Portfolio.

**Applicants' Legal Analysis**

1. Applicants request that the Commission issue an order pursuant to section 6(c) exempting them from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of shares representing interests in the same investment portfolio might be deemed: (1) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act in violation of section 18(f)(1); or (2) to violate the equal voting provisions of section 18(i) of the Act. Applicants believe that the proposed arrangement would permit the Trust to facilitate the distribution of its securities and enhance the scope and depth of its shareholder services without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Applicants also believe that the proposed allocation of expenses and the voting rights relating to the Administrative Services Plan or Rule 12b-1 Plan in the manner described above is equitable and would not discriminate against any group of shareholders.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares of each Portfolio of the Trust will represent interests in the same portfolio of investments of a Portfolio of the Trust, and will be identical in all respects, except as set forth below. The only differences between the classes of shares of the Trust will relate solely to: (a) The impact of the disproportionate Administrative Services Plan payments, Rule 12b-1 Plan payments, and Class Expenses which will be limited to (i) transfer agent fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to the current shareholders of a specific class; (iii) Blue Sky registration fees incurred by a class; (iv) SEC registration fees incurred by a class; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class; and (vii) trustees fees incurred as a result of issues relating to one class; (b) the fact that the classes will vote separately with respect to the Portfolio's Rule 12b-1 Plan and Administrative Services Plan; (c) exchange features; and (d) class designation differences.

2. The trustees of the Trust, including a majority of the independent trustees, will approve the offering of two classes of shares (the "Dual Class System"). The minutes of the respective meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the Dual Class System will reflect in detail the reasons for the trustees' determination that the Dual Class System is in the best interests of both the Trust and its shareholders.

3. On an ongoing basis, the trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Portfolios for the existence of any material conflicts among the interests of the two classes of shares. The trustees, including a majority of the non-interested trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Hawaiian Trust Company, Limited as adviser and Aquila Distributors, Inc. as distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the adviser and the distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the trustees of the Trust, including a majority of the trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by a Portfolio to meet class expenses shall provide to the trustees of the Trust, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. Any Administrative Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders of Service Shares need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of the Trust will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subjected to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments made by Service Shares under the Rule 12b–1 Plan or Administrative Services Plan, and any Class Expenses, will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value, dividends and distributions of the classes of shares and the proper allocation of expenses between those classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Trust (which the Trust agrees to provide), will be available for inspection by the SEC staff upon the written request to the Trust for

such work papers, by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation," as defined and described in Statement of Auditing Standards ("SAS") No. 70 of the American Institute of Certified Public Accountants ("AICPA"), and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness," as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset values, dividends and distributions of the two classes of shares and the proper allocation of expenses between the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectus for each Portfolio will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Portfolio shares may receive different compensation with respect to one particular class of shares over another in the same Portfolio.

11. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the Dual Class System will be set forth in guidelines which will be furnished to the trustees.

13. Each Portfolio will disclose the expenses, performance data, distribution arrangement, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to both classes in every prospectus, regardless of whether both classes are offered through each prospectus. Each Portfolio will disclose the respective expenses and performance data applicable to all classes of shares of the Portfolio in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to each Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares in a Portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares in such Portfolio. The information provided by the applicants for publication in any newspaper or similar listing of each Portfolio's net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the requested exemptive order will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trust may make pursuant to its Administrative Services or Rule 12b–1 Plans in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–28781 Filed 11–21–94; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Minneapolis/St. Paul District Advisory Council; Public Meeting

The U.S. Small Business Administration Minneapolis/St. Paul District Advisory Council will hold a public meeting on Thursday, December 1, 1994 at 12:00 noon, at the Decathlon Athletic Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss such matter as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Dated: November 17, 1994.

**Dorothy A. Overal,**

*Acting Assistant Administrator, Office of Advisory Councils.*

[FR Doc. 94–28844 Filed 11–21–94; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 11, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49861

*Date filed:* November 1, 1994

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* November 29, 1994

*Description:* Application of American Airlines, Inc., pursuant to 49 USC 41108 and Subpart Q of the Regulations, applies for renewal and amendment of its certificate for Route 487 authorizing scheduled foreign air transportation of persons, property, and mail between Miami, Florida and London, United Kingdom.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 94–28725 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–62–P

## Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

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

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

**DATES:** The meeting will be held on December 7, 1994 at noon.

**ADDRESSES:** The meeting will be held at the Regional Airline Association, 1200 19th Street NW., Washington, DC, third floor conference room.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judi Citrenbaum, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–9689

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualifications issues. This meeting will be held on December 7, 1994, at noon, at the Regional Airline Association in Washington, DC. The agenda for this meeting will include a progress report from the Aircraft Dispatcher Working Group. In addition, the FAA will present a new task in which ARAC will be asked to review and recommend an appropriate course of action for the comments received on the Operator Flight Attendant English Language Advance Notice of Proposed Rulemaking, published in the **Federal Register** on April 18, 1994 (59 FR 18456). The FAA will also provide an informational briefing on the economic analysis process.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 14, 1994.

**Thomas Toula,**

*Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.*

[FR Doc. 94–28727 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## Aviation Rulemaking Advisory Committee; Production Certification Working Group

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

**ACTION:** Notice of task amendment for the Production Certification Working Group.

**SUMMARY:** This notice informs the public of an amendment to the original task assigned to the Production Certification Working Group of the Aviation Rulemaking Advisory Committee.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel P. Salvano, Aircraft Certification Service (AIR–3), 800 Independence avenue S.W., Washington, D.C. 20591, Telephone: (202) 267–9554; FAX (202) 267–5364.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) has established the Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190; January 22, 1991, and 58 FR 9230; February 19, 1993). One issue being addressed by ARAC is aircraft certification procedures. This issue involves the procedures for aircraft certification found in parts 21, 39, and 183 of the Federal Aviation Regulations (FAR), and Special Federal Aviation Regulation No. 36 (SFAR 36), which are the responsibility of the FAA Director, Aircraft Certification Service.

On March 19, 1993, the Production Certification Working Group was established, and notice of establishment was published in the **Federal Register** on March 29, 1993 (58 FR 16574). This Working Group was charged with making recommendations to the ARAC concerning the modernization of requirements applicable to production approval holders in subparts, F, G, H, J, K, and O of FAR Part 21.

After the task was assigned, it became apparent that subpart L of FAR Part 21 and subparts A and B of FAR Part 45 should have been included in the review; therefore, the Production Certification Working Group task statement is amended to include subpart L of FAR Part 21 and subparts A and B of FAR Part 45.

Task: The task statement assigned to the Production Certification Working Group is, therefore, amended to read as follows: The Production Certification Working Group is charged with making recommendations to the ARAC concerning the modernization of requirements applicable to production approval holders in subparts F, G, H, J, K, L, and O of FAR Part 21 and subparts A and B of Part 45. These recommendations involve streamlining the rules to establish a more modern, standardized set of production approval requirements more responsive to current industry production practices. The Production Certification Working Group will submit recommendations to the ARAC, which will determine whether to forward them to the FAA.

Issued in Washington, DC, on October 21, 1994.

**Daniel P. Salvano,**

*Assistant Executive Director ARAC on Aircraft Certification Procedures.*

[FR Doc. 94–28726 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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[Special Committee 159]

## RTCA, Inc.; Thirty-Second Meeting; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 159 meeting to be held December 5–9, 1994, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

**Specific Working Groups Sessions**

December 5
- Working Group 1, GPS/GLONASS
- Working Group 5, Fault Detection and Isolation
- Ad Hoc Working Group, Interference Issues

December 6
- Working Group 2, GPS/GIC/WADGNSS

December 16
- Working Group 3, GPS/Other Navigation Systems

December 8
- Working Group 4, Precision Landing Guidance and Airport Surface Surveillance

December 9

Agenda—Plenary Session:

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Approval of summary of the thirty-first meeting held on October 7, 1994; (3) Review Working Group (WG) progress and identify issues for resolution (a) GPS/GLONASS (WG–1) (b) GPS/GIC/WADGNSS (WG–2) (c) GPS/Other Navigation Systems (WG–3) (d) GPS/Precision Landing Guidance and Airport Surface Surveillance (WG–4) (e) Fault Detection and Isolation (WG–5) (f) Interference Issues (Ad Hoc); (5) Review of EUROCAE activities; (6) Assignment/Review of Future Work; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral

statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 14, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–28729 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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**[Special Committee 169]**

## RTCA, Inc.; Thirteenth Meeting; Aeronautical Data Link Applications

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 169 meeting to be held January 10–12, 1995 starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the summary of the twelfth meeting held August 10, 1994; (4) Outstanding action items; (5) Review SC–169's work plan; (6) Review RTCA Special Committee Planning Document; (7) Review EUROCAE WG–45 Activity; (8) Review Working Group (WG) progress and identify issues for resolution (a) WG–1 Air/Ground ATS Applications (b) WG–2 Systems Architecture (c) WG–3 Flight Information Services (d) WG–4 International Coordination (e) WG–5 Ground/Ground Data Link Systems; (9) Coordination Activities with RTCA Special Committees 142/162/165/172/185; (10) Data Link Operational Requirements Team Presentation; (11) Flight Management ATM Next Generation Requirements Presentation; (12) Status Updates: (a) FAA Systems Engineering (b) FAA Technical Center (c) RTCA; (13) SC–169 ATM MASPS Drafting Group Update; (14) Other business (a) Flight Data Recorder; (15) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 14, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–28730 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## RTCA, Inc.; Special Committee 183; Third Meeting; Standards for Airport Security Access Control Systems

Pursuant to section 10(a)(20 of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 183 meeting to be held December 13–14, 1994. The meeting will be held at RTCA Conference Room, 1140 Connecticut Avenue, NW. Suite 1020, Washington, DC 20036.

Specific times are as follows: First Day: Designated Working Groups @12:00; Plenary 1:00 p.m.; Second Day: Plenary @9:00 a.m. Agenda will be as follows: (1) Administrative remarks; (2) General introductions; (3) Approval of agenda; (4) Approval of the minutes of the second meeting held November 1–2, 1994; (5) Working group reports; (6) Identify goals, develop work program and examine milestones; (7) Assign tasks; (8) Other business; (9) Establish agenda for next meeting; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 16, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–28774 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## RTCA, Inc.; Seventh Meeting; Standards of Navigation Performance

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for a Joint RTCA Special Committee 181/EUROCAE WG–13 meeting to be held January 9–13, 1995 starting at 9:00 a.m. The meeting will be held at the Wyndham Garden Hotel, 2461 W. Union Hills Drive, Phoenix, Arizona. (Phone) (602) 978–2222 (Fax) (602) 978–9139. Honeywell Coordinator: Lisa Turek (Phone) (602) 436–1579 (Fax) (602) 436–1500.

Agenda will be as follows:

**Plenary Session**

*January 9—Morning 0900–1200*

(1) Introductions; (2) Opening remarks and review of agenda; (3) Approval of summary of the sixth meeting; (4) Chairmen's report; (5) Working Group Reports: (a) Working Group 1 (b) Working Group 2 (c) Working Group 3 (d) Containment Surface Sub-group (e) Other business

*Afternoon 1300–1700*

(6) Working Group Sessions

*January 10–11*

Working Group Sessions

*January 12—Plenary Session*

(1) Presentation of draft text and outlines for MASPS, and Working Groups 2 and 3

*January 13—Plenary Session*

(1) Presentation of draft text and outlines for MASPS, and Working Groups 2 and 3 (continued); (2) Future meeting schedule; (3) Any other business; (4) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 14, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–28728 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## Notice of Intent to Rule on Application to Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) and Use PFC Revenue From Previously Approved Impose Only Projects at Inyokern Airport, Inyokern, CA

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

**ACTION:** Notice of intent to rule on application.

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**SUMMARY:** The Federal Aviation Administration (FAA) proposes to rule

and invites public comment on the application to impose only, and impose and use PFC revenue from a PFC and to use PFC revenue from previously approved impose only projects at Inokern Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) and 14 CFR, Part 158. On November 9, 1994, the FAA determined that the application to use revenue from a PFC submitted by the Indian Wells Valley Airport District 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 February 11, 1995.

**DATES:** Comments must be received on or before December 22, 1994.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA., 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Nancy Bass, General Manager, Indian Wells Valley Airport District, P.O. Box 634, Inyokern, California, 93527. Comments from air carriers may be in the same form as provided to the Indian Wells Valley Airport District under section 158.23 of FAR Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. John P. Milligan, Supervisor Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 297–1029. 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 only and impose and use the revenue from a PFC at Inyokern Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 9, 1994, the FAA determined that the application to impose only, impose and use and to use the revenue from a PFC submitted by the Indian Wells Valley Airport District 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, not later than February 11, 1995.

The following is a brief overview of the application:

Level of the Proposed PFC: $3.00

Proposed Charge Effective Date: April 1, 1995

Proposed Charge Expiration Date: July 31, 1999

Total Estimated PFC Revenue: $248,500

*Brief Description of the Proposed Projects—Impose and Use*

Parking Lot and Airport Road Extension—Total $30,000

Purchase Hydraulic Lift—Total $3,500

*Impose Only*

Overlay Taxiways—Total $215,000

*Projects to be Changed From Impose Only to Use*

Terminal Alteration—Total $30,000

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Small certified air taxi carriers not providing scheduled service to Inyokern Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the Indian Wells Valley Airport District Office.

Issued in Hawthorne, California, on November 9, 1994.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 94–28777 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) and Use PFC Revenue From Previously Approved Impose Only Projects at McCarran International Airport, Las Vegas, NV

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use PFC revenue from a PFC and to use PFC revenue for previously approved impose only projects at McCarran International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) and 14 CFR, Part 158.

On October 14, 1994, the FAA determined that the application to use the revenue from a PFC submitted by Clark County 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 13, 1994.

**DATES:** Comments must be received on or before December 22, 1994.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA. 90009 or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert N. Broadbent, Director of Aviation, Clark County, Department of Aviation, P.O. Box 1105, Las Vegas, Nevada 89111. Comments from air carriers and foreign air carriers may be in the same form as provided to Clark County under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph R. Rodriquez, Supervisor Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805. 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 Las Vegas McCarran International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 14, 1994, the FAA determined that the application to impose and use and to use the revenue from a PFC submitted by the county of Clark was substantially complete within the requirements of section 158.25 of Part 158. The FAA has deferred the review of a portion of the September 14, 1994, PFC application at the request of Clark County. Clark County has advised the FAA that additional environmental documentation will be submitted to the FAA for review and approval for four projects: Runway 1L/19R Upgrade Construction, Concourse D Design and Construction, Automatic Transit System to Concourse D and Construction of Runway 7R/25L Extension. Total deferred cost of the four projects is $165,940,000. A portion of the bond related projects has also been deferred,

including bond issuance costs debt service requirements and bond related interest expenses. Total of the deferred costs of the debt service is $282,882,292. The FAA will approve or disapprove the application, in whole or in part, not later than January 13, 1995.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00
Proposed Charge Effective Date: April 1, 1995
Proposed Charge Expiration Date: June 30, 2025
Total Estimated PFC Revenue: $281,609,708
Total Estimated Deferred PFC Revenue: $448,822,292

*Brief Description of the Proposed Projects—Impose and Use*

Bond Issuance Cost, Debt Service Reserve, Design and Construct Ticketing and Baggage Handling Facility Improvement, Bond Related Interest Expense, On-Airport Roadways Modification and Bond Related Project Expense. Total $215,542,708.

*Projects to be Changed From Impose Only to Use*

Swensen Street—Airport Ground Transportation, Portions of Park 2000, Runway 19R Protection Zone, Design—Runway 19R/1L Upgrade and CIT Apron Expansion. Total $66,067,000.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Carriers who file Form 1800–31 AND carry less than 2,500 passengers per year.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at Clark County.

Issued in Hawthorne, California, on November 15, 1994.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 94–28776 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## Notice of Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) Submitted by the City of Riverton at Riverton Regional Airport, Riverton, WY

**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 a PFC at Riverton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before December 22, 1994.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager, Denver Airports District Office, DEN–ADO, Federal Aviation Administration, 5440 Roslyn, Suite 300, Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harry LaBonde, Public Works Director, of the City of Riverton at the following address: P.O. Box 1700, Riverton, Wyoming 82501.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the City of Riverton, under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Don O'Brien, (303) 286–5549; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, Colorado 80216–6026. 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 a PFC at Riverton Regional Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 15, 1994, the FAA determined that the application to impose a PFC submitted by Riverton Regional Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 14, 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: January 1, 2007
Total estimated PFC revenues $515,954.88

Brief description of proposed project: Design and construct new terminal building including airside and landside support facilities and acquisition of a passenger lift device.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

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, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Riverton Regional Airport.

Issued in Renton, Washington, on November 15, 1994.

**David A. Field,**

*Acting Manager, Airports Division, Northwest Mountain Region.*

[FR Doc. 94–28775 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–13–M

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## Federal Highway Administration

**[FHWA Docket No. 94–2]**

## Request for Public Participation in the Development of the National Program Plan for Intelligent Transportation Systems (ITS), formerly called Intelligent Vehicle-Highway Systems

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Department of Transportation solicits public comment on a third draft of a National Program Plan (the Plan) for Intelligent Transportation Systems (ITS), formerly called Intelligent Vehicle-Highway Systems (IVHS). ITS applies advanced technologies such as information processing, communications, and electronics to surface transportation needs. The Plan is being developed based on a set of user services, each of which is designed to respond to the needs of particular users. The draft Plan attempts to integrate Federal, State, local government, and private sector activities in a single document to present a coherent picture of how the public and private sectors will work together to achieve ITS program goals. The Plan seeks to reflect the consensus view of all parties interested in the development and deployment of ITS.

**DATES:** Comments on the November 1994 draft are due December 30, 1994. Comments received after that date will be considered to the extent possible.

**ADDRESSES:** Comments should be sent to: Docket Clerk, Docket No. 94–2, room 4232, United States Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590. Commenters on the previous drafts will automatically receive a copy of the November 1994 draft; others may obtain a copy by contacting the Federal Highway Administration, HVH–2, 400 Seventh Street, SW., Room 3400, Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Gary Euler, Deputy Director, Joint IVHS Program Office, Federal Highway Administration, HVH–2, 400 Seventh Street, SW., Room 3400, Washington, D.C. 20590, Ph: (202) 366–2196, Fax: (202) 366–8712.

**SUPPLEMENTARY INFORMATION:**

**Background**

The objective of the ITS program is to apply advanced technology in the areas of information processing, communications, control, and electronics to improve safety, reduce congestion, increase mobility, reduce the energy and environmental harm caused by transportation, and increase economic productivity. The ITS program also incorporates the use of strategic planning and innovative management practices at all levels of government to implement those initiatives which enhance our national surface transportation system, strengthen our economy, and benefit a broad range of users.

To that end, the third draft incorporates various of the comments received through the earlier notice process and the public forums, as well as those received from individual members of ITS AMERICA, a broad-based, non-profit organization that also serves as a utilized Federal Advisory Committee under the Federal Advisory Committee Act (5 U.S.C. App. 2). ITS AMERICA will also be distributing copies of the Plan to its membership and preparing consensus comments on the Plan; therefore, member comments to ITS AMERICA need not be duplicated in comments to the DOT docket.

The Plan is intended to clearly present the ITS program to Congress, other government leaders, and private sector entities. It is intended to guide investment decisions in the development and deployment of ITS products and services to be made by private entities, the Federal government, and local governments; to facilitate prioritization and coordination of ITS development activities; to reduce duplication of effort; and to ensure ITS program activities are directed toward deployment of ITS services in a nationally compatible intermodal system.

These services have been grouped into the following categories or "bundles": *Travel and Transportation Management*, which would improve the flow of traffic and provide travel-related information to the public; *Travel Demand Management*, which would reduce vehicle demand by encouraging modes other than the single occupancy vehicle; *Public Transportation Operations*, which would assist in delivering improved public transportation systems; *Commercial Vehicle Operations*, which would improve the efficiency and safety of commercial fleet operations; *Electronic Payment*, which would allow travelers to pay for transportation services with electronic cards or tags; *Emergency Management*, which can be used by police, fire, and rescue authorities to improve their management of, and response to, emergency situations; and *Advanced Vehicle Control and Safety Systems*, which would provide improved vehicle safety.

The deployment of these user services will depend on a range of issues that will be assessed in formulating and implementing the Plan, including cost, public acceptance, the maturity or availability of the technologies, and regulatory issues. The Plan will also serve as the framework for a continuing process that will assess progress and allow government and private sector investment decisions to be made after the views of all interested parties have been considered.

Because the Plan is being developed with the user as the focus, the Department is interested in participation from a broad range of individuals and organizations including, but not limited to, public officials from State and local governments, consumer groups, vehicle manufacturers and other private sector entities, transit authorities, toll authorities, small businesses, academic institutions, associations, and individual citizens.

This is the third notice on the Plan. The first notice, at 58 FR 65814 (December 15, 1993), contained background information on the national ITS program, including a detailed description of the user services. The second notice, 59 FR 26552 (May 20, 1994), announced a series of five public forums (held around the country in June 1994) to obtain input on the Plan development. Comments received in response to both notices, and the public forums, have been utilized in preparing the third draft of the Program Plan that is now available.

This draft of the Plan has been substantially revised from the previous draft, and edited to reduce its length and remove redundancies. A new chapter has been added that discusses the societal, economic, legislative, and other forces that led to the ITS program. User Service Integration and National Compatibility have been divided into separate chapters, and the discussion of telecommunications issues has been expanded. The Deployment and Deployment Support chapters have been substantially revised to reflect 5-, 10-, and 20-year deployment scenarios, provide an analysis of the potential affects of different levels of public and private sector participation in ITS deployment, and a description of program initiatives to address deployment barriers. A new Travel Demand Management bundle has been created that encompasses the Pre-Trip Travel Information, Ride Matching and Reservation, and Demand Management and Operations user services.

In response to a number of comments, a Synopsis of the Plan has been developed and is included with the third draft. This third draft is intended to be the final draft before publication of the first edition the Plan in March, 1995. The Plan will then be updated periodically to reflect changes in the development and deployment of the ITS program.

**Information Requested**

The Department is especially interested in public comment on Chapter 6, Deployment, and Chapter 7, Deployment Support, the deployment scenarios presented, the analysis of the effects of different levels of public and private sector participation in ITS deployment, and the discussion of program initiatives to address deployment barriers. Respondents are also asked to indicate their agreement with the publication of this document, following the comment period and with comments considered, as the first edition of the National ITS Program Plan.

Any additional information, suggestions, opinions or other comments that would assist in further developing the Plan would be welcome.

**Authority:** 23 U.S.C. 315; 49 CFR 1.48; Pub. L. 102–240, Secs. 6051–6059, 105 Stat. 2189–2195.

Issued on: November 15, 1994

**Rodney E. Slater,**

*Federal Highway Administrator.*

[FR Doc. 94–28769 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–22–P

## National Highway Traffic Safety Administration

**[Docket No. 94–103; Notice 1]**

## American Transportation Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

American Transportation Corporation (AmTran) of Conway, Arkansas, has determined that some of its vehicles fail to comply with 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." AmTran has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417)) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.3 of FMVSS No. 120 states that each vehicle must have a label affixed which includes the size designation of the tires and the size designation of the rims.

AmTran produced approximately 38,000 buses and school buses from 1987 through 1994 which do not meet the labeling requirements stated in the standard. The vehicles lack the rim diameter designation on the label. The label does include the rim width and complete tire size.

AmTran supports its application with the following:

American Transportation (AmTran) requests that an exemption be granted based on the grounds that the noncompliance is inconsequential as it related to motor vehicle safety. The rim width is listed on the certification label; however, the rim diameter is not listed. The complete tire size, including the diameter (which is identical to the rim diameter), is listed on each label. Therefore, [AmTran] believes that sufficient information is available for the user to match tire and rim sizes appropriately.

Interested persons are invited to submit written data, views, and arguments on the application of AmTran, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 22, 1994.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and NHTSA Order 800–2.

Issued on: November 16, 1994.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 94–28773 Filed 11–21–94; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF VETERANS AFFAIRS

## Veterans' Advisory Committee on Education, Notice of Meeting Cancellation

The Department of Veterans Affairs notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, to be held on November 14, 1994 and November 15, 1994, is hereby cancelled. The notice appeared in the **Federal Register** on November 1, 1994, on page 54674.

If you have any questions, please contact Mrs. Celia P. Dollarhide, Director, Education Service (phone 202–273–7132).

Dated: November 7, 1994.

By direction of the Secretary.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 94–28782 Filed 11–21–94; 8:45 am]

BILLING CODE 8320–01–M

## Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Special Medical Advisory Group, authorized by Title 38, U.S.C., Section 7312, will be held at the Department of Veterans Affairs, Room 830, 810 Vermont Avenue, N.W., Washington, D.C., on November 21, 1994.

The meeting will convene at 8:30 a.m. (EST) and adjourn at approximately 1:00 p.m. (EST), November 21. The meeting will be open to the public up to the seating capacity of the room. Those wishing to attend should contact Susan Hall, Office of the Deputy Under Secretary for Health, at 202–273–5813, no later than November 14, 1994.

Dated: November 4, 1994.

By Direction of the Secretary.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 94–28783 Filed 11–21–94; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 224
Tuesday, November 22, 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).

## NATIONAL TRANSPORTATION SAFETY BOARD

**TIME:** 9:30 a.m., Tuesday, November 29, 1994

**PLACE:** The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

6491—Highway Accident Report: School Bus/Tractor-Semitrailer Collision, Snyder, Oklahoma, November 10, 1993.

**NEWS MEDIA CONTACT:** Telephone: (202) 382–0660.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382–6525.

Dated: November 18, 1994.

**Bea Hardesty,**

*Federal Register Liaison Officer.*

[FR Doc. 94–28939 Filed 11–18–94; 3:03 pm]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of November 21, 28, December 5, and 12, 1994.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of November 21**

There are no meetings scheduled for the Week of November 21.

**Week of November 28—Tentative**

There are no meetings scheduled for the Week of November 28.

**Week of December 5—Tentative**

*Wednesday, December 7*

10:00 a.m.

Briefing on Pilot Diagnostic Evaluation Program and Use of Licensee Self-Assessments in Inspections (Public Meeting)

(Contact: 1st part Ellis Merschoff, 404–331–5179 and 2nd part Frank Gillespie, 301–504–1275)

2:00 p.m.

Briefing on Status of Reactor Pressure Vessels in Commercial Nuclear Power Plants (Public Meeting)

(Contact: Brian Sheron, 301–504–2722)

*Thursday, December 8*

2:00 p.m.

Briefing on Proposed Rule—Revision to Appendix J to 10 CFR Part 50 (Public Meeting)

(Contact: Joseph Murphy, 301–415–5670)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of December 12—Tentative**

There are no Commission meetings scheduled for the Week of December 12.

**ADDITIONAL INFORMATION:** By a vote of 3–0 on November 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Amendments to 10 CFR Parts 30, 32, and 35: Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use" (Public Meeting) be held on November 15, and on less than one week's notice to the public.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Dr. Andrew Bates, (301) 504–1963.

Dated: November 17, 1994.

**Andrew L. Bates,**

*Chief, Operations Branch, Office of the Secretary.*

[FR Doc. 94–28912 Filed 11–18–94; 11:25 am]

BILLING CODE 7590–01–M

federal register

Tuesday
November 22, 1994

Part II

# Department of the Interior

## Bureau of Indian Affairs

## Preparation of Catawba Indian Base Membership Roll; Notice

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Preparation of Catawba Indian Base Membership Roll

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is announcing that a base membership roll is being prepared by the Catawba Indian Tribe of South Carolina in accordance with the Act of October 27, 1993, the "Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993." The Catawba Tribe's current membership roll is open and will remain open for a 90 day period for the addition of the names of persons who can meet the requirements for Catawba tribal membership.

**DATES:** Effective November 22, 1994.

**ADDRESSES:** Persons who can provide proof that they meet the requirements for inclusion on the base membership roll currently being prepared by the Catawba Indian Tribe of South Carolina may contact the tribe at Post Office Box 11106, Rock Hill, South Carolina 29731, or Carol Bacon, Acting Area Director, Bureau of Indian Affairs, Eastern Area Office, 3701 North Fairfax Drive, Mail Stop 260 VA SQU, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** Carol Bacon, Acting Area Director, Bureau of Indian Affairs, Eastern Area Office, 3701 North Fairfax Drive, Mail Stop 260 VA SQU, Arlington, VA 22201.

**SUPPLEMENTARY INFORMATION:** Section 7 of the Act of October 27, 1993, the "Catawba Indian Tribe of South Carolina Land Claims Settlement Act," 25 U.S.C. 941e, requires the Secretary of the Department of the Interior to publish within 90 days after the enactment of the Act, in the **Federal Register**, and in three newspapers of general circulation in the tribe's service area, a notice stating: (1) that a base membership roll is being prepared by the Catawba Tribe and that the current tribal membership roll is open and will remain open for a 90 day period; and (2) that an individual is eligible for inclusion on the base membership roll being prepared by the Catawba Tribe if that individual is now living or was living on October 27, 1993; is listed on the membership roll published by the Secretary in the **Federal Register** on February 25, 1961 (26 FR 1680–1688) or if the tribal Executive Committee determines, based on the identical criteria used to compile the membership roll of February 25, 1961, that the individual should have been included on the membership roll at that time, but was not; or is a lineal descendant of a member whose name appeared or should have appeared on the membership roll of February 25, 1961.

Dated: November 7, 1994.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 1 | 2 | Adams, Clarence Roddey | 339 Park Ave., Rock Hill, SC | M | 7/26/1942 | |
| 2 | | Adams, Dewey Lee | 339 Park Ave., Rock Hill, SC | M | 5/24/1949 | Adams, Mammie-5. |
| 3 | 1 | Adams, Franklyn Douglas | 339 Park Ave., Rock Hill, SC | M | 7/4/1943 | |
| 4 | | Adams, James Robert | 339 Park Ave., Rock Hill, SC | M | 9/18/1947 | Adams, Mammie-5. |
| 5 | | Adams, Jane Carol | 339 Park Ave., Rock Hill, SC | F | 9/2/1945 | Adams, Mammie-5. |
| 6 | 5 | Adams, Mammie | 339 Park Ave., Rock Hill, SC | F | 9/15/1912 | |
| 7 | 3 | Adams, Margaret Josephine | 339 Park Ave., Rock Hill, SC | F | 5/29/1939 | |
| 8 | 4 | Adams, Nelson Judson | 339 Park Ave., Rock Hill, SC | M | 11/10/1940 | |
| 9 | | Ayers, Avery Stuart | Route 3, Box 224, Rock Hill, SC | M | 8/27/1947 | Sanders, Sarah Lee-260 and Ayers, Hazel-10. |
| 10 | 6 | Ayers, Claude Kenneth | 5 Pitts Ave., Rock Hill, SC | M | 6/8/1930 | |
| 11 | | Ayers, Debra Kay | 5 Pitts Ave., Rock Hill, SC | F | 5/15/1957 | Ayers, Claude-6. |
| 12 | | Ayers, Ernest, Jr. | 302 Flat Rock St., Clover, SC | M | 5/9/1956 | Ayers, Earnest-8. |
| 13 | 8 | Ayers, Ernest Wade | 302 Flat Rock St., Rock Hill, SC | M | 3/12/1927 | |
| 14 | 10 | Ayers, Hazel Ervin | Route 3, Box 224, Rock Hill, SC | M | 1/27/1924 | |
| 15 | | Ayers, Jane Dilling | 302 Flat Rock St., Clover, SC | F | 7/3/1957 | Ayers, Earnest-8. |
| 16 | 12 | Ayers, John | Route 1, Catawba, SC | M | 11/27/1922 | |
| 17 | | Ayers, Johnny Nelson | Route 1, Catawba, SC | M | 1/31/1953 | Ayers, John-12. |
| 18 | | Ayers, Marilyn Ann | Route 1, Catawba, SC | F | 9/28/1959 | Ayers, John-12. |
| 19 | | Ayers, Ralph Lewis | Route 1, Catawba, SC | M | 11/16/1955 | Ayers, John-12. |
| 20 | 11 | Ayers, Robert Heber | Route 3, Rock Hill, SC | M | 10/5/1901 | |
| 21 | | Ayers, Roger Dale | Box 585, Blacksburg, SC | M | 4/22/1959 | Ayers, Fred-9. |
| 22 | 260 | Ayers, Sarah Lee Sanders | Route 3, Box 224, Rock Hill, SC | F | 8/22/1919 | |
| 23 | | Ayers, Vivian Marie | Route 1, Catawba, SC | F | 10/29/1951 | Ayers, John-12. |
| 24 | | Ayers, William Frell, Jr. | Box 585, Blacksburg, SC | M | 10/31/1947 | Ayers, Fred-9. |
| 25 | 9 | Ayers, William Frell (Fred) | Box 585, Blacksburg, SC | M | 1/22/1925 | |
| 26 | | Beck, Donna B. | Route 3, Rock Hill, SC | F | 9/28/1957 | Beck, Lillie-19. |
| 27 | | Beck, Duane Early | 1726 Nicholson Ave., Rock Hill, SC | M | 8/26/1950 | Beck, Eugene-15. |
| 28 | 14 | Beck, Eugene, Jr. | 1726 Nicholson Ave., Rock Hill, SC | M | 8/21/1948 | |
| 29 | 15 | Beck, Eugene | 1726 Nicholson Ave., Rock Hill, SC | M | 7/30/1920 | |
| 30 | 16 | Beck, Fletcher Buck, Jr. | Route 3, Rock Hill, SC | M | 6/3/1927 | |
| 31 | 17 | Beck, Gerald Leon | Route 3, Rock Hill, SC | M | 1/7/1948 | |
| 32 | 18 | Beck, Helen | Route 3, Rock Hill, SC | F | 12/5/1920 | |
| 33 | | Beck, John C. | Route 3, Rock Hill, SC | M | 3/12/1957 | Beck, Major-22. |
| 34 | 19 | Beck, Lillie | Route 3, Rock Hill, SC | F | 12/5/1941 | |
| 35 | 21 | Beck, Lulla S. | Route 3, Rock Hill, SC | F | 5/3/1905 | |
| 36 | 23 | Beck, Phyllis | Route 3, Rock Hill, SC | F | 1/28/1940 | |
| 37 | | Beck, Ronald Lee | 1726 Nicholson Ave., Rock Hill, SC | M | 1/12/1947 | Beck, Eugene-15. |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 38 | ..... | Beck, Roderick Neil | Route 3, Rock Hill, SC | M | 11/18/1946 | Beck, Helen-18 and Beck, Samuel-27. |
| 39 | 25 | Beck, Sallie | Route 3, Box 211, Rock Hill, SC | F | 9/23/1893 | |
| 40 | 27 | Beck, Samuel John | Route 3, Rock Hill, SC | M | 2/12/1916 | |
| 41 | ..... | Beck, Samuel Mitchell | Route 3, Rock Hill, SC | M | 1/3/1944 | Beck, Eugene-15 and Beck, Samuel-27. |
| 42 | ..... | Beck, Sandra Marlene | 1726 Nicholson Ave., Rock Hill, SC | F | 9/24/1948 | Beck, Eugene-15. |
| 43 | ..... | Beck, Shansa Ilene | Route 3, Rock Hill, SC | F | 1/22/1950 | Beck, Helen-18 and Beck, Samuel-27. |
| 44 | ..... | Beck, Tommie Rae | 1726 Nicholson Ave., Rock Hill, SC | M | 4/25/1958 | Beck, Eugene-15. |
| 45 | 22 | Beck, W.H. (Major, Jr.) | Route 3, Rock Hill, SC | M | 9/27/1929 | |
| 46 | 35 | Blue, Andrew Gene | Route 3, Rock Hill, SC | M | 7/20/1938 | |
| 47 | 29 | Blue, Arnold | Route 3, Box 223, Rock Hill, SC | M | 6/9/1946 | Harris, Lillian-184 and Blue, Arnold-29. |
| 48 | ..... | Blue, Arnold, Jr. | Route 3, Box 223, Rock Hill, SC | M | 6/9/1946 | Harris, Lillian-184 and Blue, Arnold-29. |
| 49 | 156 | Blue, Betty Lou Harris | Route 3, Box 223, Rock Hill, SC | F | 8/31/1934 | |
| 50 | 32 | Blue, Bobby Everette | 871 McNair St., Rock Hill, SC | M | 8/13/1935 | |
| 51 | ..... | Blue, Carson Taylor | Route 3, Box 43, Rock Hill, SC | M | 3/17/1944 | Blue, Leroy-44. |
| 52 | 33 | Blue, Doris Belle | Route 3, Rock Hill, SC | F | 1/14/1905 | |
| 53 | 34 | Blue, Eva | Route 3, Rock Hill, SC | F | 6/7/1910 | |
| 54 | 49 | Blue, Frederick Nelson | Route 4, Box 44, Rock Hill, SC | M | 10/25/1889 | |
| 55 | ..... | Blue, Gail B. | Route 3, Rock Hill, SC | F | 11/30/1947 | Blue, Eva-34 and Blue, Guy-37. |
| 56 | 36 | Blue, Gilbert | Route 3, Rock Hill, SC | M | 12/5/1923 | |
| 57 | 37 | Blue, Guy | Route 3, Rock Hill, SC | M | 12/3/1911 | |
| 58 | 38 | Blue, Guy Leslie | Route 3, Rock Hill, SC | M | 1/8/1941 | |
| 59 | 40 | Blue, Harvey | Route 3, Rock Hill, SC | M | 4/26/1930 | |
| 60 | ..... | Blue, Harry Reid | Route 3, Box 43, Rock Hill, SC | M | 8/23/1947 | Blue, Leroy-44. |
| 61 | 44 | Blue, Henry LeRoy | Route 3, Box 43, Rock Hill, SC | M | 8/14/1907 | |
| 62 | 41 | Blue, Herbert | Route 3, Box 42, Rock Hill, SC | M | 4/25/1898 | |
| 63 | 42 | Blue, Herbert Roosevelt | Route 3, Box 42, Rock Hill, SC | M | 2/12/1927 | |
| 64 | 46 | Blue, Hester Louisa | Route 3, Box 223, Rock Hill, SC | F | 2/7/1883 | |
| 65 | 39 | Blue, Joanette | Route 3, Rock Hill, SC | F | 8/31/1938 | |
| 66 | ..... | Blue, Kelly La Brian | 871 McNair St., Rock Hill, SC | M | 3/12/1960 | Harris, Betty-156 and Blue, Bobby-32. |
| 67 | 184 | Blue, Lillian | Route 3, Box 223, Rock Hill, SC | F | 8/27/1925 | |
| 68 | ..... | Blue, Malinda Darlene | 732 Level St., Rock Hill, SC | F | 10/22/1958 | Blue, Lavone-43. |
| 69 | 48 | Blue, Mildred | Route 3, Rock Hill, SC | F | 8/4/1922 | |
| 70 | ..... | Blue, Nathan Taylor | Route 3, Box 223, Rock Hill, SC | M | 6/29/1955 | Harris, Lillian-184 and Blue, Arnold-29. |
| 71 | 51 | Blue, Pricilla (Priscilla) | Route 3, Box 43, Rock Hill, SC | F | 10/24/1939 | |
| 72 | 43 | Blue, Randall LaVon (Lavone) | 732 Level St., Rock Hill, SC | M | 12/20/1933 | |
| 73 | 28 | Blue, Sam Andrew | Route 3, Rock Hill, SC | M | 1/15/1900 | Died Sept. 18, 1960. |
| 74 | 53 | Blue, Shirley | Route 3, Box 43, Rock Hill, SC | F | 9/28/1941 | |
| 75 | ..... | Blue, Toy June | Route 3, Rock Hill, SC | F | 12/21/1943 | Blue, Eva-34 and Blue, Guy-37. |
| 76 | ..... | Bodiford, Hazel Dewey | 88 W. Rutger St., Pontiac, MI | M | 7/1/1953 | On 1943 roll as George, Fay. |
| 77 | 230 | Bodiford, Margaret Faye | Route 1, Fort Lawn, SC | F | 5/16/1930 | |
| 78 | ..... | Branham, Angela Renee | Route 4, Box 454, Rock Hill, SC | F | 4/27/1958 | Fox, Cynthia Ann-101. |
| 79 | ..... | Branham, Barbara Jean | Route 4, Box 448C, Rock Hill, SC | F | 6/7/1954 | Fox, Josephine-105. |
| 80 | ..... | Branham, Betty Joe | Route 4, Box 448C, Rock Hill, SC | F | 7/20/1947 | Fox, Josephine-106. |
| 81 | 101 | Branham, Cynthia Ann Foxx | Route 4, Box 454, Rock Hill, SC | F | 2/13/1942 | |
| 82 | 106 | Branham, Josephine Foxx | Route 4, Box 448C, Rock Hill, SC | F | 8/10/1929 | |
| 83 | ..... | Brindle, Carl | 31 Lincoln St., York, SC | M | 1/20/1948 | Brindle, Missouria-58. |
| 84 | 55 | Brindle, Francis | 31 Lincoln St., York, SC | F | 3/1/1943 | |
| 85 | ..... | Brindle, Frank Wayne | 31 Lincoln St., York, SC | M | 5/28/1944 | Brindle, Missouria-58. |
| 86 | ..... | Brindle, Helen Louise | 31 Lincoln St., York, SC | F | 6/23/1949 | Brindle, Missouria-58. |
| 87 | 179 | Brindle, Jennie Harris | P.O. Box 351, York, SC | F | 6/2/1908 | |
| 88 | 56 | Brindle, Jesse Roy | 538 Oakland St., Charlotte, NC | M | 10/13/1939 | |
| 89 | 57 | Brindle, Melvin Lester | 31 Lincoln St., York, SC | M | 7/22/1941 | |
| 90 | 58 | Brindle, Missouria | 31 Lincoln St., York, SC | F | 4/23/1921 | |
| 91 | ..... | Brindle, Walter A | 31 Lincoln St., York, SC | M | 8/20/1946 | Brindle, Missouria-58. |
| 92 | ..... | Brown, Anna Maria | Route 3, Box 215, Rock Hill, SC | F | 11/23/1958 | Brown, William-78 and Ayers, Ruby-13. |
| 93 | ..... | Brown, Bobby Norman | Route 3, Box 215, Rock Hill, SC | M | 6/28/1949 | Brown, William-78 and Ayers, Ruby-13. |
| 94 | ..... | Brown, David Lee | Route 1, Box 189, York, SC | M | 1/17/1958 | Brown, Leola-69. |
| 95 | 60 | Brown, Donald L | 1017 Chandler Dr., Rock Hill, SC | M | 3/21/1935 | |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 96 | ..... | Brown, Donald Richard | 1017 Chandler Dr., Rock Hill, SC | M | 1/19/1956 | Brown, Donald-60. |
| 97 | 61 | Brown, Early | Route 3, Rock Hill, SC | M | 1/26/1891 | |
| 98 | 62 | Brown, Edith B. Harris | 743 North Jones Ave., Rock Hill, SC | F | 6/13/1893 | |
| 99 | 63 | Brown, Edna | Route 3, Box 216, Rock Hill, SC | F | 5/14/1911 | |
| 100 | 64 | Brown, Edward | 720 Cedar St., Rock Hill, SC | M | 12/8/1911 | |
| 101 | 65 | Brown, Emma | Route 3, Rock Hill, SC | F | 6/6/1889 | |
| 102 | 66 | Brown, George | C2 Gonzales Gardens, Columbia, SC. | M | 9/16/1914 | |
| 103 | ..... | Brown, Harold Dean | Route 1, Box 189, York, SC | M | 12/17/1954 | Brown, Leola-69. |
| 104 | 59 | Brown, Hazel Edward | 1090 Chandler Dr., Rock Hill, SC | M | 11/7/1943 | Ayers, Mary Ann-71 and Brown, Richard-76. |
| 105 | ..... | Brown, Helen Mae | Route 1, Box 189, York, SC | F | 4/30/1944 | Brown, Leola-69. |
| 106 | ..... | Brown, John Samuel | Route 1, Box 189, York, SC | M | 10/13/1947 | Brown, Leola-69. |
| 107 | 69 | Brown, Leola | Route 1, Box 189, York, SC | F | 8/23/1919 | |
| 108 | ..... | Brown, Lewis Herman, Jr. | 1090 Chandler Dr., Rock Hill, SC | M | 5/9/1946 | Ayers, Mary Ann-71 and Brown, Richard-76. |
| 109 | ..... | Brown, Lillian Ann | 720 Cedar St., Rock Hill, SC | F | 11/27/1945 | Brown, Edward-64. |
| 110 | ..... | Brown, Linda Gail | Route 1, Box 189, York, SC | F | 1/22/1957 | Brown, Leola-69. |
| 111 | ..... | Brown, Martha Sue | 1090 Chandler Dr., Rock Hill, SC | F | 1/20/1949 | Ayers, Mary Ann-71 and Brown, Richard-76. |
| 112 | 71 | Brown, Mary Ann Ayers | 1090 Chandler Dr., Rock Hill, SC | F | 6/11/1918 | |
| 113 | ..... | Brown, Mickie Edward | Route 1, Box 189, York, SC | M | 9/18/1951 | Brown, Leola-69. |
| 114 | ..... | Brown, Myra Edith | Route 3, Box 215, Rock Hill, SC | F | 11/26/1959 | Brown, William-78 and Ayers, Ruby-13. |
| 115 | ..... | Brown, Nancy Mae | Route 3, Box 215, Rock Hill, SC | F | 6/5/1947 | Brown, William-78 and Ayers, Ruby-13. |
| 116 | 73 | Brown, Otis Roddy | 1090 Chandler Dr., Rock Hill, SC | M | 11/14/1941 | |
| 117 | ..... | Brown, Owen Keith | Route 3, Box 215, Rock Hill, SC | M | 3/23/1951 | Brown, William-78 and Ayers, Ruby-13. |
| 118 | ..... | Brown, Patricia | St. Andrews Terr., Columbia, SC | F | 9/7/1959 | Brown, Viola Robbins-234. |
| 119 | ..... | Brown, Patricia Lucille | Route 1, Box 189, York, SC | F | 12/12/1949 | Brown, Leola-69. |
| 120 | 75 | Brown, Rachel Wysie | ..... | F | 8/22/1873 | Died Sept. 20, 1960. |
| 121 | ..... | Brown, Reba Maxine | Route 3, Box 215, Rock Hill, SC | F | 11/7/1953 | Brown, William-78 and Ayers, Ruby-13. |
| 122 | 76 | Brown, Richard | 1090 Chandler Dr., Rock Hill, SC | M | 8/21/1916 | |
| 123 | 77 | Brown, Roy | Route 3, Box 216, Rock Hill, SC | M | 1/28/1905 | |
| 124 | 13 | Brown, Ruby Ayers | Route 3, Box 215, Rock Hill, SC | F | 8/4/1928 | |
| 125 | ..... | Brown, Ruth Ann | Route 1, Box 189, York, SC | F | 1/25/1946 | Brown, Leola-69. |
| 126 | ..... | Brown, Teresa Diana | 1017 Chandler Dr., Rock Hill, SC | F | 8/29/1958 | Brown, Donald-60. |
| 127 | ..... | Brown, Tommy Clyde | Route 1, Box 189, York, SC | M | 10/18/1953 | Brown, Leola-69. |
| 128 | ..... | Brown, Vanessa Lee | Route 3, Box 215, Rock Hill, SC | F | 11/29/1955 | Brown, William-78 and Ayers, Ruby-13. |
| 129 | ..... | Brown, Velma Irene | Route 3, Box 215, Rock Hill, SC | F | 6/12/1957 | Brown, William-78 and Ayers, Ruby-13. |
| 130 | 234 | Brown, Viola Robbins Martin | Route, St. Andrews Terr., Columbia, SC. | F | 9/17/1925 | |
| 131 | 78 | Brown, William | Route 3, Box 215, Rock Hill, SC | M | 1/28/1905 | |
| 132 | ..... | Brown, William Clifford | 1017 Chandler Dr., Rock Hill, SC | M | 3/1/1957 | Brown, Donald-60. |
| 133 | ..... | Brown, William Larry | Route 3, Box 215, Rock Hill, SC | M | 1/12/1954 | Brown, William-78 and Ayers, Ruby-13. |
| 134 | ..... | Bryson, Janet Renee | Route 3, Rock Hill, SC | F | 12/22/1956 | Bryson, Themla Louise-20. |
| 135 | 157 | Bryson, Myrtle Blanche Harris | Route 3, Box 225, Rock Hill, SC | F | 11/22/1926 | |
| 136 | 20 | Bryson, Thelma Louise Beck | Route 3, Rock Hill, SC | F | 8/15/1931 | |
| 137 | ..... | Bryson, Virgil Stanley H. | Route 3, Box 225, Rock Hill, SC | M | 1/17/1945 | Harris, Blanch-157. |
| 138 | ..... | Burns, James Vernon | Box 282, Aztec, NM | M | 9/5/1945 | Brown, Lizzie-70. |
| 139 | 70 | Burns, Lizzie Jane Brown | Box 282, Aztec, NM | F | 8/21/1927 | |
| 140 | ..... | Cabanise, Elizabeth Kay | Route 3, Box 38, Rock Hill, SC | F | 9/7/1949 | Blue, Marcel-47. |
| 141 | 47 | Cabaniss, Marcille Blue | Route 3, Box 38, Rock Hill, SC | F | 2/15/1924 | |
| 142 | ..... | Cabaniss, William Forrest, Jr | Route 3, Box 38, Rock Hill, SC | M | 8/23/1947 | Blue, Marcel-47. |
| 143 | ..... | Campbell, Edwin Lee | Route 3, Box 135, Rock Hill, SC | M | 12/24/1954 | Harris, Nola-195. |
| 144 | 195 | Campbell, Nola L. Harris | Route 3, Box 135, Rock Hill, SC | F | 5/2/1918 | |
| 145 | ..... | Caudle, Retta Fay | Route 3, Box 135, Rock Hill, SC | F | 11/3/1956 | Harris, Nola-195. |
| 146 | ..... | Canty, Alene Fern | 534 Hudson St., Rock Hill, SC | F | 5/13/1958 | Canty, Allen-80 and Canty, Ella-86. |
| 147 | 79 | Canty, Alice Elaine | 534 Hudson St., Rock Hill, SC | F | 6/29/1940 | |
| 148 | 80 | Canty, Allan | 534 Hudson St., Rock Hill, SC | M | 9/18/1911 | |
| 149 | ..... | Canty, Allie Mae | 534 Hudson St., Rock Hill, SC | F | 3/16/1948 | Canty, Allen-80 and Canty, Ella-86. |
| 150 | 81 | Canty, Alonzo George | Route 3, Box 218, Rock Hill, SC | M | 2/26/1907 | |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 151 | ..... | Canty, Alonzo George, Jr. | Route 3, Box 218, Rock Hill, SC | M | 12/5/1945 | Canty Alonso-81. |
| 152 | ..... | Canty, Alvin B. | Route 3, Rock Hill, SC | M | 2/13/1944 | Canty, Artie-82 and Canty, Henry-87. |
| 153 | ..... | Canty, Anita | Route 3, Rock Hill, SC | F | 11/17/1959 | Canty, Huey-89. |
| 154 | ..... | Canty, Anthony Scott | Route 3, Rock Hill, SC | M | 6/18/1956 | George, Thelma-147. |
| 155 | 82 | Canty, Artie Jane | Route 3, Rock Hill, SC | F | 3/21/1915 | |
| 156 | 83 | Canty, Billie | Route 3, Rock Hill, SC | M | 3/26/1916 | |
| 157 | ..... | Canty, Billie Ann | Route 3, Rock Hill, SC | F | 11/12/1945 | Canty, Billie-83 and Canty, Catherine-84. |
| 158 | ..... | Canty, Betty Corine | Route 3, Box 218, Rock Hill, SC | F | 4/22/1952 | Canty, Alonso-81. |
| 159 | ..... | Canty, Bobby D. | Route 3, Rock Hill, SC | M | 8/1/1957 | Canty, Artie-82 and Canty, Henry-87. |
| 160 | 84 | Canty, Catherine Sanders | Route 3, Rock Hill, SC | F | 2/11/1917 | |
| 161 | ..... | Canty, Cathy | Route 3, Rock Hill, SC | F | 2/20/1952 | Canty, Huey-89. |
| 162 | 85 | Canty, Cecil Ray | 534 Hudson St., Rock Hill, SC | M | 8/17/1935 | |
| 163 | ..... | Canty, Cindy | Route 3, Rock Hill, SC | F | 8/19/1953 | Canty, Huey-89. |
| 164 | ..... | Canty, Clifford Troy | Route 3, Rock Hill, SC | M | 11/28/1946 | Canty, Billie-83 and Canty, Catherine-84. |
| 165 | ..... | Canty, Dean | Route 3, Box 213–B, Rock Hill, SC | M | 11/22/1951 | Canty, Howyard-88. |
| 166 | ..... | Canty, Eddie Henderson | 534 Hudson St., Rock Hill, SC | M | 5/6/1950 | Canty, Allen-80 and Canty, Ella-86. |
| 167 | ..... | Canty, Edwin Bruce | Route 3, Box 218, Rock Hill, SC | M | 10/10/1950 | Canty, Alonso-81. |
| 168 | ..... | Canty, Elizabeth Jane | 534 Hudson St., Rock Hill, SC | F | 1/17/1952 | Canty, Allen-80 and Canty, Ella-86. |
| 169 | 86 | Canty, Ella | 534 Hudson St., Rock Hill, SC | F | 8/21/1915 | |
| 170 | ..... | Canty, Ella Rich | 534 Hudson St., Rock Hill, SC | F | 4/11/1954 | Canty, Allen-80 and Canty, Ella-86. |
| 171 | ..... | Canty, Ellen | Route 3, Box 213–B, Rock Hill, SC | F | 10/27/1957 | Canty, Howyard-88. |
| 172 | ..... | Canty, Emily Elizabeth | Route 3, Rock Hill, SC | F | 11/1/1952 | Canty, Artie-82 and Canty, Henry-87. |
| 173 | ..... | Canty, Emma Geraldine | Route 3, Rock Hill, SC | F | 2/6/1949 | Canty, Billie-83 and Canty, Cahterine-84. |
| 174 | ..... | Canty, Eric Jerome | Route 3, Box 218, Rock Hill, SC | M | 8/20/1955 | Canty, Alonso-81. |
| 175 | 87 | Canty, Henry | Route 3, Rock Hill, SC | M | 9/8/1911 | |
| 176 | 88 | Canty, Heyward Jackson | Route 3, Box 213–B, Rock Hill, SC | M | 1/15/1927 | |
| 177 | ..... | Canty, Heyward, Jr | Route 3, Box 213–B, Rock Hill, SC | M | 9/1/1947 | Canty, Howyard-88. |
| 178 | 89 | Canty, Huey | Route 3, Rock Hill, SC | M | 8/13/1933 | |
| 179 | 90 | Canty, James Henry | Route 3, Rock Hill, SC | M | 2/16/1937 | |
| 180 | ..... | Canty, Jannie | Route 3, Rock Hill, SC | F | 8/10/1954 | Canty, Huey-89. |
| 181 | ..... | Canty, Judith Patricia | Route 3, Box 218, Rock Hill, SC | F | 12/15/1947 | Canty, Alonso-81. |
| 182 | 91 | Canty, Lawrence | 534 Hudson St., Rock Hill, SC | M | 8/30/1942 | |
| 183 | ..... | Canty, Leonard T. | Route 3, Rock Hill, SC | M | 11/26/1946 | Canty, Artie-82 and Canty, Henry-87. |
| 184 | ..... | Canty, Lisa Marie | Route 3, Rock Hill, SC | F | 6/2/1958 | George, Thelma-147 |
| 185 | ..... | Canty, Lynn | Route 3, Box 213–B, Rock Hill, SC | F | 6/9/1949 | Canty, Howyard-88. |
| 186 | ..... | Canty, Marion I. | Route 3, Rock Hill, SC | M | 12/1/1948 | Canty, Artie-82 and Canty, Henry-87. |
| 187 | ..... | Canty, Reba Louise | 534 Hudson St., Rock Hill, SC | F | 3/28/1956 | Canty, Allen-80 and Canty, Ella-86. |
| 188 | ..... | Canty, Robert Kirk | Route 3, Rock Hill, SC | M | 12/21/1947 | Canty, Billie-83 and Canty, Catherine-84. |
| 189 | ..... | Canty, Roger B. | Route 3, Rock Hill, SC | M | 4/21/1954 | Canty, Artie-82 and Canty, Henry-87. |
| 190 | ..... | Canty, Ronald | Route 3, Rock Hill, SC | M | 12/21/1956 | Canty, Howyard-88. |
| 191 | ..... | Canty, Rosemary | 534 Hudson St., Rock Hill, SC | F | 1/2/1945 | Canty, Allen-80 and Canty, Ella-86. |
| 192 | 147 | Canty, Thelma George | Route 3, Rock Hill, SC | F | 1/23/1932 | |
| 193 | ..... | Canty, Teresa Diane | Roue 3, Rock Hill, SC | F | 5/12/1951 | Canty, Artie-82 and Canty, Henry-87. |
| 194 | ..... | Canty, Wallace Lee, Sr. | Route 3, Box 218, Rock Hill, SC | M | 2/16/1954 | Canty, Alonso-81. |
| 195 | 96 | Caponis, Constantine Elizabeth | 5642 110th St., Jacksonville, FL | F | 5/30/1942 | |
| 196 | 97 | Caponis, John Alvin | 5642 110th St., Jacksonville, FL | M | 2/5/1938 | |
| 197 | 98 | Caponis, Raina | 5642 110th St., Jacksonville, FL | F | 5/17/1917 | |
| 198 | ..... | Carpenter, Chris Darrel | 605 College Ave., Rock Hill, SC | M | 1/9/1959 | Died Nov. 14, 1960–Son of Carpenter, Sadie-94. |
| 199 | 94 | Carpenter, Sadie | 605 College Ave., Rock Hill, SC | F | 4/27/1936 | |
| 200 | ..... | Caudle, Edward Chris | 503 North Jones Ave., Rock Hill, SC | M | 7/18/1958 | Blue, Sylvia-54. |
| 201 | ..... | Caudle, Jill Ronea | 502 North Jones Ave., Rock Hill, SC | F | 5/24/1957 | Blue, Sylvia-54. |
| 202 | ..... | Caudle, Nichem James | 502 North Jones Ave., Rock Hill, SC | M | 8/4/1959 | Blue, Sylvia-54. |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 203 | 54 | Caudle, Sylvia Blue | 502 North Jones Ave., Rock Hill, SC | F | 4/2/1936 | |
| 204 | 181 | Cookson, Jewell Harris | 117 Leonard Dr., Cabokia, IL | F | 8/24/1929 | |
| 205 | ..... | Cookson, Ricardo Harris | 117 Leonard Dr., Cabokia, IL | M | 10/7/1952 | Harris, Jewel-181. |
| 206 | ..... | Cookson, Shirley Lynn | 117 Leonard Dr., Cabokia, IL | F | 6/4/1950 | Harris, Jewel-181. |
| 207 | 221 | Cox, Angeline Petty | Route 3, Rock Hill, SC | F | 7/31/1920 | |
| 208 | ..... | Davis, Cindy Phoebe L. | Route 3, Box 45–A, Rock Hill, SC | F | 10/24/1957 | George, Francis-132. |
| 209 | 132 | Davis, Frances L. G. H. | Route 3, Box 45–A, Rock Hill, SC | F | 9/6/1927 | |
| 210 | ..... | Davis, Freddie D. Horne | Route 3, Box 45–A, Rock Hill, SC | M | 11/9/1949 | George, Francis-132. |
| 211 | ..... | Davis, Jacqueline D. Horne | Route 3, Box 45–A, Rock Hill, SC | F | 2/6/1947 | George, Francis-132. |
| 212 | ..... | Davis, Lena May | Route 3, Box 45–A, Rock Hill, SC | F | 1/9/1956 | George, Francis-132. |
| 213 | 118 | Ferrell, Alberta Lavinia | Route 3, Box 40–B, Rock Hill, SC | F | 8/30/1929 | |
| 214 | ..... | Ferrell, Karen Denise | Route 3, Box 40–B, Rock Hill, SC | F | 4/3/1954 | George, Alberta-118. |
| 215 | ..... | Ferrell, Kevin Lamar | Route 3, Box 40–B, Rock Hill, SC | M | 9/30/1956 | George, Alberta-118. |
| 216 | ..... | Ferrell, Lorna Cecelia | Route 3, Box 40–B, Rock Hill, SC | F | 6/7/1955 | George, Alberta-118. |
| 217 | ..... | Ferrell, Marsha Francine | Route 3, Box 40–B, Rock Hill, SC | F | 2/10/1950 | George, Alberta-118. |
| 218 | 109 | Foxx, Antonio B., Sr. | 202 South York Ave., Rock Hill, SC | M | 8/21/1915. | |
| 219 | 110 | Foxx, Antonio B., Jr. | 202 South York Ave., Rock Hill, SC | M | 7/30/1940 | |
| 220 | 102 | Foxx, Charles W. | 405 South Webb St., W. Gastonia, NC. | M | 3/30/1938 | |
| 221 | ..... | Foxx, Cora Lee | 336 Ebenezer Ave., Rock Hill, SC | F | 12/5/1947 | Fox, Joe-105. |
| 222 | ..... | Foxx, Cynthia Ann | 336 Ebenezer Ave., Rock Hill, SC | F | 1/27/1955 | Fox, Joe-105. |
| 223 | 103 | Foxx, Ernest B. | 504 South Webb St, West Gastonia, NC. | M | 7/16/1917 | |
| 224 | 104 | Foxx, Jimmie Cox | 504 South Webb St., West Gastonia, NC. | M | 5/18/1937 | |
| 225 | 105 | Foxx, Joe Basil | 336 Ebenezer Ave., Rock Hill, SC | M | 4/23/1924 | |
| 226 | ..... | Foxx, Joe E. Basil | 202 South York Ave., Rock Hill, SC | M | 6/23/1944 | Fox, Tony-109. |
| 227 | ..... | Foxx, Kimberly Dinesi | 504 South Webb St., West Gastonia, NC. | F | 1/4/1959 | Fox, Jimmie-104. |
| 228 | ..... | Foxx, Lewis H. Basil | 202 South York Ave., Rock Hill, SC | M | 5/22/1946 | Fox, Tony-109. |
| 229 | 107 | Foxx, Louis Russel | 504 South Webb St., West Gastonia, NC. | M | 6/16/1941 | |
| 230 | 108 | Foxx, Mary E. | Route 4, Box 448–C, Rock Hill, SC | F | 12/24/1895 | |
| 231 | ..... | Foxx, Mary Delores | 202 South York Ave., Rock Hill, SC | F | 6/16/1951 | Fox, Tony-109. |
| 232 | ..... | Foxx, Ronald Guy | 504 South Webb St., West Gastonia, NC. | M | 12/30/1957 | Fox, Jimmie-104. |
| 233 | ..... | Foxx, Wm. C. Basil | 202 South York Ave., Rock Hill, SC | M | 10/18/1942 | Fox, Tony-109. |
| 234 | ..... | Garcia, Barbara Annette | Route 3, Rock Hill, SC | F | 6/24/1944 | Garcia, Bettie-113 and Garcia, Guy-116. |
| 235 | 111 | Garcia, Ben | Box 52, Sanford, CO | M | 12/22/1911 | |
| 236 | 112 | Garcia, Ben E. R., Jr. | Box 52, Sanford, CO | M | 8/25/1935 | |
| 237 | 113 | Garcia, Betty Juanita | Route 3, Rock Hill, SC | F | 12/13/1924 | |
| 238 | 114 | Garcia, Bonnie | 1113 Blake St., Pueblo, CO | F | 6/12/1937 | |
| 239 | 116 | Garcia, Edward Guy | Route 3, Rock Hill, SC | M | 9/15/1914 | |
| 240 | 115 | Garcia, Fletcher Calvin | Box 52, Sanford, CO | M | 5/13/1941 | |
| 241 | 117 | Garcia, Irene Beck | Box 52, Sanford, CO | F | 5/19/1918 | |
| 242 | ..... | Garcia, Velma Marlene | Route 3, Rock Hill, SC | F | 9/5/1953 | Garcia, Bettie-113 and Garcia, Guy-116. |
| 243 | 131 | Garland, Hazel Faye B. | 88 West Rutgers St., Pontiac, MI | F | 11/19/1935 | |
| 244 | 120 | George, Caroline Dinne | Route 3, Box 40–A, Rock Hill, SC | F | 3/23/1941 | |
| 245 | 121 | George, Charles Lewis | 725 North Jones Ave., Rock Hill, SC | M | 7/30/1932 | |
| 246 | 122 | George, Claude Leonard | Route 1, York, SC | M | 6/30/1933 | |
| 247 | ..... | George, Eddie Mac | 32 McLain St., York, SC | M | 4/11/1948 | George, Macaroni-142. |
| 248 | 124 | George, Elsie | Route 3, Box 39, Rock Hill, SC | F | 3/1/1914 | |
| 249 | 125 | George, Ephraim D. | Route 3, Box 48, Rock Hill, SC | M | 7/1/1902 | |
| 250 | 127 | George, Evans McClure | 1 Barrow St., Rock Hill, SC | M | 12/29/1905 | |
| 251 | 128 | George, Evans McClure (Buck), Jr. | 1119 Mcdow Dr., Rock Hill, SC | M | 1/25/1932 | |
| 252 | 129 | George, Evelyn Brown | 743 North Jones Ave., Rock Hill, SC | F | 2/7/1914 | |
| 253 | ..... | George, Fannie Lavinia | Route 1, McConnellsville , SC | F | 6/10/1956 | George, Howard-135. |
| 254 | ..... | George, Flonnie Evelyn | Route 1, McConnellsville , SC | F | 4/1/1955 | George, Howard-135. |
| 255 | 146 | George, Hiram Qually | Route 3, Rock Hill, SC | M | 2/14/1912 | |
| 256 | 177 | George, Isabel Harris | Route 3, Box 48, Rock Hill, SC | F | 2/7/1904 | |
| 257 | ..... | George, Jerry Lee | 1 Barrow St., Rock Hill, SC | M | 6/8/1953 | George, Elane-123. |
| 258 | 137 | George, Joan Carol Jean | 743 North Jones Ave., Rock Hill, SC | F | 1/13/1937 | |
| 259 | ..... | George, John Earlee | 743 North Jones Ave., Rock Hill, SC | M | 1/28/1946 | George, Marvin-145 and George, Evelyn-129. |
| 260 | 145 | George, John Marvin | 743 North Jones Ave., Rock Hill, SC | M | 8/16/1909 | |
| 261 | 139 | George, Landrum L | Route 3, Box 39, Rock Hill, SC | M | 3/31/1908 | |
| 262 | 140 | George, Lavern Randolph | 1 Barrow St., Rock Hill, SC | M | 7/9/1942 | |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 263 | 135 | George, Lawrence Howard | Route 1, McConnellsville , SC | M | 9/26/1931 | |
| 264 | ..... | George, Lewis Buntley | 725 North Jones Ave., Rock Hill, SC | M | 9/7/1959 | George, Charlie-121. |
| 265 | 144 | George, Marion Phillip | 743 North Jones Ave., Rock Hill, SC | M | 2/16/1941 | |
| 266 | 141 | George, Maroni P. | Route 3, Rock Hill, SC | M | 8/21/1884 | |
| 267 | 142 | George, Maroni Taylor | 32 McClain St., York, SC | M | 4/28/1925 | |
| 268 | ..... | George, Marsha D. | Route 1, York, SC | F | 3/17/1954 | George, Claude-122. |
| 269 | 123 | George, Mary Elane | 1 Barrow St., Rock Hill, SC | F | 4/5/1936 | |
| 270 | ..... | George, Peggy Jane | Route 1, McConnellsville , SC | F | 5/1/1960 | George, Howard-135. |
| 271 | ..... | George, Philip K. | Route 1, York, SC | M | 9/8/1955 | George, Claude-122. |
| 272 | ..... | George, Reta Sharon | Route 1, McConnellsville , SC | F | 3/31/1958 | George, Howard-135. |
| 273 | ..... | George, Rhonda K. | Route 1, York, SC | F | 8/28/1958 | George, Claude-122. |
| 274 | ..... | George, Roger Wayne | 743 North Jones Ave., Rock Hill, SC | M | 9/30/1948 | George, Marvin-145 and George, Evelyn-129. |
| 275 | ..... | George, Susan Maria | 743 North Jones Ave., Rock Hill, SC | F | 6/1/1947 | George, Marvin-145 and George, Evelyn-129. |
| 276 | ..... | George, Thomas Clark | 32 McClain St., York, SC | M | 12/14/1957 | George, Macaroni-142. |
| 277 | ..... | George, Thomas Howard | Route 1, McConnellsville , SC | M | 7/24/1953 | George, Howard-135. |
| 278 | ..... | George, Wenonah Kay | 1119 McDow Dr., Rock Hill, SC | F | 11/27/1953 | George, Evans-128. |
| 279 | 148 | Gordon, Eliza | Route 3, Rock Hill, SC | F | 4/30/1902 | Died Nov. 15, 1960. |
| 280 | ..... | Graves, Cynthia Linn | 2011 Cherry Rd., Rock Hill, SC | F | 5/19/1955 | Blue, Patricia-50. |
| 281 | ..... | Green, Hal E | 5136 Ponderosa Dr., Fayetteville, NC. | M | 10/27/1955 | George, Joyce-138. |
| 282 | 138 | Green, Joyce George | 5136 Ponderosa Dr., Fayetteville, NC. | F | 1/27/1937 | |
| 283 | ..... | Green, Shelly Maxine | 5136 Ponderosa Dr., Fayetteville, NC. | F | 3/16/1957 | George, Joyce-138. |
| 284 | ..... | Gunn, David Howard, Jr. | Box 51, Rock Hill, SC | M | 1/23/1956 | Canty, Lou Ella-92. |
| 285 | ..... | Gunn, Floyd Lee | Box 51, Rock Hill, SC | M | 8/21/1958 | Canty, Nellie-93. |
| 286 | ..... | Gunn, Joann | Box 51, Rock Hill, SC | F | 4/23/1955 | Canty, Nellie-93. |
| 287 | 92 | Gunn, Lou Ella Jane Canty | Box 51, Rock Hill, SC | F | 2/17/1941 | |
| 288 | ..... | Gunn, Mary Faye | Box 51, Rock Hill, SC | F | 11/26/1953 | Canty, Nellie-93. |
| 289 | 93 | Gunn, Nellie Fay Canty | Box 51, Rock Hill, SC | F | 2/23/1939 | |
| 290 | ..... | Gunn, Patricia Lucille | Box 51, Rock Hill, SC | F | 4/24/1960 | Canty, Nellie-93. |
| 291 | ..... | Gunn, Wanda Diane | Box 51, Rock Hill, SC | F | 12/31/1956 | Canty, Nellie-93. |
| 292 | 50 | Hamm, Patsy Blue Graves | 2011 Cherry Rd., Rock Hill, SC | F | 6/5/1937 | |
| 293 | ..... | Hamm, Teresa Mary | 2011 Cherry Rd., Rock Hill, SC | F | 8/12/1959 | Blue, Patricia-50. |
| 294 | ..... | Hammond, Bobby Ray | Route 3, Box 220, Rock Hill, SC | M | 7/9/1957 | Thomas, Nora Lee-273. |
| 295 | ..... | Hammond, Gerald James, Jr. | Route 3, Box 220, Rock Hill, SC | M | 12/20/1953 | Thomas, Nora Lee-273. |
| 296 | 273 | Hammond, Nora Lee Thomas | Route 3, Box 220, Rock Hill, SC | F | 10/12/1930 | |
| 297 | ..... | Hammond, Patricia Ann | Route 3, Box 220, Rock Hill, SC | F | 3/26/1956 | Thomas, Nora Lee-273. |
| 298 | ..... | Hammond, Shirley Ruth | Route 3, Box 220, Rock Hill, SC | F | 11/6/1958 | Thomas, Nora Lee-273. |
| 299 | ..... | Harris, Alfred Kenneth | Route 3, Box 216, Rock Hill, SC | M | 2/27/1948 | Brown, Peggie Thatcher-74. |
| 300 | ..... | Harris, Alfred Neal | Route 3, Box 216, Rock Hill, SC | M | 5/6/1920 | Harris, Nancy Cornella (with 83d Infantry Merrils Marauders)-194. |
| 301 | ..... | Harris, Alice Loretta | Route 4, Dixie River Rd., Charlotte, NC. | F | 10/20/1946 | Harris, Wilford-211 and Thomas, Bulah-271. |
| 302 | ..... | Harris, Barry Dean | Box 47, Route 3, Rock Hill, SC | M | 10/25/1950 | Harris, Floyd-168. |
| 303 | ..... | Harris, Barry Phillip | Route 4, Dixie River Rd., Charlotte, NC. | M | 9/2/1949 | Harris, Wilford-211 and Thomas, Bulah-271. |
| 304 | 182 | Harris, Benjamin Joseph | Route 3, Box 67–C, Rock Hill, SC | M | 4/15/1906 | |
| 305 | ..... | Harris, Bernice | Route 3, Box 225, Rock Hill, SC | F | 9/16/1957 | Harris, Wesley-209 and Harris, Reola-200. |
| 306 | 155 | Harris, Bertha | Route 3, Rock Hill, SC | F | 6/29/1913 | |
| 307 | 271 | Harris, Beulah Thomas | Route 4, Dixie River Rd., Charlotte, NC. | F | 2/10/1929 | |
| 308 | ..... | Harris, Bruce Edward | Route 3, Box 205, Rock Hill, SC | M | 1/30/1959 | Harris, Morgan-193. |
| 309 | ..... | Harris, Calvin Wayne | Route 3, Box 205, Rock Hill, SC | M | 6/15/1957 | Harris, Morgan-193. |
| 310 | 158 | Harris, Carl E. | Route 3, Box 135, Rock Hill, SC | M | 2/23/1937 | |
| 311 | ..... | Harris, Catherine Marie | 337 Ebenezer Ave., Rock Hill, SC | F | 11/17/1947 | Harris, Leona-185. |
| 312 | ..... | Harris, Cheryl Ann | Route 3, Rock Hill, SC | F | 6/27/1960 | Harris, Dewey-165. |
| 313 | ..... | Harris, Cheryl Ann | 2205 Pinehurst, Columbia, SC | F | 12/15/1959 | Harris, Jeff-178. |
| 314 | ..... | Harris, Cheryl Darlene | Route 3, Box 67, Rock Hill, SC | F | 5/11/1958 | Harris, Melvin-190. |
| 315 | 159 | Harris, Chester Gilbert | 2417 Lee St., Columbia, SC | M | 8/15/1909 | |
| 316 | 161 | Harris, Cleatus O'Neal | Route 3, Box 225, Rock Hill, SC | M | 7/13/1935 | |
| 317 | ..... | Harris, Constance Veronica | Route 3, Rock Hill, SC | F | 1/4/1951 | Harris, David-162. |
| 318 | ..... | Harris, Cora | Route 3, Box 225, Rock Hill, SC | F | 10/11/1954 | Harris, Wesley-209 and Harris, Reola-200. |
| 319 | ..... | Harris, Curtis Douglas | Box 47, Route 3, Rock Hill, SC | M | 5/18/1956 | Harris, Floyd-168. |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 320 | ..... | Harris, Dale Wallace | Route 3, Rock Hill, SC | M | 1/19/1955 | Harris, Dewey-165. |
| 321 | ..... | Harris, Darrel Kent | Route 3, Box 216, Rock Hill, SC | M | 4/8/1958 | Brown, Peggie Thatcher-74. |
| 322 | 162 | Harris, David Adams | Route 3, York, SC | M | 7/12/1927 | |
| 323 | ..... | Harris, David Loran | Route 3, Rock Hill, SC | M | 10/13/1958 | Harris, Loran (Leona) (deceased) (Born in Washington, D.C.)-185. |
| 324 | 163 | Harris, David Spencer | 14 Paris St., Rock Hill, SC | M | 6/16/1916 | |
| 325 | ..... | Harris, Deborah Ann | Route 3, Box 205, Rock Hill, SC | F | 5/1/1960 | Harris, Morgan-193. |
| 326 | ..... | Harris, Deborah Mae | Route 3, Box 135, Rock Hill, SC | F | 10/24/1948 | Harris, Nola-195 and Harris, Raymond (deceased) -199. |
| 327 | ..... | Harris, Della Eleanor | Route 3, Box 135, Rock Hill, SC | F | 1/1/1944 | Harris, Nola-195 and Harris, Raymond-199. |
| 328 | 164 | Harris, Dennis | Route 3, York, SC | M | 8/8/1905 | |
| 329 | ..... | Harris, Dessa | Route 3, Rock Hill, SC | F | 11/14/1948 | Harris, Wesley-209 and Harris, Reola-200. |
| 330 | 165 | Harris, Dewey | Route 3, Rock Hill, SC | M | 2/21/1936 | |
| 331 | ..... | Harris, Donald Wilford | Route 4, Dixie River Rd., Charlotte, NC. | M | 12/19/1950 | Harris, Wilford-211 and Thomas, Bulah-271. |
| 332 | ..... | Harris, Doris Kay | Route 3, Box 216, Rock Hill, SC | F | 8/26/1946 | Brown, Peggie Thatcher-74. |
| 333 | ..... | Harris, Ellen Deloria | Box 47, Route 3, Rock Hill, SC | F | 2/15/1952 | Harris, Floyd-168. |
| 334 | ..... | Harris, William, Jr | Box 47, Route 3, Rock Hill, SC | M | 10/5/1953 | Harris, Floyd-168. |
| 335 | 166 | Harris, Floyd William | Route 3, Box 47, Rock Hill, SC | M | 2/16/1928 | |
| 336 | 169 | Harris, Furman George | Route 3, Rock Hill, SC | M | 1/7/1913 | |
| 337 | ..... | Harris, Garfield Crawford | Route 3, Box 225, Rock Hill, SC | M | 3/8/1914 | Harris, Artemis-152 and Harris, Theodore (army April 1941 to September 1945)-206, 1945. |
| 338 | ..... | Harris, Garland | Route 3, Rock Hill, SC | M | 4/30/1950 | Harris, Wesley-209 and Harris, Reola-200. |
| 339 | 170 | Harris, Georgia H | Route 3, Box 47, Rock Hill, SC | F | 7/29/1905 | |
| 340 | 171 | Harris, Gilbert Devaine | 2417 Lee St., Columbia, SC | M | 9/26/1941 | Harris, Chester-159. |
| 341 | 173 | Harris, Grady | Route 3, Box 135, Rock Hill, SC | M | 12/25/1939 | |
| 342 | 174 | Harris, Henry A. | Route 3, Box 203, Rock Hill, SC | M | 2/8/1994 | |
| 343 | ..... | Harris, Homer Vernon | Route 3, Rock Hill, SC | M | 6/27/1947 | Harris, Bertha-155 and Harris, Furman-169. |
| 344 | 176 | Harris, Ida | Route 3, Box 67–B, Rock Hill, SC | F | 4/17/1904 | |
| 345 | ..... | Harris, James Wade | 2205 Pinehurst Rd., Columbia, SC | M | 11/13/1956 | Harris, Jeff-178. |
| 346 | ..... | Harris, James Loran, Jr | 337 Ebenezer Ave., Rock Hill, SC | M | 3/30/1946 | Harris, Lorraine-186. |
| 347 | 178 | Harris, Jefferson W.C | Co. D. 3d Bn., Fort Jackson, SC | M | 9/23/1936 | |
| 348 | 180 | Harris, Jesse | Bldg. 116B, Gist St., Columbia, SC | M | 4/25/1899 | |
| 349 | 183 | Harris, Joseph W | Route 3, Box 67–C, Rock Hill, SC | M | 8/15/1931 | |
| 350 | ..... | Harris, Karen Angela | Route 3, Rock Hill, SC | F | 7/3/1958 | Harris, Lorraine-186. |
| 351 | ..... | Harris, Lester | Route 3, Box 225, Rock Hill, SC | M | 6/9/1953 | Harris, Wesley-209 and Harris, Reola-200. |
| 352 | 186 | Harris, Lorraine (Eleanor L.) | Route 3, Rock Hill, SC | F | 8/11/1938 | |
| 353 | 193 | Harris, Luther Morgan | Route 3, Box 205, Rock Hill, SC | M | 8/8/1933 | |
| 354 | ..... | Harris, Lyda | Route 3, Box 225, Rock Hill, SC | F | 3/29/1951 | Harris, Wesley-209 and Harris, Reola-200. |
| 355 | ..... | Davis, Lynda Annette | Route 3, York, SC | F | 4/22/1946 | Harris, David-162 and Plyler, Elisabeth-222. |
| 356 | ..... | Harris, Lynette | Route 3, Rock Hill, SC | F | 1/1/1945 | Harris, Wesley-209 and Harris, Reola-200. |
| 357 | 188 | Harris, Martin Raymond | Route 3, Box 135, Rock Hill, SC | M | 9/30/1941 | Harris, Nola-195 and Harris, Raymond-199. |
| 358 | 189 | Harris, Mary B. | Route 3, Box 67–B, Rock Hill, SC | F | 5/23/1915 | |
| 359 | ..... | Harris, Mary Joe Ann 2205 | Pinehurst Rd., Columbia, SC | F | 10/29/1957 | Harris, Jeff-178. |
| 360 | 190 | Harris, Melvin | Route 3, Box 67–B, Rock Hill, SC | M | 9/11/1924 | |
| 361 | 191 | Harris, Minnie Sanders | 14 Paris St., Rock Hill, SC | F | 12/23/1909 | |
| 362 | 192 | Harris, Mitchell Oliver | Route 3, Rock Hill, SC | M | 2/1/1943 | |
| 363 | ..... | Harris, Michael Wayne | 337 Ebenezer Ave., Rock Hill, SC | M | 3/11/1949 | Harris, Leona-185. |
| 364 | 194 | Harris, Nancy Cora | Route 3, Rock Hill, SC | F | 10/17/1899 | |
| 365 | ..... | Harris, Neal Kelly | Route 3, Box 216, Rock Hill, SC | M | 3/21/1952 | Brown, Peggie Thatcher-74. |
| 366 | ..... | Harris, Patricia Charlene | Route 3, Rock Hill, SC | F | 3/1/1954 | Harris, David-162. |
| 367 | ..... | Harris, Paul Kenneth, Jr. | Route 3, Rock Hill, SC | M | 11/22/1959 | Harris, Paul-196. |
| 368 | *96 | Harris, Paul Kenneth, Sr. | Route 3, Rock Hill, SC | M | 9/7/1936 | In Navy, Stationed San Diego |
| 369 | ..... | Harris, Peggy Ann | Route 3, York, SC | F | 7/23/1951 | Harris, David-162. |
| 370 | 74 | Harris, Peggy Elizabeth T. | Route 3, Box 216, Rock Hill, SC | F | 8/2/1927 | |
| 371 | 200 | Harris, Reola | Route 3, Rock Hill, SC | F | 10/12/1921 | |
| 372 | 201 | Harris, Richard Jackson | Route 3, Rock Hill, SC | M | 2/13/1898 | |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 373 | ..... | Harris, Roger | Route 3, Rock Hill, SC | M | 7/8/1943 | Harris, Wesley-209 and Harris, Reola-200. |
| 374 | ..... | Harris, Sharon Gwen | Route 3, Rock Hill, SC | F | 9/7/1944 | Harris, Bertha-155 and Harris, Furman-169. |
| 375 | 205 | Harris, Sylvia Margaret | 2417 Lee St., Columbia, SC | F | 4/13/1939 | |
| 376 | 206 | Harris, Theodore | Route 3, Rock Hill, SC | M | 3/27/1893 | |
| 377 | ..... | Harris, Theresa Earlene | Route 4, Dixie River Rd., Charlotte, NC. | F | 1/14/1948 | Harris, Wilford-211 and Thomas, Bulah-271. |
| 378 | 209 | Harris, Theodore Wesley | Route 3, Rock Hill, SC | M | 8/27/1921 | |
| 379 | ..... | Harris, Thomas Edward | Route 3, Rock Hill, SC | M | 5/19/1960 | Harris, Lorraine-186. |
| 380 | ..... | Harris, Victor | Route 3, Box 225, Rock Hill, SC | M | 12/5/1958 | Harris, Wesley-209 and Harris, Reola-200. |
| 381 | ..... | Harris, Victoria Yvonne | Route 3, Box 216, Rock Hill, SC | F | 4/2/1950 | Brown, Peggie Thatcher-74. |
| 382 | ..... | Harris, Walter, Sr | Route 3, Rock Hill, SC | M | 12/6/1946 | Harris, Wesley-209 and Harris, Reola-200. |
| 383 | ..... | Harris, Wanda Jean | Route 3, Box 67, Rock Hill, SC | F | 7/21/1959 | Harris, Melvin-190. |
| 384 | ..... | Harris, Wendel Loran | Route 3, York, SC | M | 3/7/1955 | Harris, Leona-185. |
| 385 | 210 | Harris, Wilburn | Route 3, Box 67–B, Rock Hill, SC | M | 6/21/1922 | |
| 386 | 211 | Harris, Wilford P | Route 4, Dixie River Rd., Charlotte, NC. | M | 2/7/1924 | |
| 387 | ..... | Harris, Willard Leon | Route 3, Box 135, Rock Hill, SC | M | 9/16/1946 | Harris, Nola-195 and Harris, Raymond-199. |
| 388 | 166 | Harris, William Douglas | Route 3, Box 47, Rock Hill, SC | M | 12/8/1905 | |
| 389 | 213 | Harris, Woodrow | 14 Paris St., Rock Hill, SC | M | 8/3/1939 | |
| 390 | ..... | Harris, Yvonne | Route 3, York, SC | F | 7/15/1957 | Harris, Leona-185. |
| 391 | ..... | Honeycutt, Earl H., Jr | Route 3, Rock Hill, SC | M | 5/18/1955 | Sanders, Roberta-259. |
| 392 | ..... | Honeycutt, Louise Renee | Route 3, Rock Hill, SC | F | 11/24/1957 | Sanders, Roberta-259. |
| 393 | 259 | Honeycutt, Roberta Sanders | Route 3, Rock Hill, SC | F | 1/19/1932 | |
| 394 | ..... | Honeycutt, Troy T | Route 3, Rock Hill, SC | M | 6/10/1956 | Sanders, Roberta-259. |
| 395 | 246 | Howard, Colleen Sanders | Route 3, Rock Hill, SC | F | 6/5/1934 | |
| 396 | ..... | Howard, Deborah Mae | Route 3, Rock Hill, SC | F | 12/17/1958 | Sanders, Colleen-246. |
| 397 | ..... | Howard, Frances R | Route 3, Rock Hill, SC | F | 12/14/1950 | Sanders, Colleen-246. |
| 398 | ..... | Howard, James Moore, Jr | Route 3, Rock Hill, SC | M | 10/7/1956 | Sanders, Colleen-246. |
| 399 | ..... | Howard, Lillian | Route 3, Rock Hill, SC | F | 7/14/1955 | Sanders, Colleen-246. |
| 400 | ..... | Howard, Susan Jean | Route 3, Rock Hill, SC | F | 11/8/1952 | Sanders, Colleen-246. |
| 401 | ..... | Howard, Tom William | Route 3, Rock Hill, SC | M | 11/5/1957 | Sanders, Colleen-246. |
| 402 | ..... | Hunter, Bessie Valoy | 469 North Main St., Salt Lake City, UT. | F | 1/1/1944 | Blue, Lillie-45. |
| 403 | 45 | Hunter, Lillie Viola Blue | 469 North Main St., Salt Lake City, UT. | F | 9/10/1918 | |
| 404 | ..... | Hunter, Julius Calvin | 469 North Main St., Salt Lake City, UT. | M | 11/13/1947 | Blue, Lillie-45. |
| 405 | 214 | Johnson, Hadden Delano | Route 3, Box 219, Rock Hill, SC | M | 2/17/1943 | |
| 406 | 215 | Johnson, Martha H | Route 3, Box 219, Rock Hill, SC | F | 1/14/1902 | |
| 407 | 67 | Keesee, Alice Grace Brown | Parrish Tr Pk, N. Jones, Rock Hill, SC. | F | 8/12/1939 | |
| 408 | ..... | Keesee, Robert Lewis | Parrish Tr Pk, N. Jones, Rock Hill, SC. | M | 11/4/1959 | Brown, Grace Alice-67. |
| 409 | 72 | Kimbrell, Nettie Brown | 127 Hill St., Pineville, NC | F | 2/21/1937 | |
| 410 | ..... | Kimbrell, Joyce Ann | 127 Hill St., Pineville, NC | F | 1/24/1954 | Brown, Nettie-72. |
| 411 | ..... | Kimbrell, Wanda Kay | 127 Hill St., Pineville, NC | F | 1/11/1956 | Brown, Nettie-72. |
| 412 | ..... | Kimbrell, Ronnie Lee | 127 Hill St., Pineville, NC | M | 10/14/1957 | Brown, Nettie-72. |
| 413 | ..... | Kimbrell, Susan Darlene | 127 Hill St., Pineville, NC | F | 4/27/1959 | Brown, Nettie-72. |
| 414 | 294 | Love, Sylvia Wright | 1021 G. Washington Pky., Portsmouth, VA. | F | 9/10/1937 | |
| 415 | 253 | Mackey, Nellie Leona Sanders | Route 3, Box 136, Rock Hill, SC | F | 7/21/1936 | |
| 416 | ..... | Mackey, Leone Sherrill | Route 3, Box 136, Rock Hill, SC | F | 4/9/1959 | Sanders, Leona-253. |
| 417 | ..... | Mackey, Wendell David | Route 3, Box 136, Rock Hill, SC | M | 2/20/1954 | Sanders, Leona-253. |
| 418 | 247 | Manors, Clara Lee Sanders | Route 3, Box 224, Rock Hill, SC | F | 8/3/1941 | |
| 419 | ..... | Martin, Darnell | Route, St. Andrews Ter., Columbia, SC. | F | 7/12/1951 | Robbins, Viola-234. |
| 420 | ..... | Martin, I. Jane | Route, St. Andrews Ter., Columbia, SC. | F | 6/15/1948 | Robbins, Viola-234. |
| 421 | ..... | Martin, Jackie | Route, St. Andrews Ter., Columbia, SC. | M | 10/1/1946 | Robbins, Viola-234. |
| 422 | ..... | Martin, Malcom | Route, St. Andrews Ter., Columbia, SC. | M | 10/23/1944 | Robbins, Viola-234. |
| 423 | 218 | Mcghee, Lucille Freddie | Route 4, Box 44, Rock Hill, SC | F | 11/13/1914 | |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 424 | ..... | Medlin, Charles Robert | 575 North First, West Salt Lake City, UT. | M | 9/8/1947 | Medlin, Margarett-216. |
| 425 | ..... | Medlin, Charlotte Ann Harris | Route 4, Box 22, Rock Hill, SC | F | 6/13/1944 | Harris, Pearly-197. |
| 426 | ..... | Medlin, Nona Jane | 575 North First, West Salt Lake City, UT. | F | 2/25/1946 | Medlin, Margarett-216. |
| 427 | 217 | Medlin, William Lamont | Route 4, Box 44, Rock Hill, SC | M | 10/1/1940 | |
| 428 | 229 | Miller, Ester Robbins | Route 3, Box 56, Rock Hill, SC | F | 7/7/1919 | |
| 429 | ..... | Miller, Victoria Elizabeth | Route 3, Box 56, Rock Hill, SC | F | 2/24/1951 | Robbins, Ester-229. |
| 430 | 160 | Petty, Christine | Route 2, Inman, SC | F | 9/3/1930 | |
| 431 | ..... | Petty, Jack Alton | Route 3, Rock Hill, SC | M | 12/31/1955 | Petty, John Wayne-220. |
| 432 | 220 | Petty, John Wayne | Route 3, Rock Hill, SC | M | 8/3/1939 | |
| 433 | ..... | Petty, Johnnie William | Route 3, Rock Hill, SC | M | 12/31/1955 | Petty, John Wayne-220. |
| 434 | ..... | Petty, Luther Thomas | Route 2, Inman, SC | M | 6/1/1954 | Harris, Christine-160. |
| 435 | ..... | Petty, Patricia Ann | Route 2, Inman, SC | F | 9/26/1949 | Harris, Christine-160. |
| 436 | ..... | Petty, Paula Delores | Route 3, Rock Hill, SC | F | 2/18/1959 | Petty, John Wayne-220. |
| 437 | ..... | Petty, Ronald Vance | Route 3, Rock Hill, SC | M | 12/6/1957 | Petty, John Wayne-220. |
| 438 | ..... | Perry, Wanda Kay | Route 2, Inman, SC | F | 4/5/1952 | Harris, Christine-160. |
| 439 | ..... | Plyler, Arthur Terrance | APO 39, New York, NY | M | 8/10/1954 | Plyler, Olin Flow, Jr. (U.S. Army-Japan)-226. |
| 440 | ..... | Plyler, Cynthia Arnette | 335 Lyle St., Rock Hill, SC | F | 7/11/1959 | Plyler, Leonard-224. |
| 441 | ..... | Plyler, Donald Olin | APO 39, New York, NY | M | 8/10/1959 | Plyler, Olin Flow, Jr. (U.S. Army-Japan)-226. |
| 442 | 223 | Plyler, Hubert Gerald Fewell | APO 39, New York, NY | M | 2/15/1937. | |
| 443 | 224 | Plyler, Leonard | 335 Lyle St., Rock Hill, SC | M | 11/2/1934 | |
| 444 | ..... | Plyler, Michael Wayne | 335 Lyle St., Rock Hill, SC | M | 8/13/1954 | Plyler, Leonard-224. |
| 445 | ..... | Plyler, Norman Lynn | 335 Lyle St., Rock Hill, SC | M | 9/28/1955 | Plyler, Leonard-224. |
| 446 | 226 | Plyler, Olin Flow, Jr | Co. A, 1st Cal., APO 39, New York, NY. | M | 4/18/1932 | |
| 447 | ..... | Potts, Alton Amos | Route 3, Box 202, Rock Hill, SC | M | 7/8/1958 | Sanders, Renda-258. |
| 448 | ..... | Potts, Calvin Lee | Route 3, Box 202, Rock Hill, SC | M | 5/3/1955 | Sanders, Renda-258. |
| 449 | ..... | Potts, John Hugh | Route 3, Box 202, Rock Hill, SC | M | 9/6/1952 | Sanders, Renda-258. |
| 450 | ..... | Potts, Myrtle Lucille | Route 3, Box 202, Rock Hill, SC | F | 3/10/1954 | Sanders, Renda-258. |
| 451 | ..... | Potts, Naomi Rith | Route 3, Box 202, Rock Hill, SC | F | 8/5/1959 | Sanders, Renda-258. |
| 452 | ..... | Potts, Olivia Grace | Route 3, Box 202, Rock Hill, SC | F | 5/3/1950 | Sanders, Renda-258. |
| 453 | 258 | Potts, Renda Sanders | Route 3, Box 202, Rock Hill, SC | F | 7/4/1926 | |
| 454 | ..... | Robbins, Barney C | Route 3, Box 56, Rock Hill, SC | M | 6/16/1950 | Robbins, Earl-227 and Robbins, Viola Harris-235. |
| 455 | ..... | Robbins, Bradley M | Route 3, Box 56, Rock Hill, SC | M | 2/26/1955 | Robbins, Earl-227 and Robbins, Viola Harris-235. |
| 456 | 227 | Robbins, Earl | Route 3, Box 56, Rock Hill, SC | M | 4/14/1921 | |
| 457 | 228 | Robbins, Effie Elizabeth | Route 3, Box 56, Rock Hill, SC | F | 5/16/1930 | |
| 458 | 99 | Robbins, Flint | Route 3, Box 56, Rock Hill, SC | M | 4/26/1924 | |
| 459 | ..... | Robbins, Frank E | Route 3, Box 56, Rock Hill, SC | M | 7/11/1953 | Robbins, Earl-227 and Robbins, Viola Harris-235. |
| 460 | 231 | Robbins, Jimmie | Route 1, Chesney, SC | M | 4/4/1922 | |
| 461 | ..... | Robbins, Margaret | Route 3, Box 56, Rock Hill, SC | F | 1/4/1957 | Robbins, Earl-227 and Robbins, Viola Harris-235. |
| 462 | 232 | Robbins, Mabel Harris | Route 1, Chesney, SC | F | 4/17/1895 | |
| 463 | 235 | Robbins, Viola Harris | Route 3, Box 56, Rock Hill, SC | F | 10/12/1921 | |
| 464 | 236 | Robbins, William, Jr. | Route 1, Chesney, SC | M | 7/1/1928 | |
| 465 | ..... | Robinson, Aubrey Dale | Route 3, Box 46, Rock Hill, SC | M | 11/17/1954 | Plyler, Elisabeth-222. |
| 466 | 222 | Robinson, Elizabeth Plyler | Route 3, Box 46, Rock Hill, SC | F | 11/2/1928 | |
| 467 | ..... | Robinson, Marvin Ted | Route 3, Box 46, Rock Hill, SC | M | 1/17/1953 | Plyler, Elisabeth-222. |
| 468 | 212 | Robinson, Winona Harris | Route 3, Box 46, Rock Hill, SC | F | 1/20/1927 | |
| 469 | 237 | Rogers, Ernest D. | Route 3, Box 247, Rock Hill, SC | M | 8/7/1942 | |
| 470 | ..... | Rogers, Fred Kelly | Route 3, Box 247, Rock Hill, SC | M | 7/20/1946 | Rogers, Mary Jane-239. |
| 471 | 238 | Rogers, Jimmie | Route 3, Box 247, Rock Hill, SC | M | 6/21/1941 | |
| 472 | ..... | Rogers, John Alvin | Route 3, Box 247, Rock Hill, SC | M | 4/22/1948 | Rogers, Mary Jane-239. |
| 473 | ..... | Rogers, Larry Dwayne | Route 3, Box 247, Rock Hill, SC | M | 6/27/1949 | Rogers, Mary Jane-239. |
| 474 | ..... | Rogers, Mary Beth | Route 3, Box 247, Rock Hill, SC | F | 4/5/1953 | Rogers, Mary Jane-239. |
| 475 | 239 | Rogers, Mary Jane | Route 3, Box 247, Rock Hill, SC | F | 2/6/1921 | |
| 476 | ..... | Rogers, Ronnie | Route 3, Box 247, Rock Hill, SC | M | 12/22/1944 | Rogers, Mary Jane-239. |
| 477 | ..... | Rogers, Steven Olin | Route 3, Box 247, Rock Hill, SC | M | 3/21/1956 | Rogers, Mary Jane-239. |
| 478 | ..... | Rogers, Timothy Deen | Route 3, Box 247, Rock Hill, SC | M | 2/20/1955 | Rogers, Mary Jane-239. |
| 479 | ..... | Rogers, Wanda Sue | Route 3, Box 247, Rock Hill, SC | F | 5/8/1950 | Rogers, Mary Jane-239. |
| 480 | 240 | Sanders, Ada I. | Route 3, Box 136, Rock Hill, SC | F | 3/25/1931 | |
| 481 | 241 | Sanders, Albert H., Sr. | Route 3, Box 136, Rock Hill, SC | M | 10/10/1904 | |
| 482 | 242 | Sanders, Albert H., Jr | Route 3, Box 136, Rock Hill, SC | M | 10/28/1926 | |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 483 | ..... | Sanders, Ann Garnet | Route 3, Box 136, Rock Hill, SC | F | 2/8/1949 | Sanders, Albert-241 and Sanders, Vera-262. |
| 484 | 256 | Sanders, Anna Mahovia | Route 3, Box 228, Rock Hill, SC | F | 9/15/1937 | |
| 485 | 243 | Sanders, Arzada | Route 3, Box 228, Rock Hill, SC | F | 7/3/1896 | |
| 486 | ..... | Sanders, Calvin Ray | 741 Level St., Rock Hill, SC | M | 5/23/1951 | Sanders, Jack-250. |
| 487 | ..... | Sanders, Caroleen | Route 3, Box 137, Rock Hill, SC | F | 7/20/1944 | Sanders, Willie-268 and Sanders, Verdia-263. |
| 488 | ..... | Sanders, Cecil Glenn | 741 Level St., Rock Hill, SC | M | 4/14/1956 | Sanders, Jack-250. |
| 489 | ..... | Sanders, Charles Richard | Route 3, Rock Hill, SC | M | 2/24/1952 | Sanders, Thomas-261. |
| 490 | ..... | Sanders, Clark A. | Route 3, Rock Hill, SC | M | 2/21/1947 | Sanders, Willie-268 and Sanders, Verdia-263. |
| 491 | ..... | Sanders, Donald Wayne | 820 North Jones Ave., Rock Hill, SC | M | 2/19/1953 | Sanders, William-267. |
| 492 | ..... | Sanders, Doris Jean | 741 Level St., Rock Hill, SC | F | 4/11/1954 | Sanders, Jack-250. |
| 493 | ..... | Sanders, Dot Mirian | Route 3, Box 224, Rock Hill, SC | F | 11/20/1944 | Sanders, Kirk-251 and Sanders, Sarah Lee-260. |
| 494 | 248 | Sanders, Early Fred | 575 North First St., West Salt Lake City, UT. | M | 4/9/1926 | |
| 495 | ..... | Sanders, Fred Eugene | 741 Level St., Rock Hill, SC | M | 10/30/1958 | Sanders, Jack-250. |
| 496 | ..... | Sanders, Freda Kaye | 575 North First St., West Salt Lake City, UT. | F | 3/15/1952 | Medlin, Margarett-216 and Sanders, Fred-248. |
| 497 | 172 | Sanders, Freddie Grace | 14 Paris St., Rock Hill, SC | F | 9/5/1933 | |
| 498 | ..... | Sanders, Gail | 14 Paris St., Rock Hill, SC | F | 11/10/1950 | Harris, Perry-198. |
| 499 | 249 | Sanders, John Idle | Route 3, Box 228, Rock Hill, SC | M | 10/12/1892 | |
| 500 | 250 | Sanders, John Jack | 741 Level St., Rock Hill, SC | M | 3/10/1922 | |
| 501 | ..... | Sanders, Jack, Jr. | 741 Level St., Rock Hill, SC | M | 7/12/1948 | Sanders, Jack-250. |
| 502 | ..... | Sanders, Marcus Emory | 304 Almond St., Salt Lake City, UT | M | 4/13/1960 | Sanders, William-267. |
| 503 | 216 | Sanders, Margaret Blue Medlin | 575 North First St., West Salt Lake City, UT. | F | 12/20/1924 | |
| 504 | ..... | Sanders, Marilyn Deloi | Route 3, Box 136, Rock Hill, SC | F | 3/21/1951 | Sanders, Albert-241 and Sanders, Vera-262. |
| 505 | ..... | Sanders, Norma Jean | Route 3, Rock Hill, SC | F | 3/31/1947 | Sanders, Thomas-261. |
| 506 | 198 | Sanders, Perry | 14 Paris St., Rock Hill, SC | M | 8/3/1929 | |
| 507 | ..... | Sanders, Randall Dean | Route 3, Box 136, Rock Hill, SC | M | 10/28/1946 | Sanders, Albert-241 and Sanders, Vera-262. |
| 508 | ..... | Sanders, Randolph Edward | Route 3, Rock Hill, SC | M | 10/31/1950 | Sanders, Thomas-261. |
| 509 | ..... | Sanders, Ronald William | 820 North Jones Ave., Rock Hill, SC | M | 12/23/1950 | Sanders, William-267. |
| 510 | ..... | Sanders, Ruthie Mae | Route 3, Box 137, Rock Hill, SC | F | 3/23/1949 | Sanders, Willie-268 and Sanders, Verdia-263. |
| 511 | ..... | Sanders, Sandra D. | Route 3, Box 137, Rock Hill, SC | F | 11/21/1951 | Sanders, Willie-268 and Sanders, Verdia-263. |
| 512 | ..... | Sanders, Sonji Nell | 575 North First St., West Salt Lake City, UT. | F | 7/28/1953 | Medlin, Margarett-216 and Sanders, Fred-248. |
| 513 | ..... | Sanders, Susan Juanita | Route 3, Box 136, Rock Hill, SC | F | 12/3/1943 | Sanders, Albert-241 and Sanders, Vera-262. |
| 514 | ..... | Sanders, Thomas Cornelius | Route 3, Rock Hill, SC | M | 3/11/1946 | Sanders, Thomas-261. |
| 515 | 261 | Sanders, Thomas McCloud | Route 3, Rock Hill, SC | M | 1/27/1924 | |
| 516 | 207 | Sanders, Velda Harris | 14 Paris St., Rock Hill, SC | F | 10/1/1936 | |
| 517 | 262 | Sanders, Vera L. Blue | Route 3, Rock Hill, SC | F | 8/21/1909 | |
| 518 | 263 | Sanders, Verdia H. | Route 3, Box 137, Rock Hill, SC | F | 6/6/1902 | |
| 519 | 267 | Sanders, William Emory | 304 Almond St., Salt Lake City, UT | M | 10/7/1928 | |
| 520 | 268 | Sanders, Willie A. | Route 3, Box 137, Rock Hill, SC | M | 2/20/1907 | |
| 521 | ..... | Sanders, William Louie | Route 3, Box 137, Rock Hill, SC | M | 7/14/1937 | Sanders, Willie-268 and Sanders, Verdia-263. |
| 522 | ..... | Sanders, Willie Mack | Route 3, Rock Hill, SC | M | 4/11/1948 | Sanders, Thomas-261. |
| 523 | 133 | Schutte, Geneva Geraldine | 1759 Woodbury Rd., Pasadena, CA | F | 12/25/1934 | |
| 524 | 245 | Sigman, Brenda Corneal | Route 3, Box 136, Rock Hill, SC | F | 4/26/1941 | |
| 525 | ..... | Simmers, Daniel Taylor | Route 3, Rock Hill, SC | M | 2/3/1945 | Sanders, Marie-257. |
| 526 | ..... | Simmers, Gerald Ray | Route 3, Rock Hill, SC | M | 8/3/1948 | Sanders, Marie-257. |
| 527 | ..... | Simmers, James Leon | Route 3, Rock Hill, SC | M | 9/22/1950 | Sanders, Marie-257. |
| 528 | ..... | Simmers, Joan Rebecca | Route 3, Rock Hill, SC | F | 5/28/1947 | Sanders, Marie-257. |
| 529 | 257 | Simmers, Marie Sanders | Route 3, Rock Hill, SC | F | 10/28/1926 | |
| 530 | ..... | Simmers, Mildred Leona | Route 3, Rock Hill, SC | F | 3/22/1955 | Sanders, Marie-257. |
| 531 | ..... | Simmers, Pamela Jean | Route 3, Rock Hill, SC | F | 8/10/1953 | Sanders, Marie-257. |
| 532 | ..... | Simmers, Rocky Vernon | Route 3, Rock Hill, SC | M | 11/16/1956 | Sanders, Marie-257. |
| 533 | 187 | Spivey, Letta Harris | Route 2, Box 104, Chesney, SC | F | 6/15/1942 | |
| 534 | ..... | Smith, Betty Ruth | Route 6, Spartanburg, SC | F | 3/4/1948 | George, Margarett-143. |
| 535 | ..... | Smith, Lula Annette | Route 6, Spartanburg, SC | F | 6/29/1955 | George, Margarett-143. |
| 536 | 143 | Smith, Margaret Rebecca | Route 6, Spartanburg, SC | F | 9/24/1927 | |
| 537 | ..... | Smith, Robert Earl | Route 6, Spartanburg, SC | M | 1/7/1951 | George, Margarett-143. |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 538 | 219 | Smith, Shiela Rita Petty | Box 119, Coward, SC | F | 8/31/1943 | |
| 539 | 291 | Stevens, Barbara Wright | 835 Dekalb Ave., Portsmouth, VA | F | 1/2/1939 | |
| 540 | ..... | Stokes, Barry D. | 10 Henry St., Camden, SC | M | 6/19/1958 | Canty, Stella-95. |
| 541 | ..... | Stokes, Billy J. | 10 Henry St., Camden, SC | M | 11/29/1954 | Canty, Stella-95. |
| 542 | ..... | Stokes, Daniel L. | 10 Henry St., Canden, SC | M | 2/8/1960 | Canty, Stella-95. |
| 543 | ..... | Stokes, Kenneth R. | 10 Henry St., Camden, SC | M | 2/4/1953 | Canty, Stella-95. |
| 544 | ..... | Stokes, Robert L. | 10 Henry St., Camden, SC | M | 8/17/1956 | Canty, Stella-95. |
| 545 | ..... | Stokes, Sandra K. | 10 Henry St., Camden, SC | F | 7/30/1957 | Canty, Stella-95. |
| 546 | 95 | Stokes, Stella B. Canty | 10 Henry St., Camden, SC | F | 4/5/1935 | |
| 547 | 197 | Strickland, Pearly Harris | Route 3, Box 205, Rock Hill, SC | F | 2/14/1907 | |
| 548 | 126. | Teaster, Etta D. George | Route 4, Gaffney, SC | F | 4/17/1931 | |
| 549 | ..... | Teaster, Hazel Elizabeth | Route 4, Gaffney, SC | F | 11/13/1951 | George, Etta-126. |
| 550 | ..... | Teaster, Jessie Elaine | Route 4, Gaffney, SC | F | 2/27/1955 | George, Etta-126. |
| 551 | ..... | Teaster, Jimmie Eugene | Route 4, Gaffney, SC | M | 8/6/1953 | George, Etta-126. |
| 552 | ..... | Teaster, Ransom | Route 4, Gaffney, SC | M | 2/21/1960 | George, Etta-126. |
| 553 | ..... | Teaster, Virginia Claudette | Route 4, Gaffney, SC | F | 5/12/1950 | George, Etta-126. |
| 554 | ..... | Teaster, William Glenn | Route 4, Gaffney, SC | M | 4/18/1949 | George, Etta-126. |
| 555 | ..... | Tessner, Ann | Route 1, Chesney, SC | F | 10/15/1954 | Robbins, Ruth-233. |
| 556 | ..... | Tesaner, Margie | Route 1, Chesney, SC | F | 4/23/1949 | Robbins, Ruth-233. |
| 557 | 233 | Tessner, Ruth Robbins | Route 1, Chesney, SC | F | 4/7/1936 | |
| 558 | 68 | Thatcher, Harold L. | Route 3, Box 213, Rock Hill, SC | M | 2/12/1929 | |
| 559 | ..... | Thatcher, Harold Lloyd | Route 3, Box 213, Rock Hill, SC | M | 6/13/1958 | Brown, Harold Thatcher-68. |
| 560 | ..... | Thatcher, Joyce Pamela | Route 3, Box 213, Rock Hill, SC | F | 2/25/1955 | Brown, Harold Thatcher-68. |
| 561 | ..... | Thatcher, Mathew Tyler | Route 3, Box 213, Rock Hill, SC | M | 6/9/1956 | Brown, Harold Thatcher-68. |
| 562 | ..... | Thatcher, Myra June | Route 3, Box 213, Rock Hill, SC | F | 3/13/1953 | Brown, Harold Thatcher-68. |
| 563 | ..... | Thatcher, Steven Keith | Route 3, Box 213, Rock Hill, SC | M | 2/13/1954 | Brown, Harold Thatcher-68. |
| 564 | ..... | Thomas, Christopher Dewain | Route 3, Box 220, Rock Hill, SC | M | 8/29/1959 | Thomas, Randolph-274. |
| 565 | 272 | Thomas, Cleo B. | Route 3, Box 220, Rock Hill, SC | F | 7/11/1919 | |
| 566 | 274 | Thomas, Emory R. | Route 3, Box 220, Rock Hill, SC | M | 1/7/1936 | |
| 567 | 150 | Thomas, Gladys Gordon | Route 3, Rock Hill, SC | F | 8/22/1921 | |
| 568 | ..... | Thomas, Larry Allen | Route 3, Rock Hill, SC | M | 7/11/1950 | Gordon, Gladys-150. |
| 569 | ..... | Thomas, Louis Scott | Route 3, Rock Hill, SC | M | 7/19/1957 | Gordon, Gladys-150. |
| 570 | 270 | Thomas, Margaret Ann | Route 3, Box 220, Rock Hill, SC | F | 6/18/1943 | |
| 571 | ..... | Thomas, Timothy Randolph | Route 3, Box 220, Rock Hill, SC | M | 8/10/1958 | Thomas, Randolph-274. |
| 572 | ..... | Thompson, Bobby, Jr. | Route 3, Box 136, Rock Hill, SC | M | 8/4/1958 | Sanders, Lois-254. |
| 573 | ..... | Thompson, Kathy Elizabeth | Route 3, Box 136, Rock Hill, SC | F | 11/30/1956 | Sanders, Lois-254. |
| 574 | 254 | Thompson, Lois Elaine Sanders | Route 3, Box 136, Rock Hill, SC | F | 12/21/1933 | |
| 575 | ..... | Thompson, Patricia Ann | Route 3, Box 136, Rock Hill, SC | F | 9/29/1954 | Sanders, Lois-254. |
| 576 | 276 | Trimnal, Gloria June | Route 3, Box 42, Rock Hill, SC | F | 6/5/1938 | |
| 577 | 275 | Trimnal, Mae Carol | Route 3, Box 42, Rock Hill, SC | F | 9/2/1943 | |
| 578 | 277 | Trimnal, Roger Snow | Route 3, Box 42, Rock Hill, SC | M | 1/23/1940 | |
| 579 | 278 | Trimnal, Virginia Blue | Route 3, Box 42, Rock Hill, SC | F | 12/4/1920 | |
| 580 | ..... | Varnadore, Karen | 767 Cedar St., Rock Hill, SC | F | 1/2/1957 | Sanders, Laura-252. |
| 581 | 252 | Varnadore, Laura M. Sanders | 767 Cedar St., Rock Hill, SC | F | 12/21/1933 | |
| 582 | ..... | Varnadore, Renee | 767 Ceadr St., Rock Hill, SC | F | 5/2/1958 | Sanders, Laura-252. |
| 583 | ..... | Varnadore, Ronnie | 767 Cedar St., Rock Hill, SC | M | 8/29/1959 | Sanders, Laura-252. |
| 584 | 293 | Vick, Mary Wright | 3111 Brighton St., Portsmouth, VA | F | 1/2/1941 | |
| 585 | ..... | Vinson, Eric Wheeler | Route 3, Rock Hill, SC | F | 10/3/1957 | Sanders, Lou Gene-255. |
| 586 | 255 | Vinson, Lou Gene Sanders | Route 3, Rock Hill, SC | F | 5/27/1940 | |
| 587 | ..... | Wade, Baxter Bruce | Waughton P.O., Winston-Salem, NC | M | 10/23/1949 | Wade, William-284. |
| 588 | ..... | Wade, Buford | Waughton P.O., Winston-Salem, NC | M | 10/26/1948 | Wade, William-284. |
| 589 | ..... | Wade, Cathie Yvonne | Waughton P.O., Winston-Salem, NC | F | 2/3/1954 | Wade, William-284. |
| 590 | ..... | Wade, Cleave Harrison | Waughton P.O., Winston-Salem, NC | M | 3/3/1951 | Wade, William-284. |
| 591 | ..... | Wade, Connie Steve | Route 3, Rock Hill, SC | M | 10/29/1946 | Wade, Esmerllia-279 and Harris, Florence-167. |
| 592 | ..... | Wade, Cynthia | Waughton P.O., Winston-Salem, NC | F | 8/8/1946 | Wade, William-284. |
| 593 | 280 | Wade, Edith Frances | Route 3, Box 214, Rock Hill, SC | F | 2/28/1924 | |
| 594 | 167 | Wade, Florence R. Harris | Route 3, Rock Hill, SC | F | 4/28/1922 | |
| 595 | ..... | Wade, Frieda Marilyn | Route 3, Rock Hill, SC | F | 11/5/1949 | Wade, Esmerllia-279 and Harris, Florence-167. |
| 596 | ..... | Wade, Glenn Hampton | Waughton P.O., Winston-Salem, NC | M | 2/27/1947 | Wade, William-284. |
| 597 | 281 | Wade, Horace Gary, Sr. | Route 3, Box 214, Rock Hill, SC | M | 9/24/1922 | |
| 598 | ..... | Wade, Horace Gary, Jr. | Route 3, Box 214, Rock Hill, SC | M | 11/21/1944 | Wade, Gary Harris-281 and Wade, Francis Canty-280. |
| 599 | ..... | Wade, Joy Mardine | Route 3, Rock Hill, SC | F | 7/15/1954 | Wade, Esmerllia-279 and Harris, Florence-167. |
| 600 | ..... | Wade, Michael Gregg | Route 3, Box 214, Rock Hill, SC | M | 4/27/1947 | Wade, Gary Harris-281 and Wade, Francis Canty-280. |
| 601 | 279 | Wade, Rella (Esmerilla) | Route 3, Rock Hill, SC | F | 9/4/1917 | |

FINAL ROLL OF THE CATAWBA INDIAN TRIBE OF SOUTH CAROLINA—PREPARED PURSUANT TO THE ACT OF SEPTEMBER 21, 1959 (73 STAT. 592)—Continued

| Roll No. | 1960 roll No. | Name | Address | Sex | Date of birth | Remarks: Name and roll number of parent on 1960 roll |
|---|---|---|---|---|---|---|
| 602 | 282 | Wade, Sallie | Route 3, Rock Hill, SC | F | 4/28/1895 | |
| 603 | 283 | Wade, Sherry Geraldine | Route 3, Box 214, Rock Hill, SC | F | 12/8/1942 | |
| 604 | 284 | Wade, William Perry | Route 3, Rock Hill, SC | M | 7/19/1927 | |
| 605 | ..... | Wade, William Perry, Jr. | Waughton P.O., Winston-Salem, NC | M | 2/1/1953 | Wade, William-284. |
| 606 | ..... | Warner, Cheryl Ann | 429 Beitler St. NE, New Philadelphia, OH. | F | 6/26/1946 | Warner, Ethel-286. |
| 607 | 286 | Warner, Cora Ethel | 429 Beitler St. NEuare, R, New Philadelphia, OH. | F | 10/14/1924 | |
| 608 | ..... | Warner, Oliver Dale | 429 Beitler St. NE, New Philadelphia, OH. | M | 6/12/1944 | Warner, Ethel-286. |
| 609 | 287 | Watts, Clifford O'Dell | 848 Dakin, Apt. 23, Chicago, IL | M | 5/25/1923 | |
| 610 | ..... | Watts, Donna Leola | 60 Wesy 2nd North, Salt Lake City, UT. | F | 2/20/1953 | Watts, Eula-288 and Watts, William-289. |
| 611 | ..... | Watts, Edwin Larson | 60 West 2nd North, Salt Lake City, UT. | M | 4/12/1951 | Watts, Eula-288 and Watts, William-289. |
| 612 | 288 | Watts, Eula Sanders | 60 West 2nd North, Salt Lake City, UT. | F | 8/31/1919 | |
| 613 | ..... | Watts, Janice Dorenda | 60 West 2nd North, Salt Lake City, UT. | F | 8/4/1944 | Watts, Eula-288 and Watts, William-289. |
| 614 | ..... | Watts, Milton Everett | 60 West 2nd North, Salt Lake City, UT. | M | 10/10/1947 | Watts, Eula-288 and Watts, William-289. |
| 615 | 289 | Watts, William D. | 60 West 2nd North, Salt Lake City, UT. | M | 7/26/1920 | |
| 616 | 290 | Watts, William David, Jr. | 60 West 2nd North, Salt Lake City, UT. | M | 11/1/1944 | |
| 617 | 285 | White, Eber Walter | Route 1, York, SC | M | 6/5/1940 | |
| 618 | ..... | Williford, Connie Patricia | 216 Wood St., Rock Hill, SC | F | 9/25/1955 | Sanders, Vivien-264. |
| 619 | 264 | Williford, Vivian Sanders | 216 Wood St., Rock Hill, SC | F | 1/31/1934 | |
| 620 | ..... | Wilson, Donna | 1960 Rainey St., Rock Hill, SC | F | 2/24/1956 | Harris, Rosa-204. |
| 621 | ..... | Wilson, Edwin | 1960 Rainey St., Rock Hill, SC | M | 5/25/1959 | Harris, Rosa-204. |
| 622 | ..... | Wilson, Jan | 1960 Rainey St., Rock Hill, SC | F | 1/3/1954 | Harris, Rosa-204. |
| 623 | 204 | Wilson, Rose Harris | 1960 Rainey St., Rock Hill, SC | F | 4/11/1933. | |
| 624 | ..... | Wilson, Steve | 1960 Rainey St., Rock Hill, SC | M | 10/24/1957 | Harris, Rosa-204. |
| 625 | 621 | Wilson, Violet | Route 3, Rock Hill, SC | F | 7/30/1934 | |
| 626 | ..... | Wilson, Charlotte Yvonne | 1419 Maple Ave., Portsmouth, VA | F | 6/2/1944 | Wright, Mary Ethel-292. |
| 627 | ..... | Wright, Lewis A., Jr. | 1419 Maple Ave., Portsmouth, VA | M | 9/25/1953 | Wright, Mary Ethel-292. |
| 628 | 292 | Wright, Mary Ethel Foxx | 1419 Maple Ave., Portsmouth, VA | F | 10/6/1919 | |
| 629 | ..... | Yates, Catherine Valerie | Route 3, Box 211, Rock Hill, SC | F | 9/29/1958 | Beck, Rachel-24. |
| 630 | ..... | Yates, Karen Rebecca | Route 3, Box 211, Rock Hill, SC | F | 9/9/1955 | Beck, Rachel-24. |
| 631 | 23 | Yates, Rachel Beck | Route 3, Box 211, Rock Hill, SC | F | 10/16/1933 | |

Following is the current membership roll as prepared by the Catawba Tribe's Executive Committee and approved for presentation to the Bureau of Indian Affairs in the August 1993 meeting of the General Council:

| Roll No. | Name |
|---|---|
| 1 | Ackley, Constantine Puckett. |
| 3 | Adams, Amanda Brooke. |
| 4 | Adams, Andre Darris. |
| 2069 | Adams, Christina Elizabeth. |
| 6 | Adams, Clarence Roddey. |
| 1769 | Adams, Dewey Lee. |
| 9 | Adams, Ericka Leigh. |
| 10 | Adams, Franklin Douglas. |
| 11 | Adams, Franklin Douglas Jr. |
| 13 | Adams, James Robert. |
| 14 | Adams, Jamie Shea. |
| 2068 | Adams, Jeremy Alexander. |
| 16 | Adams, Kimberly Denise. |
| 17 | Adams, Lawrence R. |
| 19 | Adams, Mamie. |
| 15 | Adams, Nelson Judson (Judd). |
| 21 | Addyman, Frances Inez. |
| 22 | Adkins, Judy Gail. |
| 23 | Adkins, Robert Alvin. |
| 24 | Adkins, Sharon Gwen. |
| 25 | Alboght, Virginia C. |
| 26 | Aldridge, Charles Anthony. |
| 27 | Aldridge, Christopher Lee. |
| 29 | Allen, Angelia Renee. |
| 32 | Allen, Cindy. |
| 30 | Allen, Ellen Deloria. |
| 31 | Allen, Henry Lester. |
| 33 | Allen, Teresa Deloria. |
| 34 | Allred, Jimmie Lee. |
| 36 | Anderson, Betty Jo. |
| 1758 | Andrew, Paul. |
| 2315 | Armenta, Holly Diana. |
| 2070 | Arminter, Jose Javier. |
| 956 | Arminter, Kimberly Dawn. |
| 2071 | Arminter, Sophia. |
| 2180 | Austin, Hollie Leigh. |
| 2179 | Austin, Jason Eugene. |
| 38 | Auten, Amy Carrie. |
| 39 | Auten, Shirley Mae. |
| 40 | Auten, Tonda Marjean. |
| 41 | Ayers, Allan Don. |
| 42 | Ayers, Amy Lynn. |
| 43 | Ayers, April L. |
| 2314 | Ayers, Ashley Elizabeth. |
| 44 | Ayers, Avery Stuart. |
| 45 | Ayers, Claude Kenneth. |
| 46 | Ayers, Dennis E. |
| 47 | Ayers, Ernest Wade Jr. |
| 48 | Ayers, Foxx E. |
| 49 | Ayers, Jessica Lynne. |
| 50 | Ayers, John. |
| 51 | Ayers, Johnnie Nelson. |
| 52 | Ayers, Johnnie Nelson Jr. |
| 55 | Ayers, Ralph Lewis. |
| 56 | Ayers, Robert Heber. |
| 57 | Ayers, Roger Dale. |
| 58 | Ayers, Sara H. |
| 59 | Ayers, Teresa Diane. |
| 60 | Ayers, Tiffany Lee. |
| 62 | Ayers, William Frell Jr. |
| 2277 | Bagley, Donice. |
| 2094 | Bagley, Frances Virginia. |
| 65 | Bagley, Jacqueline Diane. |
| 66 | Bagley, John Wayne. |

| Roll No. | Name |
|---|---|
| 1553 | Bailey, Amanda Marie. |
| 67 | Bailey, Dean. |
| 1533 | Bailey, Fanchon. |
| 68 | Bailey, Jan. |
| 1551 | Bailey, Jason Wade. |
| 1550 | Bailey, Karen Angela. |
| 69 | Bailey, Mary Joe Ann. |
| 1481 | Bailey, Michael LeRoy. |
| 1552 | Bailey, Robert Wayne. |
| 1480 | Bailey, Tamara Lynn. |
| 2372 | Baird, April Marie. |
| 2369 | Baird, Kimberly Denise. |
| 2371 | Baird, McRandall Lawrance. |
| 70 | Baker, Clara. |
| 71 | Baker, Kathy Yvonne. |
| 72 | Baker, Robert. |
| 73 | Baker, Sallie Elaine. |
| 77 | Ball, Brenda Corneal. |
| 84 | Barber, David Kyle. |
| 85 | Barker, Barbara Jean. |
| 86 | Barker, Cara Michelle. |
| 87 | Barker, Elizabeth Marie. |
| 2319 | Barnes, Cory Neil. |
| 2338 | Barnes, Justin Mark. |
| 89 | Barnes, Saron Jean. |
| 2320 | Barnes, Tiffany Michelle. |
| 91 | Bauer, JoAnn. |
| 92 | Bauer, Lawrence Peter III. |
| 93 | Baumgardner, Cheryl Ann. |
| 2193 | Baumgardner, Harlie Kristina. |
| 94 | Baumgardner, Robert Dale. |
| 95 | Baumgardner, Sheryl Lynn. |
| 2092 | Baumgardner, Teresa Marie. |
| 96 | Baumgardner, William Arthur Jr. |
| 97 | Beasler, Louise. |
| 99 | Beck, Donald Jeffery. |
| 100 | Beck, Duane Early. |
| 102 | Beck, Fletcher B. |
| 103 | Beck, Flethcher C. |
| 2090 | Beck, Gerald Leon III. |
| 104 | Beck, Gerald Leon Jr. |
| 2553 | Beck, Gerald Sr. |
| 105 | Beck, Jason Roderick. |
| 106 | Beck, Jennifer Ann. |
| 107 | Beck, Jeremy Ryan. |
| 108 | Beck, John C. |
| 109 | Beck, John Henry. |
| 110 | Beck, Kimberly Lynn. |
| 111 | Beck, Lulu S. |
| 126 | Beck, Major H. Jr. |
| 112 | Beck, Margaret Helen. |
| 2075 | Beck, Matthew Kyle. |
| 114 | Beck, Michael Tray. |
| 115 | Beck, Randall Scott. |
| 116 | Beck, Roderick Neil. |
| 117 | Beck, Ronald Lee Jr. |
| 118 | Beck, Ronnie Lee. |
| 121 | Beck, Samuel Michael. |
| 120 | Beck, Samuel Mitchell. |
| 123 | Beck, Tammy Rae. |
| 124 | Beck, Tara M. |
| 2555 | Beck, Tiffanie Denise. |
| 440 | Bennett, Carol Lynn. |
| 2192 | Bennett, Timothy Wade. |
| 2356 | Biggers, Lewis Steven. |
| 2355 | Biggers, Melissa Kaye. |
| 2316 | Biggerstaff, Alicia Beth. |
| 128 | Bishop, Lillie B. (Wilburn). |
| 129 | Black, Dicy Anna. |
| 130 | Black, Jerry Keith. |
| 131 | Blackmon, Baer Bryant. |
| 132 | Blackmon, Donna. |
| 1534 | Blackmon, Marissa Ann. |
| 133 | Blackwell, Brandon D. |
| 2343 | Blackwell, James Harold. |
| 135 | Blackwell, Tammy Anise. |
| 136 | Blackwood, Elizabeth Kay Usher. |
| 137 | Blue, Andrew Gene. |
| 173 | Blue, Arnold L. Jr. |
| 138 | Blue, Betty Harris. |
| 139 | Blue, Bobby Everette. |
| 140 | Blue, Bobby Reid. |
| 142 | Blue, Carrie Lynn. |
| 143 | Blue, Carson Taylor. |
| 144 | Blue, Charles Patrick. |
| 145 | Blue, Christopher. |
| 165 | Blue, Christy Shanon. |
| 146 | Blue, Corie Michael. |
| 147 | Blue, Crystal. |
| 2342 | Blue, Danna Lynn. |
| 149 | Blue, Douglas Keith. |
| 152 | Blue, Gilbert B. |
| 153 | Blue, Glenn T. |
| 155 | Blue, Harry Reid. |
| 157 | Blue, Heather Ashley. |
| 158 | Blue, Henry Leroy. |
| 159 | Blue, Herbert Roosevelt. |
| 160 | Blue, Jeffrey Travis. |
| 162 | Blue, Jessica Lee Ann. |
| 163 | Blue, Jonathan. |
| 164 | Blue, Kelly Labrian. |
| 166 | Blue, Mildred Louise. |
| 167 | Blue, Nathan Taylor. |
| 168 | Blue, Nathan Timothy. |
| 174 | Blue, Randall L. Jr. |
| 169 | Blue, Randall Lavon Sr. |
| 170 | Blue, Rebecca. |
| 171 | Blue, Samuel Andrew Wheelock. |
| 2341 | Blue, Steven Shawny. |
| 172 | Blue, Timothy E. |
| 2194 | Bodiford, Bruce Marvin. |
| 175 | Bodiford, Dana Michelle. |
| 2269 | Bodiford, Donald Bruce. |
| 176 | Bodiford, Hazel Dewey. |
| 2268 | Bodiford, Ted Dewey. |
| 177 | Bodiford, Terriol James (Terry). |
| 2095 | Boone, Brandy Leshae. |
| 178 | Boone, Jimmy David. |
| 2096 | Boone, Joshua Wayne. |
| 2186 | Bouler, Thomas Dean. |
| 2273 | Bouler, Tony Alan Jr. |
| 2339 | Boyd, Shannon Nicole. |
| 2099 | Brackett, Tehra Jansen. |
| 179 | Brackett, Tyson Wade. |
| 180 | Brackett, Vickie Jane. |
| 2195 | Bradford, Naomi Christine. |
| 1494 | Bradley, Susan D. |
| 181 | Brady, Michael Scott. |
| 182 | Branham, Annie Maria. |
| 183 | Branham, Charlotte Ann. |
| 2166 | Branham, Kristopher Lee. |
| 184 | Branham, Oliver Lee. |
| 1507 | Branham, Rodden Holden. |
| 186 | Branham, William Lamont. |
| 2301 | Brazzell, Della Melissa. |
| 187 | Brazzell, Edward H., Jr. |
| 2302 | Brazzell, Patsy Denise. |
| 2303 | Brazzell, Patty Darnell. |
| 551 | Breakfield, Laura Kay. |
| 188 | Brewton, Kevin Ray. |
| 190 | Bridges, Ellen Canty. |
| 191 | Bridges, Wanda Jean. |
| 192 | Brindle, Carl. |
| 193 | Brindle, Catherine Denise. |
| 194 | Brindle, Cynthia Dianne. |
| 195 | Brindle, Frank Wayne. |
| 196 | Brindle, Jason Carl. |
| 1565 | Brindle, Jennifer Lynn. |
| 199 | Brindle, Kimberly Gay Brindle. |
| 200 | Brindle, Lorinda Ann. |
| 201 | Brindle, Melvin Lester. |
| 202 | Brindle, Missouri Elizabeth. |
| 203 | Brindle, Patrica Lucille. |
| 204 | Brindle, Walter Andrew Jr. |
| 205 | Brindle, Walter Andrew. |
| 2347 | Brooks, Arthur Dale. |
| 2345 | Brooks, Christopher Thomas. |
| 2348 | Brooks, Janice Amelia. |
| 2346 | Brooks, Joseph Lee. |
| 206 | Brown, Arnold Dean. |
| 208 | Brown, Bobby Norman. |
| 2203 | Brown, Christopher E. |
| 2098 | Brown, Crystal Dawn. |
| 209 | Brown, Cynthia Dawn. |
| 210 | Brown, David Lee. |
| 2202 | Brown, David W. |
| 211 | Brown, Donald Lester. |
| 212 | Brown, Donald Lester Jr. |
| 213 | Brown, Donald Richard. |
| 217 | Brown, Eric Lee. |
| 218 | Brown, Gary William. |
| 220 | Brown, Harold Dean. |
| 221 | Brown, Hazel Edward Jr. |
| 257 | Brown, Hazel Edward Sr. |
| 222 | Brown, Jamie Gail. |
| 223 | Brown, Janet. |
| 2205 | Brown, Jessica E. |
| 224 | Brown, Jessica Wenonah. |
| 225 | Brown, Jessie Thomas. |
| 226 | Brown, Joel Lee. |
| 2296 | Brown, John Edward. |
| 228 | Brown, John Jeffery. |
| 256 | Brown, John Samuel Jr. |
| 2353 | Brown, Joshau Wayne. |
| 229 | Brown, Karen Diane. |
| 1762 | Brown, Kayla Michelle. |
| 2352 | Brown, Kelly Marie. |
| 230 | Brown, Leola. |
| 231 | Brown, Lewis Herman II |
| 258 | Brown, Lewis Herman Sr. |
| 2326 | Brown, Mandy Marie. |
| 232 | Brown, Mary Leigh Ann. |
| 233 | Brown, Mary Lynn. |
| 2175 | Brown, Melissa Michelle. |
| 234 | Brown, Michael Edward Jr. |
| 2351 | Brown, Michael Edward. |
| 235 | Brown, Milisse Michelle. |
| 236 | Brown, Myra Edith. |
| 237 | Brown, Otis Roddey. |
| 238 | Brown, Otis Wayne. |
| 239 | Brown, Owen Keith. |
| 240 | Brown, Pamela Sue. |
| 241 | Brown, Patrick Neal. |
| 2097 | Brown, Robbie Lee. |
| 244 | Brown, Robert Charles. |
| 1563 | Brown, Robert Stephen. |
| 245 | Brown, Sally. |
| 246 | Brown, Sandy Michelle. |
| 247 | Brown, Scottie Eugene. |
| 1763 | Brown, Stephanie Nicole. |
| 248 | Brown, Tammy Ann. |
| 249 | Brown, Teresa Diana. |
| 250 | Brown, Tommy Clyde. |
| 2350 | Brown, Troy Dean. |
| 251 | Brown, Troy Gene. |
| 2324 | Brown, Troy Jane. |
| 2327 | Brown, Whitney Marie. |
| 252 | Brown, William. |
| 253 | Brown, William Clifford. |
| 254 | Brown, William Larry Brown. |
| 255 | Brown, Winona Lyne. |
| 214 | Bruce, Donna Jo. |

| Roll No. | Name |
|---|---|
| 259 | Bryson, Mahovie S. |
| 260 | Bryson, Myrtle Blanche Harris. |
| 262 | Bryson, Sanford A. Jr. |
| 2065 | Bryson, Stanley Anzle. |
| 2064 | Bryson, Tasha Lynn. |
| 2063 | Bryson, Trisha Anzle. |
| 1956 | Buckaloo, Eula Kay. |
| 2181 | Buckaloo, Mark Anthony Jr. |
| 2483 | Buckaloo, Nicholas Cody. |
| 1772 | Burciago, Carol O. |
| 264 | Burciago, Linda Ann. |
| 265 | Burgess, Tondia Carol. |
| 2101 | Burns, Andrew Scott. |
| 2100 | Burns, James Rose. |
| 266 | Burns, James Vernon. |
| 267 | Burns, Kenneth A. Jr. |
| 268 | Burns, Lizzie Jane. |
| 269 | Burns, Scott Dennis. |
| 270 | Burris, Brittany Susan. |
| 271 | Burris, Kimberly Sue. |
| 272 | Burris, Matthew Douglas. |
| 2139 | Byers, David W. |
| 2140 | Byers, Roger James. |
| 275 | Byrd, Marsha (Simmers). |
| 274 | Byrd, Timothy James. |
| 286 | Cabaniss, Airoe Ann. |
| 277 | Cabaniss, Amanda Jo. |
| 278 | Cabaniss, Daniel Hargrove. |
| 279 | Cabaniss, Jennifer Dawn. |
| 280 | Cabaniss, Marcille. |
| 281 | Cabaniss, Mary Catherine. |
| 282 | Cabaniss, Nicole Beth. |
| 283 | Cabaniss, Thomas. |
| 287 | Cabaniss, William Forrest Jr. |
| 284 | Cabaniss, William Heath. |
| 285 | Cabaniss, Zoe Marie. |
| 288 | Cameron, Sandra K. |
| 289 | Campbell, Damian. |
| 290 | Campbell, Edwin. |
| 291 | Campbell, Ella Rich. |
| 296 | Campbell, Kim. |
| 292 | Campbell, Nola. |
| 293 | Campbell, Paul Edward. |
| 294 | Campbell, Phillip Christopher. |
| 295 | Campbell, Susan Juanita. |
| 297 | Canfield, Dana Marlene. |
| 298 | Canfield, Steven Jerrial. |
| 299 | Canty, Alonzo George Jr. |
| 300 | Canty, Alvin B. |
| 301 | Canty, Alvin Huey. |
| 302 | Canty, Amelia Brooke. |
| 303 | Canty, Anthony Scott. |
| 304 | Canty, April Denise. |
| 306 | Canty, Billie Huey. |
| 307 | Canty, Billie Jack. |
| 308 | Canty, Bobby Dean. |
| 309 | Canty, Carolyn Denise. |
| 310 | Canty, Catherine Sanders. |
| 311 | Canty, Cecil Ray. |
| 312 | Canty, Charles Ray. |
| 313 | Canty, Cheyenne. |
| 315 | Canty, Christopher Chad. |
| 314 | Canty, Christopher Lance. |
| 2149 | Canty, Christopher Lee. |
| 316 | Canty, Clifford Troy. |
| 2215 | Canty, Curtis Ray Jr. |
| 317 | Canty, Curtis Ray Sr. |
| 318 | Canty, Diane. |
| 319 | Canty, Eddie Henderson. |
| 320 | Canty, Edwin B. |
| 2214 | Canty, Emily Louise. |
| 322 | Canty, Eric Jerome. |
| 2142 | Canty, Erica Rose. |
| 324 | Canty, Erin Melissa. |
| 325 | Canty, Eugene. |
| 327 | Canty, Heyward Jackson Jr. |
| 329 | Canty, Huey C. |
| 330 | Canty, James Henry. |
| 2217 | Canty, Jamie Dawn. |
| 362 | Canty, Jared Scott. |
| 331 | Canty, Jarom Dean. |
| 332 | Canty, Jeffery Neal. |
| 2059 | Canty, Jessica Lynn. |
| 2216 | Canty, Jessica Mishelle. |
| 333 | Canty, Jessica Suzan. |
| 334 | Canty, Jonathan Jered. |
| 335 | Canty, Jonathan Kyle. |
| 337 | Canty, Karen Tennille. |
| 338 | Canty, Kathy Elizabeth. |
| 340 | Canty, Lance. |
| 341 | Canty, Lawrence L. Jr. |
| 342 | Canty, Leonard James. |
| 343 | Canty, Leonard Taylor. |
| 2213 | Canty, Marcus LaCurt. |
| 344 | Canty, Marion. |
| 345 | Canty, Marion I. |
| 346 | Canty, Martha Nicole. |
| 2290 | Canty, Natalie Shawnte W. |
| 2292 | Canty, Quinlan Russell Schutte. |
| 347 | Canty, Rhonda Renee. |
| 348 | Canty, Robert Kirk. |
| 350 | Canty, Ronald Vance. |
| 351 | Canty, Scott Dell. |
| 352 | Canty, Shaun Travis. |
| 2291 | Canty, Stephanie Britt. |
| 353 | Canty, Steve. |
| 354 | Canty, Suzanne Marie. |
| 355 | Canty, Tammy Rena. |
| 356 | Canty, Teresa Diane. |
| 357 | Canty, Timothy Dean. |
| 2144 | Canty, Timothy Joseph. |
| 358 | Canty, Tina. |
| 359 | Canty, Tonda M. |
| 360 | Canty, Wallace Lee Jr. |
| 361 | Canty, Wallace Lee Sr. |
| 1562 | Caponis, Jennifer. |
| 363 | Caponis, John Alvin. |
| 2102 | Caponis, Miranda Lynn. |
| 366 | Caponis, Reina. |
| 368 | Carpenter, Christopher Sylvanus Jr. |
| 369 | Carpenter, Glenda Naomi. |
| 370 | Carpenter, Jane Dillon. |
| 371 | Carpenter, Paul Michael. |
| 372 | Carpenter, Sandra Yvone. |
| 2448 | Carroll, Amber Nichole. |
| 2447 | Carroll, Ernest Haskel III. |
| 1624 | Carroll, Karen Elaine. |
| 374 | Carver, Jack Monroe Jr. |
| 375 | Carver, Jacqueline Delores. |
| 376 | Carver, Kenneth Wayne. |
| 2218 | Carver, Kristen Danielle. |
| 377 | Carver, Mary Delores. |
| 378 | Carver, Tracy. |
| 1468 | Castagna, Loren Naomi. |
| 2547 | Catoe, Cerra Leann. |
| 379 | Catoe, Francine. |
| 2255 | Catoe, Herbert Pascal. |
| 380 | Catoe, Jutanna Suzette. |
| 460 | Catoe, Lesslie June. |
| 2253 | Catoe, Richard David. |
| 441 | Catoe, Valerie Francine. |
| 2254 | Catoe, William Brad. |
| 381 | Caudle, Edward Chris. |
| 382 | Caudle, Jennifer Rebecca. |
| 383 | Caudle, Kenneth Darrell. |
| 384 | Caudle, Nichem James. |
| 385 | Caudle, Rita Fay. |
| 386 | Caudle, Sylvia Blue. |
| 2219 | Charles, Christopher Anthony. |
| 388 | Charles, Donna. |
| 2141 | Charles, Donna Lucille. |
| 387 | Charles, Lyda. |
| 389 | Cherry, Alice Elaine. |
| 390 | Cherry, Donald Ray. |
| 2222 | Cherry, Eula May. |
| 391 | Cherry, James Columbus Jr. |
| 1495 | Cherry, Jennifer E. |
| 392 | Cherry, Jimmy Dean. |
| 1496 | Cherry, Scott R. |
| 2072 | Childers, Teressa W. |
| 393 | Clark, Cheryl Darlene. |
| 394 | Clark, Nathan. |
| 395 | Cline, James Patrick Jr. |
| 396 | Cline, Shirley Lynn Cookson. |
| 398 | Colley, Anna M. |
| 399 | Collins, Connie Patricia. |
| 2360 | Collins, Daniel Howard. |
| 400 | Collins, James David. |
| 78 | Collins, Malinda Darlene. |
| 401 | Colter, Lisa Kristine. |
| 402 | Cookson, Amber Jewell. |
| 403 | Cookson, Christene Lee. |
| 404 | Cookson, Christian Darryl. |
| 2359 | Cookson, Corey A. |
| 2358 | Cookson, Jeremy R. |
| 405 | Cookson, Jewell Shirley Harris. |
| 406 | Cookson, Ricardo Harris. |
| 407 | Cooper, David Lee. |
| 408 | Cooper, Erica Shawta. |
| 409 | Copper, Lisa Maureen. |
| 410 | Corbridge, Nicole Leigh. |
| 411 | Corbridge, Sandra Marlene. |
| 412 | Corder, Cecil Idus. |
| 413 | Corder, Christopher W. |
| 415 | Corder, James Ralph Jr. |
| 417 | Corder, Joyce I. |
| 414 | Corder, Joyce Martin. |
| 998 | Cornwell, Tonya Nicole. |
| 963 | Crawford, Julia May. |
| 418 | Crawford, Tammy R.C. |
| 419 | Croft, James Franklin. |
| 2104 | Culbertson, Jason Eric. |
| 2196 | Curtis, Carl Nathan. |
| 421 | Curtis, Donna. |
| 2197 | Curtis, Michael Shannon. |
| 2515 | Cuthbert, Catherine Azlee. |
| 2 | Dabney, Alan Dwayne Adams. |
| 2366 | Davis, Barry Joseph. |
| 422 | Davis, Christina Renee. |
| 423 | Davis, Danelle Hazel Martin. |
| 2364 | Davis, Desiree Melinda. |
| 424 | Davis, Frances L. |
| 426 | Davis, Freddie Horne. |
| 428 | Davis, Jayson Lee. |
| 429 | Davis, Linda Annette. |
| 430 | Davis, Michelle Angelina. |
| 2365 | Davis, Shane Christopher. |
| 431 | Davis, Tanya Annette. |
| 432 | Deal, Daylon Gene. |
| 433 | Deal, Stephen Brian. |
| 434 | Deal, Susan. |
| 435 | Deal, Waylon Dean. |
| 273 | Dellinger, Cansandra Felice. |
| 2105 | Dietrich, James Emanual. |
| 442 | Dresser, Victoria. |
| 443 | Driggers, Angela Marie. |
| 444 | Driggers, Betty. |
| 445 | Driggers, Judy Patricia. |
| 446 | Driggers, Marvin Henry Jr. |
| 447 | Dunnells, Kenneth W. |
| 448 | Dunnels, Jeffery L. |

| Roll No. | Name |
|---|---|
| 449 | Edwards, Amanda Lynn. |
| 450 | Edwards, Cindy Lee. |
| 451 | Edwards, Robert Daniel. |
| 453 | Elkins, Mary Jane. |
| 2395 | Ellison, Elizabeth Leigh-Ann. |
| 2396 | Ellison, Richard William II. |
| 2476 | Ensley, Tonya Marie Mackey. |
| 454 | Esplin, Alice Kris. |
| 2134 | Esplin, Colton. |
| 2135 | Esplin, Kelsey C. |
| 2445 | Evans, Holley Amanda. |
| 2444 | Evans, Kelly Wayne. |
| 455 | Ferrell, Alberta Lavinia. |
| 458 | Ferrell, Autumn L. |
| 457 | Ferrell, Saleeshia Z. |
| 459 | Fife, Cheryl June. |
| 759 | Fincher, Sharon Dale. |
| 2417 | Ford, Branden Ray. |
| 2418 | Ford, Katura Ann. |
| 2415 | Ford, Melinda. |
| 2243 | Fowler, Bobby Lee. |
| 2242 | Fowler, Kathy Marie. |
| 2367 | Fowler, Patrick Thorne. |
| 461 | Fowler, Ricky Dean. |
| 462 | Fowler, Robbie Colel. |
| 463 | Fowler, Sandra Delores. |
| 2240 | Fowler, Stacey Michelle. |
| 464 | Fowler, Terressa Dianne. |
| 465 | Fowler, Valarie Yvonne. |
| 2393 | Fox, Jesse Lee. |
| 2394 | Fox, Jessica Louise. |
| 466 | Foxx, Annette Marice. |
| 468 | Foxx, Antonio B. III. |
| 467 | Foxx, Antonio B. Jr. |
| 469 | Foxx, Atucha Ann. |
| 2391 | Foxx, Brittany Dawn. |
| 470 | Foxx, Charles Winifred. |
| 2392 | Foxx, Charles Winifred II. |
| 471 | Foxx, Danny Ray. |
| 472 | Foxx, Dwana Menjon. |
| 473 | Foxx, Ernest B. |
| 2380 | Foxx, Ernest Ryan. |
| 475 | Foxx, Jimmie Cox. |
| 476 | Foxx, Joey Edward. |
| 2376 | Foxx, Kari Anne. |
| 478 | Foxx, Kimberly Dinesi. |
| 2374 | Foxx, Kristen Michelle. |
| 2373 | Foxx, Leshea Breeon. |
| 479 | Foxx, Lewis Angelo Basil. |
| 480 | Foxx, Louis H. |
| 481 | Foxx, Louis Russell. |
| 482 | Foxx, Michael Wayne. |
| 2377 | Foxx, Ronald Gerry. |
| 484 | Foxx, Ronald Guy. |
| 485 | Foxx, Steven Lewis. |
| 486 | Foxx, Terrill Dwayne. |
| 2384 | Foxx, Terrill Dwayne Jr. |
| 2378 | Foxx, Tiffany Jo. |
| 487 | Foxx, William C. B. Jr. |
| 488 | Foxx, Willie Ray. |
| 490 | Frances, Jay Robert Brian. |
| 491 | Francis, Patricia Hammond. |
| 492 | Francisco, Curtis Lucanio. |
| 493 | Francisco, Shirley Ann. |
| 494 | Francisco, Tolian Ione. |
| 2385 | Frary, Alyssa Nichole. |
| 495 | Frary, Christopher Paul. |
| 496 | Frary, Dot Mirian. |
| 2145 | Gable, Allen Wayne, Jr. |
| 499 | Gaillard, Angelia. |
| 500 | Gaillard, Lorie Anne. |
| 501 | Gaillard, Nancy Marie. |
| 502 | Garcia, Aletta Michele. |
| 504 | Garcia, Ben Jr. |
| 505 | Garcia, Betty Juanita. |
| 506 | Garcia, Bonnie. |
| 507 | Garcia, Calvin Trever. |
| 508 | Garcia, Edward Guy. |
| 510 | Garcia, Irene Minerva. |
| 511 | Garcia, Mindy Sue. |
| 513 | Garland, Steven E. |
| 514 | Garland, Vivian A. |
| 515 | Garner, Emily Suzanne. |
| 517 | Garner, Mary Beth. |
| 519 | Garris, Joan S. |
| 520 | Garris, Jonathan Hazel. |
| 522 | Garris, Shana Louise. |
| 521 | Garris, Zan Marie. |
| 523 | Geer, Joyce. |
| 524 | Geoff, Patricia S.B. |
| 525 | George, Amanda L. |
| 2285 | George, Amber Leslie. |
| 526 | George, April Leigh. |
| 527 | George, Brentley Clark. |
| 1510 | George, Brooklyn Nicole. |
| 2200 | George, Bryan Wayne. |
| 528 | George, Charles Edward. |
| 529 | George, Charles Lewis. |
| 2299 | George, Christopher Evans. |
| 530 | George, Claude Leonard. |
| 2287 | George, Courtney Elizabeth. |
| 2284 | George, Crystal Lee. |
| 531 | George, Curtis Edward. |
| 2198 | George, Cynthia Amanda. |
| 28 | George, Cynthia Annette Plyler. |
| 532 | George, Eddie Mac. |
| 533 | George, Elsie Blue. |
| 534 | George, Emily Wycie. |
| 580 | George, Evans M. (Buck) Jr. |
| 535 | George, Evelyn B. |
| 536 | George, Flonnie E. |
| 537 | George, Fred Calvin. |
| 538 | George, Gregory Tige. |
| 539 | George, Heather Cocelia. |
| 541 | George, Jennifer Annette. |
| 542 | George, John Albert. |
| 543 | George, John Christopher. |
| 2257 | George, John Earl. |
| 544 | George, John Early. |
| 545 | George, John Marvin. |
| 546 | George, Johnathan Nikita. |
| 547 | George, Joshua. |
| 548 | George, Kevin Wade. |
| 2280 | George, Kevin Wade Jr. |
| 549 | George, Kristin Nicole. |
| 550 | George, Landrum L. |
| 552 | George, Lavern Randolph |
| 553 | George, Lavern Randolph Jr. |
| 554 | George, Lawrence Howard. |
| 2201 | George, Leonard Chadwick. |
| 555 | George, Lewis Brently. |
| 556 | George, Linda De Ann. |
| 2256 | George, Lisa Michelle. |
| 557 | George, Lorna (Harris). |
| 558 | George, Marion Phillip. |
| 559 | George, Maroni Taylor |
| 560 | George, Marvin Kelly |
| 562 | George, Mary Frances. |
| 2282 | George, Matthew Asher. |
| 563 | George, Megan N. |
| 564 | George, Michael Allen. |
| 2286 | George, Nathan Charles. |
| 2199 | George, Nyeoka Iona. |
| 566 | George, Philip Keith. |
| 2265 | George, Phillip Anthony. |
| 2266 | George, Phillip Dekota Two Bears. |
| 567 | George, Rachel. |
| 569 | George, Robert Neil. |
| 570 | George, Roger Wayne. |
| 2283 | George, Sara Luoise. |
| 2297 | George, Shannon Leigh. |
| 572 | George, Sommer Lynn. |
| 573 | George, Susan M. |
| 2281 | George, Susan Marie. |
| 574 | George, Thomas Clark. |
| 576 | George, Thomas Howard. |
| 2279 | George, Tina Ann. |
| 578 | George, Tracy A. |
| 2512 | George, William Joseph Corrichee. |
| 1478 | GeorgeWarren, DeLesslin Evans. |
| 1477 | GeorgeWarren, K.C. |
| 1476 | GeorgeWarren, Wanda. |
| 2304 | Gibson, Jason Matthew. |
| 2305 | Gibson, Joshua Dekota. |
| 581 | Gibson, Mary Ayers. |
| 2459 | Giles, Christopher Ray. |
| 1349 | Giles, Renee. |
| 2458 | Giles, Shannon Leigh. |
| 2440 | Gillian, Jon Allen. |
| 2441 | Gillian, Rhyne Matthew. |
| 583 | Gillilan, John Strickland Jr. |
| 584 | Gonzales, Donna Leola. |
| 585 | Gordon, Carson Matthew. |
| 2231 | Gordon, Cory LaBrian. |
| 587 | Gordon, Sheryl Mackey. |
| 588 | Gordon, Vicky Michelle. |
| 589 | Gordon, Wesley Olin. |
| 1502 | Graham, Jason Gregory. |
| 590 | Graham, Jillian Gayle. |
| 1500 | Graham, Jonathon Yates |
| 1501 | Graham, Joseph Gartman. |
| 591 | Graham, Joshua Garrison. |
| 592 | Graham, Karen Rebecca. |
| 1503 | Graham, Karl Ray. |
| 1504 | Graham, Kevin Ross. |
| 593 | Graham, Kimberly Rebecca. |
| 1499 | Graham, Kurtis Randall |
| 2507 | Green, Aaryn Rae. |
| 2510 | Green, Caitlin Elizabeth. |
| 2424 | Green, Cheryl Ann. |
| 595 | Green, Edward Brian. |
| 596 | Green, Hal Ephraim. |
| 597 | Green, Joyce M. |
| 2233 | Green, Justin Adam. |
| 2508 | Green, Lindsay Joyce. |
| 2509 | Green, Norah Nicole. |
| 598 | Greenwood, Lisa Marie. |
| 2357 | Gregory, Beverly Nicole. |
| 600 | Greiner, Hazel Faye. |
| 601 | Griffin, Alina Elvina |
| 602 | Griggs, Belinda Faye. |
| 603 | Griggs, Bonita Sue. |
| 1529 | Griggs, Brandon Charles. |
| 604 | Griggs, Christopher Charles. |
| 1527 | Griggs, Jessica Lane. |
| 606 | Griggs, Lisa Anne. |
| 1528 | Griggs, Miranda Christian. |
| 607 | Grobusky, Charles Christropher. |
| 2362 | Grobusky, Joseph Stanley. |
| 609 | Groff, Viola Robbins Martin. |
| 1515 | Gunn, Andrew P. |
| 610 | Gunn, Angie D. |
| 611 | Gunn, David Howard. |
| 2188 | Gunn, David Howard Jr. |
| 2559 | Gunn, Floyd Jr. |
| 1514 | Gunn, Floyd L. Jr. |
| 612 | Gunn, Floyd Lee. |
| 613 | Gunn, Lou Ella. |
| 614 | Gunn, Mary Faye. |
| 1513 | Gunn, Michelle. |
| 2560 | Gunn, Michelle. |

| Roll No. | Name |
|---|---|
| 615 | Gunn, Nancy Jane. |
| 616 | Gunn, Nellie Faye Canty. |
| 617 | Gunn, Patricia Lucille. |
| 2561 | Gunn, Paul. |
| 618 | Gunn, Richard A. |
| 1512 | Gunn, Richard A. Jr. |
| 619 | Gunn, Susan. |
| 620 | Gunn, Wanda Diane. |
| 621 | Gunton, Fannie. |
| 622 | Gunton, Geneva Geraldine. |
| 623 | Hafner, David Christian. |
| 624 | Hafner, Myra June. |
| 1474 | Haire, Chrystal Louisa. |
| 1475 | Haire, Wenonah Caitlin. |
| 625 | Haire, Wenonah George. |
| 742 | Hall, Victoria Shelle. |
| 2117 | Hamacher, Heather Elizabeth. |
| 1775 | Hamacher, Susan Marlene. |
| 626 | Hamm, Beverly Francien. |
| 627 | Hamm, Robert Leroy Hamm. |
| 628 | Hamm, Teresa Mae. |
| 629 | Hammond, Bobby Ray. |
| 2429 | Hammond, Christopher Ian. |
| 2428 | Hammond, David Kenneth. |
| 630 | Hammond, Gerald James III. |
| 631 | Hammond, Nora Lee. |
| 635 | Harris, Adam. |
| 636 | Harris, Alfred Kenneth. |
| 637 | Harris, Alfred Neal. |
| 708 | Harris, Alice Loretta. |
| 2402 | Harris, Amanda Renee. |
| 639 | Harris, Angela M. |
| 638 | Harris, Angela Michella. |
| 1554 | Harris, April Lynn. |
| 640 | Harris, Barry Dean Jr. |
| 632 | Harris, Barry Phillip Jr. |
| 641 | Harris, Barry Phillip. |
| 642 | Harris, Becky C. |
| 643 | Harris, Bertha. |
| 644 | Harris, Beulah Thomas. |
| 645 | Harris, Billy Ray. |
| 646 | Harris, Bradley Scott. |
| 2403 | Harris, Brandi Michelle. |
| 2062 | Harris, Brandon Beaumont. |
| 648 | Harris, Brandy Rebecca Jenny. |
| 647 | Harris, Brian Donald. |
| 649 | Harris, Brian Oswald. |
| 651 | Harris, Caleb. |
| 652 | Harris, Calvin Wayne. |
| 653 | Harris, Carl Bazil. |
| 655 | Harris, Charles Roger. |
| 2422 | Harris, Christophen Loran. |
| 657 | Harris, Cleadous O'Neal. |
| 659 | Harris, Curtis Douglas. |
| 661 | Harris, Dale Wallace. |
| 660 | Harris, Darrell Kent. |
| 1776 | Harris, David Steve. |
| 664 | Harris, Davin Ray. |
| 666 | Harris, Dewey Wallace. |
| 667 | Harris, Donald Brian. |
| 668 | Harris, Donald Wilford. |
| 669 | Harris, Donnie Ray. |
| 670 | Harris, Dwayne Phillip. |
| 671 | Harris, Elizabeth Lauren. |
| 672 | Harris, Emily. |
| 2414 | Harris, Ethan LLoyd William. |
| 673 | Harris, Floyd William. |
| 674 | Harris, Floyd William Jr. |
| 676 | Harris, Furman George. |
| 677 | Harris, Garfield Crawford. |
| 678 | Harris, Garland Wesley. |
| 679 | Harris, Georgia H. |
| 680 | Harris, Gilbert Dwaine. |
| 2404 | Harris, Glenda Diane. |
| 681 | Harris, Grady Crawford. |
| 682 | Harris, Gregory. |
| 1555 | Harris, Heather Nicole. |
| 683 | Harris, Homer Vernon. |
| 684 | Harris, Jacqueline Louise. |
| 739 | Harris, James Anthony. |
| 686 | Harris, James Loren Jr. |
| 1479 | Harris, James Michael. |
| 687 | Harris, James Wade. |
| 2406 | Harris, James Wade Jr. |
| 688 | Harris, James William. |
| 689 | Harris, Jan. |
| 690 | Harris, Jason M. |
| 691 | Harris, Jayson Lee. |
| 692 | Harris, Jefferson W.C. |
| 693 | Harris, Jeffrey. |
| 2423 | Harris, Jerry G. |
| 2083 | Harris, Jessica Hope. |
| 695 | Harris, Jimmy. |
| 633 | Harris, Jodie Kay. |
| 696 | Harris, John Rella. |
| 2407 | Harris, Jonathon David. |
| 698 | Harris, Joseph W. |
| 2413 | Harris, Kalum Douglas. |
| 700 | Harris, Karen Ann. |
| 701 | Harris, Kathryn. |
| 702 | Harris, Kelly Neal. |
| 703 | Harris, Kevin Leonard. |
| 1777 | Harris, Kimberly Ann. |
| 1021 | Harris, Kimberly D. |
| 705 | Harris, Lena May Davis Curtis. |
| 2079 | Harris, Lester Nathaniel. |
| 706 | Harris, Lester Neil. |
| 707 | Harris, Linda Sue. |
| 709 | Harris, Lorna C. |
| 718 | Harris, Luther Morgan. |
| 711 | Harris, Martin Raymond. |
| 2400 | Harris, Megan. |
| 712 | Harris, Melanie Louise. |
| 713 | Harris, Melvin Howard. |
| 714 | Harris, Michael Shane. |
| 715 | Harris, Michael Wayne Jr. |
| 1765 | Harris, Michael Wayne. |
| 716 | Harris, Michael William. |
| 717 | Harris, Mitchell Oliver. |
| 719 | Harris, Nina Marea. |
| 720 | Harris, Paul Christopher. |
| 721 | Harris, Paul Kenneth Jr. |
| 722 | Harris, Paul Kenneth Sr. |
| 723 | Harris, Peggy Elizabeth. |
| 1521 | Harris, Philip Lee. |
| 2061 | Harris, Randolph Gerard. |
| 725 | Harris, Richard Jackson. |
| 726 | Harris, Robert Curtis. |
| 727 | Harris, Robin Kay. |
| 694 | Harris, Roger Gerard (Jerry). |
| 728 | Harris, Ronald Floyd. |
| 729 | Harris, Shernic. |
| 730 | Harris, Stacy. |
| 731 | Harris, Stanley Spencer. |
| 732 | Harris, Tara. |
| 733 | Harris, Teresa Lee. |
| 735 | Harris, Theresa Louise. |
| 736 | Harris, Thomas Edward. |
| 2408 | Harris, Timothy Dale. |
| 737 | Harris, Timothy Neal. |
| 738 | Harris, Tonta. |
| 2080 | Harris, Tracy Irene. |
| 1778 | Harris, Tracy Marie. |
| 740 | Harris, Tressa Ann. |
| 741 | Harris, Victor. |
| 743 | Harris, Vonda Darlene. |
| 751 | Harris, Walter L. Sr. |
| 744 | Harris, Walter Lloyd Jr. |
| 745 | Harris, Wendell Loran. |
| 746 | Harris, Wilburn. |
| 747 | Harris, Wilford Phillip. |
| 748 | Harris, Willard Leon Jr. |
| 749 | Harris, William J. |
| 750 | Harris, Woodrow. |
| 752 | Harrison, Daniel Hutchenson. |
| 753 | Harrison, Marilyn Ann. |
| 754 | Harsey, Frances. |
| 2110 | Harsey, Lacey Jaye. |
| 2111 | Harsey, Samantha Renee. |
| 755 | Head, Pheobia L. D. |
| 756 | Hedgepath, Anne. |
| 757 | Hedgepath, Cora Paulette. |
| 2468 | Hedgepath, Robert Daniel. |
| 758 | Hedgepath, Ronnie Wayne. |
| 760 | Hedgepath, Sherman Dale Jr. |
| 762 | Hellewell, Caroline D. |
| 763 | Hellewell, Shauna. |
| 764 | Hellewell, Tammy. |
| 765 | Helms, Sonji Nell. |
| 766 | Henderson, Adrene. |
| 767 | Henderson, Amy. |
| 768 | Henderson, Anita Delphine. |
| 769 | Henderson, Nicholas. |
| 770 | Hendrix, Robert F. Jr. |
| 771 | Hendrix, Thelma Canty. |
| 772 | Herrind, Flonnie Evelyn. |
| 773 | Herrind, Lenny Dwayne. |
| 1559 | Herring, Andrea Kristi. |
| 774 | Herring, Anthony David. |
| 1556 | Herring, Belinda Faye. |
| 1557 | Herring, Brandy Michelle. |
| 775 | Herring, Cathy Paulette. |
| 1558 | Herring, Jamie Faye. |
| 776 | Herring, Kimberly Diane. |
| 777 | Hines, Paula Delores. |
| 778 | Hitchcock, Loretta Evilyn. |
| 779 | Hitchcock, Robert Carl Adam. |
| 1522 | Hodge, Anne. |
| 780 | Hodge, Hazel Elizabeth. |
| 1524 | Hodge, Jessey Alan. |
| 1526 | Hodge, Joshua David. |
| 1523 | Hodge, Matthew Steven. |
| 1525 | Hodge, Nicholas Blair. |
| 2333 | Honaker, Nicole Danielle. |
| 2114 | Honeycutt, Ashley Brooke. |
| 781 | Honeycutt, Daphne Delois. |
| 2108 | Honeycutt, Earl Henry III. |
| 2112 | Honeycutt, Jacqueline Marie. |
| 782 | Honeycutt, John Timothy. |
| 2125 | Honeycutt, Renee Louise. |
| 2109 | Honeycutt, Robert Wayne III. |
| 783 | Honeycutt, Roberta Sanders. |
| 2178 | Honeycutt, Sandy Kay. |
| 2113 | Honeycutt, Trisha Suzanne. |
| 784 | Honeycutt, Troy Thomas Jr. |
| 1492 | Hosmer, Allison Leigh. |
| 1493 | Hosmer, Anthony. |
| 1491 | Hosmer, Brian Phillip. |
| 1490 | Hosmer, Illa Gail. |
| 785 | Howard, Cassie Lynn. |
| 786 | Howard, Catherine Valerie. |
| 787 | Howard, David W. |
| 788 | Howard, James Moore Jr. |
| 789 | Howard, James Travis. |
| 790 | Howard, John L. Jr. |
| 795 | Howard, Paul William. |
| 792 | Howard, Timothy Daniel. |
| 793 | Howard, Tom Williams. |
| 794 | Howard, Vicky Elizabeth. |
| 2131 | Howe, Steven W. |
| 796 | Howington, Angela. |
| 1645 | Howington, Angela Talley. |

| Roll No. | Name |
|---|---|
| 2119 | Hubbard, Amanda Michelle. |
| 207 | Hubbard, Barbara Annette. |
| 2118 | Hubbard, Brandon Edward. |
| 2121 | Hubbard, Michael Tracy. |
| 2120 | Hubbard, Richard Dustin. |
| 2411 | Hueitt, Mark William. |
| 2412 | Hueitt, Richard Dean. |
| 797 | Huffstetler, Kayce. |
| 798 | Huffstetler, Martha Sue. |
| 799 | Huffstetler, Whitney. |
| 161 | Humphries, Jennifer Alane. |
| 1532 | Humphries, Rosa H. |
| 1751 | Humphries, Rose Harris. |
| 800 | Hungate, Caitlyn Jayne. |
| 801 | Hungate, Caryn Louise. |
| 802 | Hungate, Mederith Trimnal. |
| 804 | Hunter, Jenna Camille. |
| 805 | Hunter, Jude Allan. |
| 806 | Hunter, Julius Calvin. |
| 807 | Hunter, Lillie Viola. |
| 20 | Hunter, Marsha Rene. |
| 808 | Hunter, Matthew Calvin. |
| 809 | Hunter, Paige. |
| 810 | Hunter, Raegan. |
| 803 | Hunter, Shelley Jeanine. |
| 2317 | Hyatt, Cheryl Ann. |
| 811 | Hyatt, John Curtis. |
| 812 | Hyatt, Karen Denise. |
| 813 | Hyatt, Tiffany Marie. |
| 2115 | Hyman, Aaron Dupree. |
| 2116 | Hyman, Joshua Kenneth. |
| 2450 | Johnson, Amber Courtney. |
| 815 | Johnson, Amber Sharon. |
| 816 | Johnson, Amy Ray. |
| 817 | Johnson, Anita Michele. |
| 2514 | Johnson, Courtney Amanda. |
| 818 | Johnson, Crystal Renee. |
| 819 | Johnson, Cynthia Denise. |
| 820 | Johnson, Frances Inez. |
| 821 | Johnson, Hadden Delano. |
| 822 | Johnson, James Durrand. |
| 823 | Johnson, Jane Adams. |
| 2431 | Johnson, Jeccica Brooke. |
| 824 | Johnson, Joseph Hadden. |
| 825 | Johnson, Justin Derrick. |
| 826 | Johnson, Letha. |
| 828 | Johnson, Marty Adam. |
| 634 | Johnson, Pamela Sue. |
| 829 | Johnson, Paula Leigh. |
| 830 | Johnson, Priscilla Blue Jose. |
| 831 | Johnson, Robert Lee. |
| 832 | Johnson, Ruthie Mae. |
| 833 | Johnson, Santana Danielle. |
| 2451 | Johnson, Trey Michael. |
| 834 | Joiner, Beverly Allyn. |
| 835 | Joiner, Beverly C. |
| 836 | Joiner, Jason Matthew. |
| 837 | Joiner, Nathinal Jared. |
| 838 | Jones, Angelia Marie. |
| 839 | Jones, Angelica Shree. |
| 840 | Jones, Daniel Jacob. |
| 842 | Jones, James Anthony. |
| 1771 | Jones, Linda Ann. |
| 872 | Jones, Lisa Jane. |
| 843 | Jones, Sharon Rose. |
| 845 | Jordan, Debra Kay Ayers. |
| 1787 | Jordan, Kevin James. |
| 1788 | Jordan, Melanie Rose. |
| 1760 | Jordon, Jody S. |
| 1546 | Jordon, Jody Shawn. |
| 846 | Jose, Arlette Renee. |
| 847 | Keekooloni, Henry Paakiki Nahmani. |
| 848 | Keener, Marsha D. |
| 1764 | Keesee, Amber Nicole. |
| 849 | Keesee, Charles Edward. |
| 850 | Keesee, Robert Lewis. |
| 851 | Kekooloni, Jenne Rene. |
| 2511 | Kellam, Sonja N. |
| 853 | Kennington, Amanda Nicole. |
| 854 | Kennington, Donald Dwayne. |
| 1531 | Keopraseorth, Stayce Leah. |
| 1530 | Keopraseorth, Tyler Andrew. |
| 2442 | Kersey, Meagan Nicholle. |
| 855 | Kimble, Constance Veronica. |
| 856 | Kimble, Michelle Veronica. |
| 608 | Kimbrell, Cynthia A. |
| 2123 | Kimbrell, Daniel Ray. |
| 857 | Kimbrell, Nettie L. |
| 858 | Kimbrell, Ronnie Lee. |
| 2122 | Kimbrell, Shannon Nicole. |
| 859 | Kimbrell, Sherrie L. |
| 860 | Kimbrell, Susan Darlene. |
| 2432 | Kirk, Christopher Jacob. |
| 2433 | Kirk, Clarence Grover III. |
| 1508 | Kirk, Evelyn A.C. |
| 862 | Kitchen, Wanda Kay. |
| 863 | Knight, Anthony Gleen. |
| 864 | Knight, Dana Ivan. |
| 1773 | Knight, Denise. |
| 866 | Knight, Thomas Wayne. |
| 1620 | Korver, Tanya Michele. |
| 2471 | Lail, Jeremy Allen. |
| 2472 | Lail, Zackie James. |
| 926 | LaManna, Brenda Denise. |
| 867 | Lambiasi, Alene Fern. |
| 868 | Lambiasi, Amanda Fern. |
| 870 | Lambiasi, Anthony Daniel. |
| 869 | Lambiasi, Elizabeth Joann. |
| 871 | Largo, Jeanette Guynell. |
| 873 | Largo, Mark Anthony. |
| 874 | Leach, Brandon G. |
| 875 | Lear, Margaret Faye (Bodiford). |
| 877 | Long, Cora Lee Foxx. |
| 878 | Love, Darryl Lynn. |
| 2550 | Love, Jonathan Todd. |
| 2549 | Love, Jutanna S. |
| 2548 | Love, Jutanna Suzette. |
| 879 | Love, Kevin Ray. |
| 880 | Love, Sylvia Elizabeth. |
| 881 | Lyda, John S. Gillilan. |
| 882 | Lyda, Sandra D. Gillilan. |
| 582 | Lydia, Sandra Dianne. |
| 884 | Lyell, Richard. |
| 885 | Lyell, Susan. |
| 886 | Lyell, Sylvia Margaret. |
| 887 | Maccraw, Deborah Teaster. |
| 2245 | Mackey, Christopher Lee. |
| 2244 | Mackey, David Windell Jr. |
| 2246 | Mackey, Joshau. |
| 888 | Mackey, Windell David. |
| 373 | Madison, Wanda Denise. |
| 889 | Malong, Tammie K. |
| 2329 | Mancill, Kenneth Earl. |
| 890 | Mancill, Mary Frances. |
| 2328 | Mancill, Vickie Renee. |
| 891 | Maners, Kim. |
| 1511 | Manuma, Matthew L. |
| 1545 | Marshall, Melanie H. |
| 1547 | Marshall, Melissa Nicole. |
| 897 | Martin, Bryan Keith. |
| 2124 | Martin, Daniel Earl. |
| 892 | Martin, Darnell. |
| 893 | Martin, Derrick Nicholson. |
| 894 | Martin, Jackie Wesley. |
| 895 | Martin, Louise Renne Honeycutt. |
| 896 | Martin, Malcome. |
| 1761 | Mason, Betty Denise. |
| 898 | Mason, Janet Renee Bryson. |
| 1789 | Mayfield, Ashley Michelle. |
| 1790 | Mayfield, Kandice Alicia. |
| 900 | Mayfield, Kelly Cheri. |
| 2387 | Mayne, Alyssa Nicole. |
| 2386 | Mayne, Dawn Michelle. |
| 2238 | Maynor, Briana Michelle. |
| 2237 | Maynor, Rebecca Lynn. |
| 2262 | McCall, Jessica Leigh. |
| 2263 | McCall, Kailen Paige. |
| 1677 | McCall, Patricia. |
| 1584 | McCraw, Deborah Kay. |
| 2227 | McCraw, Magan Elizabeth. |
| 903 | Mcdaniel, Jane. |
| 904 | Mcdaniel, Jeremy. |
| 905 | Mcdaniel, Rachel. |
| 2449 | McGinnis, Ashley Ann. |
| 909 | Mcginnis, Elizabeth Jane Canty. |
| 910 | Mcginnis, Tammy Louise. |
| 911 | Mcginnis, Tracy Ann. |
| 912 | Mcgraw, Amanda Kay. |
| 2168 | McGraw, Daryl Owens Jr. |
| 914 | McHugh, Kim G. |
| 1780 | McHugh, Stephanie Lynn. |
| 915 | Mckellar, Billie Ann. |
| 917 | Mckeller, Steve Eugene Jr. |
| 918 | Mckinney, Bryan Patrick. |
| 919 | Mckinney, Evan Joel. |
| 920 | Mckinney, Joyce Pamela. |
| 921 | Mckinney, Justin Everett. |
| 922 | Mckinney, Lauren Celeste. |
| 923 | Mckinney, Seth Williamson. |
| 924 | Mcmanus, Deborah Mae. |
| 925 | Mcmanus, Edward Dron. |
| 1464 | Mcmanus, Kerrie. |
| 927 | Mcmaster, Linda Darnell. |
| 928 | McMaster, Thomas Edward. |
| 929 | Medlin, Billie Jo. |
| 930 | Medlin, Charles Robert. |
| 931 | Medlin, Christine Leola. |
| 932 | Medlin, Jason Charles. |
| 933 | Medlin, Jesse James. |
| 934 | Medlin, Nona Jane. |
| 935 | Medlin, William Lamont. |
| 936 | Medlock, Alisa Kay. |
| 937 | Medlock, Doris Kay. |
| 938 | Medlock, Jared Ray. |
| 2148 | Melech, Patricia Charlene. |
| 940 | Melton, Cynthia J. |
| 2127 | Mercer, Bryan Anthony. |
| 2126 | Mercer, Mark Allen Jr. |
| 2460 | Merritt, Adriene. |
| 2461 | Merritt, James Matthew. |
| 941 | Merritt, Patricia Thompson. |
| 944 | Miller, Ester. |
| 2235 | Mills, Dorenda Michelle. |
| 2234 | Mills, Howard Adams. |
| 945 | Mills, Janice Dorenda. |
| 2236 | Mills, Ryan Cheyene. |
| 948 | Mitchell, John. |
| 947 | Mitchell, Katherine Marie. |
| 2330 | Mock, Dustin Kyle. |
| 1517 | Moore, Ashley. |
| 1516 | Moore, Cynthia D. |
| 950 | Moore, Joann. |
| 1520 | Moore, Kristy D. |
| 1518 | Moore, Melissa D. |
| 1519 | Moore, Roger. |
| 2426 | Morgan, Jefferson Scott Jr. |
| 951 | Morris, Ann Garnet. |
| 952 | Morris, Beronica Lynn. |
| 953 | Morris, Bonnie Leverne. |
| 954 | Morris, Donald, Jr. |
| 955 | Morris, Doris Jean. |

| Roll No. | Name |
|---|---|
| 2067 | Morris, Ellen Deloria. |
| 957 | Morris, Robert Lee. |
| 960 | Moss, Billy Odell. |
| 962 | Moss, Helen. |
| 965 | Moss, Matthew Dell. |
| 2446 | Moss, Travis Steele. |
| 966 | Mundy, Sandra Faye Ayers. |
| 2434 | Murray, Tonda Maarjean. |
| 967 | Nash, Denise Renee. |
| 964 | Neely, Lisa Adell. |
| 2517 | Neely, Steven Wayne. |
| 968 | Nichols, Anthony Wayne. |
| 969 | Nichols, Jennifer Michele. |
| 970 | Nichols, Karen Denise. |
| 2397 | Norris, David LaFayette III. |
| 483 | Norris, Nicole Cherise. |
| 973 | Oglesby, Candice Regan. |
| 974 | Oglesby, Cassandra Leah. |
| 975 | Oglesby, Khari Morgan. |
| 976 | Oglesby, Leah. |
| 977 | Oglesby, Rhonda Delores. |
| 2454 | Oliver, Amanda Renee. |
| 2453 | Oliver, Justin Emory. |
| 978 | Oliver, Margaret Ann. |
| 979 | Oliver, Randy Lester. |
| 980 | Oliver, Sidney Jerome. |
| 981 | Olson, Bessie Valoy. |
| 982 | Osborn, Alex T. |
| 983 | Osborn, Danielle. |
| 984 | Osborn, David Todd. |
| 985 | Osborn, Dawn Renee. |
| 987 | Osborn, Jason Wade. |
| 988 | Osborn, Milton Gregg. |
| 989 | Osborn, Sherry Geraldine. |
| 990 | Osborne, Mary Elizabeth. |
| 1774 | Osborne, Sheila. |
| 992 | Osborne, Susan Marlene. |
| 1791 | Osment, Glenn Ryan. |
| 1792 | Osment, Nettie Jane. |
| 994 | Oswald, Anthony Lee. |
| 1766 | Oswald, Brittney April Leigh. |
| 995 | Oswald, Charles Micheal. |
| 996 | Outen, Jerry Lee George. |
| 997 | Outen, Robert Edward Jr. |
| 1793 | Outen, Tonya Nicole. |
| 1794 | Owens, Lula Annette. |
| 1686 | Owens, Robin Rene. |
| 1796 | Owens, Samual Hergert III. |
| 1795 | Ownes, Randall Chadwick. |
| 2503 | Oxendine, Aaron Blake. |
| 1797 | Oxendine, Della Eleanor. |
| 2502 | Oxendine, Phillip Drew. |
| 1798 | Oxendine, Ralph Guy Jr. |
| 2500 | Oxendine, Stephen Daniel. |
| 1799 | Oxendine, Waylon Keith. |
| 1591 | Parker, Ann. |
| 2260 | Parks, Cody Great Bear. |
| 2259 | Parks, Jack Big Bear. |
| 2258 | Parks, Kris Littlebear. |
| 2239 | Parks, Lauren Alyssa. |
| 791 | Parks, Nancy E. |
| 1800 | Parks, Paula Leigh. |
| 1801 | Patterson, Robyn Jolene. |
| 2489 | Payne, Christy Lee. |
| 2490 | Payne, Shayne Michelle. |
| 2491 | Payne, Shelley Renee. |
| 2171 | Perdue, Benjamin McClure. |
| 2169 | Perdue, Billy James Jr. |
| 2170 | Perdue, Elizabeth Blair. |
| 761 | Petrini, Caroline Diane. |
| 1802 | Petty, Bubby. |
| 1803 | Petty, Candy. |
| 1804 | Petty, Christine H. |
| 1805 | Petty, Cory D. |
| 1806 | Petty, George. |
| 1807 | Petty, Jackie Alton. |
| 2498 | Petty, Jackie Lynn. |
| 1808 | Petty, John Waylon. |
| 1809 | Petty, Johnnie William. |
| 1811 | Petty, Patricia Ann. |
| 1812 | Petty, Ronald Vance. |
| 1813 | Petty, Wanda Kay. |
| 2436 | Phillips, Ashley Nicole. |
| 2425 | Phillips, Crystal Nicole. |
| 2437 | Phillips, Jonathon Corey. |
| 2438 | Phillips, Rhyne Heath. |
| 2435 | Phillips, Robert Dean. |
| 2493 | Phillips, Ryan Heath. |
| 1814 | Pittman, Taloni Rochelle. |
| 1815 | Pittman, Tommy Shane. |
| 1816 | Pittman, Velma Marlene. |
| 2494 | Plyler, Arthur Terrance. |
| 2495 | Plyler, Arthur Terrence Jr. |
| 1817 | Plyler, Bruce Allen. |
| 1818 | Plyler, Charles Martin. |
| 1819 | Plyler, Donald Olin. |
| 1820 | Plyler, Gerald Hubert. |
| 2158 | Plyler, Gerald Hubert Jr. |
| 2496 | Plyler, Jennifer Jean. |
| 2160 | Plyler, Jordan Violet. |
| 2162 | Plyler, Joshua. |
| 1823 | Plyler, Joshua Olin. |
| 2159 | Plyler, Justin Allen. |
| 1824 | Plyler, Leonard. |
| 2058 | Plyler, Linda Rebecca. |
| 2156 | Plyler, Mark Jeffery. |
| 2157 | Plyler, Matthew Joseph. |
| 1826 | Plyler, Michael Dakota. |
| 1827 | Plyler, Michael Wayne. |
| 2155 | Plyler, Michaela Jeanine. |
| 1828 | Plyler, Norman Lynn. |
| 1829 | Plyler, Olin Flow Jr. |
| 1830 | Plyler, Phillip. |
| 1767 | Plyler, Sally Elizabeth. |
| 1831 | Porter, Jennifer Lauren. |
| 1832 | Porter, Joshua Wade. |
| 1833 | Porter, Joy Mardine. |
| 1834 | Porter, Kevin Christopher. |
| 2513 | Porter, Rohin. |
| 2539 | Poteet, Charlotte Yvonne. |
| 1835 | Pothenger, Shelley Maxine. |
| 2248 | Pottenger, Ashley May. |
| 2247 | Pottenger, Kressent Monique. |
| 1784 | Potts, Alisha Rae. |
| 1836 | Potts, Alton Amos. |
| 1837 | Potts, Alton Dewayne. |
| 1838 | Potts, Bryan Neal. |
| 1770 | Potts, Calvin Lee. |
| 1840 | Potts, Johnny Ray. |
| 1785 | Potts, Krista Leann. |
| 1841 | Potts, Melinda Lou. |
| 1842 | Potts, Mendy Jo. |
| 1779 | Potts, Michael Aaron. |
| 1844 | Potts, Naomi. |
| 1786 | Potts, Noah Steven. |
| 1846 | Potts, Renda. |
| 1847 | Potts, Tanya Marie. |
| 1848 | Potts, Wendy Lee. |
| 2443 | Preslar, Jarhett Wade. |
| 1849 | Price, Andrea Marie. |
| 656 | Price, Cheryl Ann. |
| 1850 | Price, Jessie Elaine. |
| 1851 | Price, Linda Diane. |
| 1852 | Price, Sandra. |
| 1853 | Price, Timothy John. |
| 1854 | Privette, Jason Lee. |
| 1855 | Privette, Jeremy James. |
| 1856 | Privette, Marsha Denise George. |
| 1857 | Pruitt, Jonathen Lee. |
| 1858 | Pruitt, Lottie Spivey. |
| 1859 | Pryor, Alan Mark. |
| 1860 | Pryor, Wanda Sue. |
| 1861 | Pryor, William Eric. |
| 2151 | Puckett, Ashley Denise. |
| 2152 | Puckett, Carrie Nicole. |
| 1862 | Puckett, James Albert II. |
| 2154 | Puckett, Pamela Antoinette. |
| 2153 | Puckett, Wanda Renee. |
| 1866 | Rabon, Emily Elizabeth. |
| 1867 | Rabon, Teresa L. |
| 2518 | Ramsey, Amanda Lynn. |
| 2519 | Ramsey, Brandon Lee. |
| 961 | Ramsey, Brenda Jean. |
| 2520 | Ramsey, Christopher Thomas. |
| 2505 | Ranucci, Michael Paul. |
| 1868 | Ratteree, Audrey Bernice. |
| 1869 | Ratteree, Audrey Reola. |
| 1870 | Ratteree, Christy Gail. |
| 1871 | Ratteree, Tonya Michele. |
| 1873 | Ravan, Betty Ruth. |
| 1872 | Ravan, Kimberly Dawn. |
| 1875 | Rayfield, Lillian Ann. |
| 1876 | Rayfield, Robert Dow. |
| 1877 | Reid, Catherine Lyanne. |
| 1878 | Reid, Fanny Lavinin. |
| 1879 | Rhynders, David. |
| 1880 | Rhynders, Peter Benjamin. |
| 1881 | Rhynders, Ryan. |
| 1882 | Rhynders, Spencer. |
| 1883 | Rhynders, Victoria Yvonne. |
| 2554 | Rider, Michael Anthony. |
| 1549 | Ridley, Melina Sharee. |
| 1548 | Ridley, Nina Marae. |
| 1884 | Riley, Amanda Dianne. |
| 1885 | Riley, Jessica Michelle. |
| 1886 | Riley, Jill Ronea. |
| 1887 | Riley, Kimberly Christina. |
| 1888 | Riley, Tammy Renee. |
| 1889 | Robbins, Barney C. |
| 2399 | Robbins, Bradley Earl. |
| 1890 | Robbins, Bradley M. |
| 1891 | Robbins, Earl. |
| 1892 | Robbins, Flint. |
| 1893 | Robbins, Frank E. |
| 1894 | Robbins, Jimmie. |
| 1895 | Robbins, Viola. |
| 1896 | Robbins, William. |
| 1897 | Robbins, William Jr. |
| 1921 | Robers, Leesa Louse. |
| 1898 | Roberts, Rose Marie. |
| 1899 | Roberts, Rosemary. |
| 8 | Robertson, Donna Marie. |
| 1768 | Robinson, Audrey Dale. |
| 1566 | Rochester, Cynthia Diane. |
| 1569 | Rochester, Jacob Lee. |
| 1568 | Rochester, James Nicholas. |
| 1567 | Rochester, Jessica Laine. |
| 1570 | Rochester, Joseph Tyler. |
| 1904 | Rodgers, Donald Wayne. |
| 1905 | Rodgers, Freddie Grace. |
| 1906 | Rodgers, Kim Lee. |
| 1907 | Rogers, Amy Nicolle. |
| 1908 | Rogers, Daniel Wayne. |
| 1909 | Rogers, Debra Lee. |
| 1910 | Rogers, Ernest D. |
| 1911 | Rogers, Fred Kelly. |
| 1912 | Rogers, James Kelly. |
| 1913 | Rogers, Jimmie. |
| 1915 | Rogers, John Alvin. |
| 1914 | Rogers, John Alvin Jr. |
| 1916 | Rogers, Kathleen Annette |
| 1917 | Rogers, Keith Preston. |

| Roll No. | Name |
|---|---|
| 1918 | Rogers, Kelly Elizabeth June. |
| 1919 | Rogers, Kristine Elizabeth. |
| 1920 | Rogers, Larry Dwayne II. |
| 1922 | Rogers, Marcie. |
| 2525 | Rogers, Mary Katherine. |
| 1923 | Rogers, Melissa Faye. |
| 1924 | Rogers, Ronnie. |
| 1925 | Rogers, Steve Otho. |
| 1926 | Rogers, Tammy Kay. |
| 1928 | Rogers, Tina Michelle. |
| 1929 | Rogers, Todd Loren. |
| 2524 | Rogers, William Bradford. |
| 1931 | Rollins, Eric Dwayne. |
| 1932 | Rowe, Adam Thomas. |
| 1933 | Rowe, Merri Rayfield. |
| 1934 | Rowe, Wyatt Dale. |
| 2522 | Rowley, James Michael II. |
| 18 | Rowley, Lisa Ann. |
| 1935 | Russell, Jai Anne. |
| 1560 | Rutland, Kristen Nicole. |
| 1936 | Sanders, Ada. |
| 1937 | Sanders, Albert Henderson III. |
| 1938 | Sanders, Albert Henderson Jr. |
| 1939 | Sanders, Albert Henderson Sr. |
| 1940 | Sanders, Aldrew Clark Jr. |
| 1941 | Sanders, Aldrew Clark Sr. |
| 1943 | Sanders, Angela Lea. |
| 1942 | Sanders, Angela Michele. |
| 2477 | Sanders, Brian Warren. |
| 1946 | Sanders, Calvin Ray. |
| 1947 | Sanders, Caroleen M. |
| 1948 | Sanders, Cecil Glen. |
| 1990 | Sanders, Celta Dawn. |
| 1949 | Sanders, Charles Richard. |
| 1950 | Sanders, Christopher Louis. |
| 1951 | Sanders, David Neal. |
| 1952 | Sanders, Deborah Jean. |
| 1953 | Sanders, Donald Wayne. |
| 1954 | Sanders, Early Fred. |
| 1955 | Sanders, Elizabeth Denise. |
| 2478 | Sanders, Franklin Thomas. |
| 1957 | Sanders, Fred Eugene. |
| 1958 | Sanders, Gail. |
| 1960 | Sanders, Jackie Scott. |
| 1961 | Sanders, John Jack Jr. |
| 1962 | Sanders, John Patrick. |
| 1963 | Sanders, Kelly Renea. |
| 1964 | Sanders, Kimberly Ann. |
| 1965 | Sanders, Marcus Emory. |
| 1966 | Sanders, Marilyn. |
| 1967 | Sanders, Mary Evelyn. |
| 1968 | Sanders, Michael Gleen. |
| 1969 | Sanders, Michelle Luraye. |
| 1970 | Sanders, Randall Dean. |
| 1972 | Sanders, Rodney Wayne. |
| 1973 | Sanders, Ronald William. |
| 1971 | Sanders, Rondolph Edward. |
| 1974 | Sanders, Scotty Dewayne. |
| 2526 | Sanders, Shannon Wayne. |
| 1975 | Sanders, Thoman Burton. |
| 1976 | Sanders, Thomas Cornelius. |
| 1977 | Sanders, Thomas Lester. |
| 1978 | Sanders, Thomas McCloud. |
| 1981 | Sanders, Verdie. |
| 1982 | Sanders, Wanda. |
| 1983 | Sanders, Wanda Hammond. |
| 1985 | Sanders, William Louie. |
| 1986 | Sanders, William Mack. |
| 2293 | Sanders, William Max. |
| 1988 | Sanders, William Scott. |
| 1991 | Schutte, Dawn Wakilani. |
| 1992 | Schutte, Garth Kaleikine. |
| 1993 | Scott, Colleen. |
| 2060 | Scruggs, Jonathan Bradley. |
| 1583 | Scruggs, Tammy Rene. |
| 906 | Sharpe, Angelia Runi. |
| 907 | Sharpe, Christopher Wayne. |
| 1484 | Sharpe, Melissa. |
| 1994 | Shaver, Lily Howard. |
| 883 | Shealy, Barbara Lynn. |
| 2506 | Shealy, Britanie Margaret. |
| 2504 | Shealy, Kailyn Marie. |
| 1995 | Shehan, Lynette Harris. |
| 1483 | Shingler, Anna D. |
| 1482 | Shingler, Dustin A. |
| 185 | Shingler, Shelia Darnell. |
| 1996 | Shirah, Christopher Lee. |
| 1997 | Shirah, Jamie. |
| 1998 | Shirah, Louise. |
| 1999 | Shrake, Freida Marilyn. |
| 2000 | Shrake, Melissa Marie. |
| 2001 | Shugart, Helen Louise. |
| 2309 | Shugart, Jeffery. |
| 2002 | Shugart, Jeffery Adams. |
| 2003 | Shugart, Jennifer Michelle. |
| 2004 | Shugart, Kenneth Eugene Jr. |
| 2349 | Shugart, Kenneth Rhiannon. |
| 2005 | Shugart, Rita Shawn. |
| 2308 | Shugart, Steven. |
| 2307 | Shugart, William Dean. |
| 2009 | Shuler, Joel Christopher. |
| 2010 | Shuler, Linda Gail Brown. |
| 2011 | Sigmon, Reba Maxine. |
| 2024 | Simmers, Brittany Nasha. |
| 2076 | Simmers, Daniel. |
| 2013 | Simmers, Daniel Taylor. |
| 2251 | Simmers, Erika Nicole. |
| 2015 | Simmers, Garrett Jason. |
| 2016 | Simmers, James Leon. |
| 2223 | Simmers, Jason Edward. |
| 2017 | Simmers, Lisa Louise Marie. |
| 2019 | Simmers, Mildred Leone. |
| 2020 | Simmers, Rocky Vernon. |
| 2021 | Simmers, Saritta Janene. |
| 2224 | Simmers, Sharon Marie. |
| 2022 | Simmers, Shelly Jeanette. |
| 2023 | Simmers, Stacy Jean. |
| 2025 | Skar, Eric Tyler. |
| 2026 | Sloat, Cynthia Lynn. |
| 2027 | Sloat, Jamie Lynn. |
| 2028 | Sloat, Patsy Blue. |
| 2029 | Smith, Angela Paulette. |
| 1543 | Smith, Anthony Glenn. |
| 2534 | Smith, Brandy Michelle. |
| 913 | Smith, Deborah Ann. |
| 12 | Smith, Glenda. |
| 2030 | Smith, Margaret Rebecca. |
| 2031 | Smith, Melanie Denise. |
| 2032 | Smith, Rebecca Carleen. |
| 1564 | Smith, Robert Earl. |
| 2034 | Smith, Robert Earl Jr. |
| 2035 | Smith, Sabrina Dawn. |
| 2036 | Smith, Sandra Darnell Sanders. |
| 1752 | Smith, Shari Wilson. |
| 2037 | Smith, Tammy Renee. |
| 2038 | Smith, Thomas Franklin Jr. |
| 2173 | Sotolongo, Amber Mechelle. |
| 365 | Sotolongo, Miranda Lynn. |
| 2039 | Sox, Paul Samuel. |
| 2040 | Sox, Robert Wesley. |
| 2041 | Sox, Teresa Earline. |
| 2042 | Spivey, Alisha. |
| 2530 | Spivey, Angela Marie. |
| 134 | Spivey, Juanita M. |
| 2529 | Spivey, Sharon Marlene. |
| 2043 | Spivey, Smantha V. |
| 2344 | Spivey, Tammy Anise. |
| 2044 | Spivey, Timothy Joe. |
| 1959 | St. Clair, Iris Lucinda. |
| 2045 | Steiniger, Jennette. |
| 2046 | Steiniger, Micheal Loraine. |
| 2047 | Steiniger, Shirley. |
| 2048 | Stevens, Barbara Ann. |
| 2337 | Stevens, Dawn Michelle. |
| 2334 | Stevens, Debora Darlene. |
| 2335 | Stevens, Sharon Jean. |
| 2050 | Stewart, Mary Evelyn Sanders. |
| 2527 | Stewart, Randall Matthew. |
| 2528 | Stewart, Steven Andrew. |
| 2051 | Stokes, Barry Dean. |
| 2052 | Stokes, Billy Joe. |
| 2053 | Stokes, Curtis Wayne. |
| 2054 | Stokes, Daniel Leroy. |
| 2055 | Stokes, Gleen Edward. |
| 2056 | Stokes, James Allen. |
| 2057 | Stokes, Joseph Coland Jr. |
| 1265 | Stokes, Kevin Ray. |
| 1266 | Stokes, Michael Shane. |
| 1267 | Stokes, Robert Lee. |
| 1268 | Stokes, Robert Lee Jr. |
| 1269 | Stokes, Stella B. |
| 1571 | Stokes, Timothy Scott. |
| 1573 | Stott, Toy June. |
| 1574 | Strickland, Pearlie. |
| 2190 | Stroud, Brittany Amanda. |
| 2191 | Stroud, Christopher Dale. |
| 704 | Stroud, Kimberly D. |
| 1575 | Sutton, Teresa Diane. |
| 2552 | Sutton, Whitney Joy Ayers. |
| 2551 | Sutton, William Curtis. |
| 1576 | Talley, Barbara Annette. |
| 1577 | Talley, Curtis Brent. |
| 1578 | Talley, Dessa Darlene. |
| 1579 | Talley, James Heyward Jr. |
| 1580 | Talley, Michael Warren. |
| 1581 | Talley, Myleah Breanne. |
| 1582 | Talley, Warren Edward. |
| 2270 | Tanner, Brooke Michele. |
| 2272 | Tanner, Kacey Danielle. |
| 2271 | Tanner, William Travis. |
| 2137 | Teaster, Etta D. |
| 1586 | Teaster, Jimmie Eugene. |
| 1587 | Teaster, Ransom. |
| 2226 | Teaster, Virginia Claudette. |
| 1588 | Teaster, William Glenn. |
| 1590 | Templeton, Debora Darlene. |
| 2410 | Terry, Michelle Lynn. |
| 1592 | Tessner, Ruth Robbins |
| 1593 | Thatcher, Harold Lloyd. |
| 2532 | Thatcher, Jason Lloyd. |
| 1595 | Thatcher, Matthew Tyler. |
| 2531 | Thatcher, Rebecca Leigh Ann. |
| 1596 | Thatcher, Steven Keith. |
| 1498 | Therrell, Joyce Ann. |
| 2311 | Thomas, Chrissy Alene. |
| 1597 | Thomas, Christopher Dowain. |
| 1598 | Thomas, Emory Randolph. |
| 1599 | Thomas, Jeffery Mcdonald. |
| 1600 | Thomas, Larry Allen. |
| 1601 | Thomas, Louis Scott. |
| 2312 | Thomas, Marvin Donald III. |
| 1602 | Thomas, Michael Shannon. |
| 1603 | Thomas, Michael Steven. |
| 1604 | Thomas, Ollie Mae. |
| 1605 | Thomas, Pamela Michelle. |
| 1606 | Thomas, Peggy. |
| 1607 | Thomas, Timothy Randolph. |
| 1608 | Thomas, Virginia Claudette. |
| 1609 | Thomas, William M. |
| 2225 | Thompson, Adam Quinton. |
| 2228 | Thompson, Anna Leigh. |
| 1610 | Thompson, Clyde. |

| Roll No. | Name |
|---|---|
| 2456 | Thompson, Jessica Lynn. |
| 1611 | Thompson, Latasha. |
| 1612 | Thompson, Lois Elvina. |
| 1613 | Thompson, Rose. |
| 2455 | Thompson, Scotty. |
| 1614 | Thompson, Scotty A. Jr. |
| 2457 | Thompson, Stephanie Michelle. |
| 2006 | Thrash, Rita Shawn. |
| 1615 | Threatt, Josephine Branham. |
| 1616 | Tinker, Geraldine. |
| 1617 | Tinker, Matthew D. |
| 1618 | Tinker, Rebecca Kathryn. |
| 1619 | Tinker, Stuart. |
| 1621 | Tipton, Cheryl Ann. |
| 1622 | Totherow, Nancy Deandrea. |
| 1623 | Totherow, Shannon Leslie. |
| 1759 | Trimnal, Ashley Carol Trimnal. |
| 1625 | Trimnal, Becky Christine. |
| 1626 | Trimnal, Bob Kenneth. |
| 1627 | Trimnal, Heather E. |
| 1629 | Trimnal, Kathy C. |
| 1630 | Trimnal, Roger Snow. |
| 1631 | Trimnal, Samuel Taylor. |
| 1633 | Trimnal, Thomas Woodrow. |
| 1635 | Troublefield, Joseph Martin. |
| 1636 | Troublefield, Vanessa Lee. |
| 1637 | Troxel, David Trent. |
| 1638 | Troxel, Samuel Neil. |
| 1639 | Troxel, Shasta Ilene. |
| 1640 | Troxel, Suzette Michele. |
| 1641 | Tucker, Margaret. |
| 2250 | Tucker, Matthews Earl. |
| 2249 | Tucker, William Shane. |
| 1642 | Usher, Jerry Dale. |
| 1643 | Usher, Kimberly Dawn. |
| 1644 | Usher, Norma Jean. |
| 2465 | Varnadore, Amy Michelle. |
| 1646 | Varnadore, Brandon Trent. |
| 2464 | Varnadore, Brandy Leigh. |
| 1647 | Varnadore, Christopher Lee. |
| 2467 | Varnadore, Cory West. |
| 2463 | Varnadore, Edward. |
| 2462 | Varnadore, James Dustin. |
| 1648 | Varnadore, Karen. |
| 2261 | Varnadore, Kenneth Chad. |
| 2466 | Varnadore, Kenneth Charles. |
| 1649 | Varnadore, Laura Sanders. |
| 1651 | Varnadore, Ronnie. |
| 1652 | Vick, Kenneth Craig. |
| 1653 | Vick, Vickie Renay. |
| 1654 | Vincent, Ruby Ayers. |
| 1655 | Vinson, Elic Wheeler. |
| 1656 | Wade, Baxter Bruce. |
| 2479 | Wade, Buford. |
| 1658 | Wade, Cleave Harrison. |
| 1659 | Wade, Connie Steve. |
| 1660 | Wade, Daniel Benjamin. |
| 1661 | Wade, Dara Danielle. |
| 1662 | Wade, Edith Frances. |
| 1663 | Wade, Florence R. |
| 1665 | Wade, Gary Brent. |
| 1667 | Wade, Glenn Hampton. |
| 1668 | Wade, Heather C. |
| 1669 | Wade, Heather Suzanne. |
| 1670 | Wade, Horace Gary Jr. |
| 1684 | Wade, Horace Gary Sr. |
| 1671 | Wade, Kimberly Nicole. |
| 1672 | Wade, Krissi Marie. |
| 1673 | Wade, Michael Gregg. |
| 1675 | Wade, Michael Lee. |
| 1676 | Wade, Natlie. |
| 1678 | Wade, Regina Suezeanne. |
| 1679 | Wade, Rhonda D. |
| 1681 | Wade, William Christopher. |
| 1682 | Wade, William Perry. |
| 1683 | Wade, William Perry Jr. |
| 1685 | Wages, Margaret Josephine. |
| 1466 | Walker, Karen. |
| 1734 | Walker, Lora Anne. |
| 2184 | Ward, Catherine Evona. |
| 2229 | Warner, Brian Dale. |
| 1688 | Warner, Cora Ethel. |
| 1689 | Warner, Jason Lee. |
| 1690 | Warner, Oliver Dale. |
| 1703 | Watts, Clifford Odell Jr. |
| 2232 | Watts, Davin Blue. |
| 1691 | Watts, Edwin Larson. |
| 1693 | Watts, Jenelle Sunshine. |
| 2176 | Watts, Joshua Everett. |
| 1694 | Watts, Kimberly Eula. |
| 1695 | Watts, Leone. |
| 2177 | Watts, Matthew Todacheeni. |
| 1696 | Watts, Milton Everett. |
| 1697 | Watts, Misti Lynn. |
| 1699 | Watts, Rachel Eleanora. |
| 1700 | Watts, Rodney Allan. |
| 1701 | Watts, Tristan Wade. |
| 1702 | Watts, William David Jr. |
| 1704 | Webb, Elizabeth Ashley. |
| 1705 | Webb, Sharon Marlene. |
| 971 | Webster, Krista Marie. |
| 1706 | Well, Lou Gene. |
| 1707 | Wheeler, Ashlin Nicole. |
| 1708 | Wheeler, Bobbie Jean. |
| 1709 | Wheeler, Tyson Robert. |
| 1710 | White, Angela Dionne. |
| 1711 | White, Deena Ann. |
| 1712 | White, Eber Walter. |
| 841 | White, Gail Blue. |
| 1713 | White, Rocky Anthony. |
| 2537 | White, Sarah Elizabeth. |
| 1714 | White, Sharon Melinda. |
| 1715 | Whitesides, Bernard. |
| 1716 | Whitesides, Charlie. |
| 1717 | Whitesides, Velma Brown. |
| 1718 | Whitlock, Sadie. |
| 1719 | Wilburn, Amber Suszanna. |
| 1720 | Wilburn, Cecil. |
| 1721 | Wilburn, Christopher. |
| 1722 | Wilburn, David Adams. |
| 1723 | Wilburn, Deborah Mae. |
| 1724 | Wilburn, Herman Franklin. |
| 1725 | Wilburn, Melissa Dawn. |
| 1726 | Wilburn, Olivia Grace. |
| 1727 | Wilburn, Rita Faye. |
| 1728 | Wilburn, Ryan Anthony. |
| 1729 | Wilburn, Stephanie Lauren. |
| 1487 | Wilkinson, Benjamin Bruce. |
| 1488 | Wilkinson, Kristin Lyn. |
| 1486 | Wilkinson, Neil. |
| 1489 | Wilkinson, Tarah Jean. |
| 1485 | Wilkinson, Theresa. |
| 1731 | Williams, Amy Carol. |
| 1738 | Williams, Brent Lee. |
| 1732 | Williams, Carol Mae. |
| 1733 | Williams, Colette DeLora. |
| 1735 | Williams, Keith Elloit. |
| 1736 | Williams, Phyllis DeLora. |
| 1737 | Williams, Randy Allen. |
| 1739 | Williams, Russell Shane. |
| 2556 | Williams, Tiffany Nichole. |
| 2535 | Williford, Cheryl Melissa. |
| 1742 | Williford, David. |
| 2536 | Williford, John Timothy. |
| 1743 | Williford, Vivian. |
| 1167 | Willis, Alice Grace. |
| 1746 | Wilson, Barbara Allen. |
| 2492 | Wilson, Billy Oliver. |
| 1538 | Wilson, Brittany Marena. |
| 1747 | Wilson, Charlotte Yvonne. |
| 2332 | Wilson, Christin Nicole. |
| 1782 | Wilson, Claire. |
| 1748 | Wilson, Donald Wayne. |
| 2331 | Wilson, Donald Wayne Jr. |
| 1749 | Wilson, Edwin Keith. |
| 1544 | Wilson, Heather Ann. |
| 1536 | Wilson, Jeffrey Ronald. |
| 1542 | Wilson, Joseph Matthew. |
| 1541 | Wilson, Joshua Michael. |
| 1750 | Wilson, Kim Lyle. |
| 1540 | Wilson, Kristy Nicole. |
| 2487 | Wilson, Roy O'Dell III. |
| 1456 | Wilson, Roy Odell Jr. |
| 1537 | Wilson, Stephanie Nicole. |
| 1753 | Wilson, Steve Randall. |
| 1539 | Wilson, Tanja Coral. |
| 1755 | Wilson, Todd L. |
| 1535 | Wilson, Travis Randall. |
| 1756 | Wilson, Violet. |
| 571 | Windham, Shana Marie. |
| 5 | Woodell, Angela D. |
| 2167 | Woodell, Jennifer Kaitlyn. |
| 2340 | Wright, Carolyn Marie. |
| 2485 | Wright, Charlotte Yvonne. |
| 1458 | Wright, Christopher Allen. |
| 1460 | Wright, Lewis Allen Jr. |
| 1461 | Wurdermann, Aaron Cole. |
| 1462 | Wurdermann, John David. |
| 1463 | Wurdermann, Kenneth Wayne Jr. |
| 1465 | Wurdermann, Lynn Canty. |
| 1467 | Yates, Christopher Michael. |
| 1469 | Yates, Rachel Beck. |
| 1470 | Yates, Rebecca. |
| 1471 | Yonce, Patricia Shirlene Brown Groff. |
| 1472 | Young, Kathryn Rachel. |
| 516 | Young, Laurie Michele. |
| 1473 | Young, Pamela Jean Brown. |

[FR Doc. 94–28590 Filed 11–21–94; 8:45 am]
BILLING CODE 4310–02–P

federal register

Tuesday
November 22, 1994

# Part III

# Environmental Protection Agency

40 CFR Part 72

Acid Rain Program: Permits; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 72**

**[FRL–5109–7]**

**RIN 2060-AF55**

## Acid Rain Program: Permits

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

**ACTION:** Proposed rule.

**SUMMARY:** Title IV of the Clean Air Act, as amended by Public Law 101–549, the Clean Air Act Amendments of 1990 (the Act), authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On August 10, 1994, EPA and other parties signed a settlement agreement addressing certain substitution plan issues.

Based on a review of the record, the Agency concludes that the January 11, 1993 regulations concerning the eligibility of units to be designated as substitution units should be revised. Under sections 404(b) and (c) of the Act, a unit that is not listed in Table A of section 404 as being subject to Phase I of the Acid Rain Program (i.e., a non-Table A unit) and that is under the control of the owner or operator of a unit listed in Table A of section 404 (i.e., a Table A unit) may be designated as a substitution unit. The January 11, 1993 regulations state that the Table A unit and each non-Table A unit that the Table A unit designates as a substitution unit must have "the same owner or operator."

The Agency is proposing to revise the regulations in order to specify more clearly the circumstances under which the statutory "control" requirement for substitution plans is met. Because the rule revision is consistent with the August 10, 1994 settlement and the Agency does not anticipate receiving adverse comments, the revision is also being issued as a direct final rule in the final rules section of this **Federal Register**.

**DATES:** Comments on the regulations proposed by this action must be received on or before December 22, 1994.

**ADDRESSES:** *Comments.* All written comments must be identified with the appropriate docket number and must be submitted in duplicate to: EPA Air Docket Section (LE–131), Waterside Mall, room 1500, lst floor, 401 M Street, SW., Washington DC 20460.

*Docket.* Docket No. A–93–40, containing supporting information used to develop the proposal, copies of all comments received, and responses to comments, is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section (LE–131), Waterside Mall, room 1500, 1st floor, 401 M Street, SW., Washington DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, Attorney-advisor, at (202) 233–9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, or the Acid Rain Hotline at (202) 233–9620.

**SUPPLEMENTARY INFORMATION:** If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant, adverse comments are timely received on any provision, that provision of the direct final rule will be withdrawn and all public comment received on that provision will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

### List of Subjects in 40 CFR Part 72

Environmental protection, Acid rain, Air pollution control, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 14, 1994.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 94–28709 Filed 11–21–94; 8:45 am]

BILLING CODE 6560–50–F

federal register

Tuesday
November 22, 1994

# Part IV

# Environmental Protection Agency

## 40 CFR Part 72
## Acid Rain Program: Permits; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 72**

**[FRL–5109–8]**

**RIN 2060—AF59**

## Acid Rain Program: Permits

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

**ACTION:** Final rule.

**SUMMARY:** Title IV of the Clean Air Act, as amended by Public Law 101-549, the Clean Air Act Amendments of 1990 (the Act), authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On November 18, 1993, the Agency published a notice of proposed revisions of those rules implementing sections 404(b) and (c) (substitution plans) and 408(c)(1)(B) (reduced utilization plans) of the Act. On May 4, 1994, EPA and other parties signed a settlement agreement addressing substitution and reduced utilization issues.

After reviewing the record, EPA concludes that the January 11, 1993 rules can be read to give utilities an ability to use substitution and reduced utilization plans to create excess, new allowances. These allowances will authorize sulfur dioxide emissions in excess of total emissions without the plans and will result from emission reductions made, or required by federal or State law adopted, before enactment of title IV. This creation of allowances is contrary to the purposes of sections 404(b) and (c) and 408(c)(1)(B) and can compromise achievement of the emissions reductions intended under title IV. Consequently, EPA is modifying sections of part 72 of the January 11, 1993 regulations. The rule revisions will prevent the use of substitution and reduced utilization plans to create excess, new allowances and are consistent with the May 4, 1994 settlement.

**EFFECTIVE DATE:** December 22, 1994.

**ADDRESSES:** Docket No. A–93–40, containing supporting information used to develop the proposal, copies of all comments received, and responses to comments, is available for public inspection and copying from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section (LE-131), Waterside Mall, room 1500, 1st floor, 401 M Street, SW., Washington DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, Attorney-advisor, at (202) 233-9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or the Acid Rain Hotline at (202) 233–9620.

**SUPPLEMENTARY INFORMATION:** The contents of the preamble to the final rule are as follows:

I. Statutory Purposes of the Substitution and Reduced Utilization Provisions
II. Need to Modify the January 11, 1993 Regulations
A. The January 11, 1993 Regulations can be Read to Give Utilities the Ability to Bring Phase II Units Into Phase I and Create Excess, new Allowances
B. Under the January 11, 1993 Regulations, Entry of Phase II Units Into Phase I can Significantly Compromise the Emissions Reduction Goals of Title IV
III. Modifications of the January 11, 1993 Regulations
A. Substitution Plans
1. Limiting the Allowances Allocated to Each Substitution Unit
a. 1989 or 1990 $SO_2$ Emissions Rate
b. Most Stringent Federal or State $SO_2$ Emissions Limitation
c. Baseline
2. Limiting the Number of Substitution Units
3. Requirement That the Substitution Unit be Under Control of the Table A Unit's Owner or Operator
4. Other Changes
B. Reduced Utilization Plans
1. Limiting the Category of Units That can Qualify as Compensating Units
2. End-of-Year Review of the Need for Compensating Units
3. Reporting and Allowance Surrender
IV. Applicability of Rule Revisions to Existing Permit Applications
V. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Miscellaneous

### I. Statutory Purposes of the Substitution and Reduced Utilization Provisions

The provisions in sections 404(b) and (c) and 408(c)(1)(B) of the Act concerning substitution and reduced utilization plans have specific statutory purposes related to the achievement of the sulfur dioxide emissions reduction goals of title IV. The Agency maintains that Congress did not intend that these provisions provide utilities an ability to create excess, new allowances by bringing Phase II units into Phase I. Because the January 11, 1993 regulations implementing these provisions can be read to allow the creation of excess, new allowances in Phase I, the Agency is revising today the regulations to ensure that this does not occur. *See* 58 FR 60951 (defining "excess, new allowances").

As discussed in the preamble of the November 18, 1993 proposal (58 FR 60950–60951), Congress established substitution plans as a compliance option to increase units' compliance flexibility and reduce their overall costs of compliance in Phase I while still achieving the emissions reductions intended by Congress under title IV. A substitution plan allows the owner or operator of a unit listed in Table A of section 404 to reassign the unit's emissions reduction obligations to a designated non-Table A unit under the owner's or operator's control. Upon approval of the reassignment, the non-Table A unit becomes subject to all requirements for Phase I units with regard to sulfur dioxide and is allocated allowances. Emissions reductions by the non-Table A unit may therefore free up allowances, which may be used by the Table A unit (or any other unit) in lieu of making emissions reductions.

Section 404(b)(5) of the Act expressly states that, with a substitution plan, the intended emissions reductions must still be achieved. That section requires that, in approving a substitution plan, the Administrator ensure that the substitution results in total emissions reductions at least equal to the total reductions that otherwise "would have been achieved" by these Table A and non-Table A units "without such substitution." 42 U.S.C. 7651c(b)(5). EPA concludes that the substitution provision is intended to provide an alternative means of achieving Phase I reductions, not a mechanism for avoiding such emission reductions.

The provision for reduced utilization plans has a statutory purpose that is also aimed at ensuring realization of emission reductions. As explained in the November 18, 1993 preamble (58 FR 60951), Congress recognized that the potential for circumvention of emission limitation requirements exists because in Phase I only a minority of all utility units are subject to such requirements. A Phase I unit could simply reduce its utilization by shifting its generation, and the emissions that would otherwise result, to a unit that was not required to use allowances to cover its emissions. Allowances allocated to the Phase I unit would be freed up for use without achievement, at either unit, of the intended emissions reductions.

In section 408(c)(1)(B), Congress adopted a solution to this problem. Owners and operators of any Phase I unit that, for compliance purposes, propose reducing utilization of the unit below 1985-87 utilization (i.e., its baseline) in order to comply with title

IV are required to submit a reduced utilization plan. In such a plan, the owners and operators must designate the units that will provide generation to compensate for the reduced utilization of the Phase I unit or must account for the reduced utilization through energy conservation or improved unit efficiency. 42 U.S.C. 7651(c)(1)(B). Each compensating unit in an approved plan becomes subject to Phase I sulfur dioxide emissions limitations and is allocated allowances equal to that unit's baseline times the lesser of the 1985 actual or allowable emissions rate for the unit. The compensating unit will therefore have to use allowances to account for its emissions, including any increased emissions resulting from compensating generation that it provides for the Phase I unit.

The Administrator approves or disapproves each plan (and compensating units proposed therein) after determining whether the plan meets the requirements of title IV, including achievement of the intended emissions reductions under the Acid Rain Program. 42 U.S.C. 7651g(c)(2); *see also* 58 FR 60951. Thus, like the provisions for substitution plans, the provisions for designating compensating units in reduced utilization plans are intended to allow compliance flexibility but also to protect the emission reduction goals of title IV by requiring that plans not result in more emissions than would occur without the plans. In fact, if the reduced utilization plan provisions were interpreted to allow the creation of excess, new allowances, utilities could simply use such plans to circumvent the limitation on the creation of allowances under substitution plans by bringing the same Phase II units into Phase I as compensating units rather than substitution units.[1]

[1] This conclusion is not contradicted by the legislative history, cited by some commenters, discussing the compliance flexibility and potential cost savings resulting from use of the allowance market. *See, e.g.,* Senate Rep. No. 101–228 at 316. Such generic discussion of the ability of units to over- or under- control emissions and to trade allowances does not address the specific issue of the entry of Phase II units into Phase I. Although, under the Partial Settlement in *Environmental Defense Fund* v. *Carol M. Browner,* No. 93–1203 and *Alabama Power Co.* v. *U.S. EPA,* No. 93–1611 (D.C. Cir. 1993) (signed May 4 and 20, 1993), many comments on the November 18, 1993 proposal were withdrawn, the Agency is responding—here or in a response-to-comment document—to the substance of all comments that were originally submitted. (This settlement is hereafter referred to as "the May 4, 1994 settlement".)

## II. Need to Modify the January 11, 1993 Regulations

### *A. The January 11, 1993 Regulations can be Read to Give Utilities the Ability to Bring Phase II Units Into Phase I and Create Excess, New Allowances*

On January 11, 1993, EPA promulgated regulations that implemented the major provisions of title IV, including the substitution and reduced utilization provisions. As discussed in the November 18, 1993 preamble (58 FR 60951–60953), these provisions can be read to provide utilities two alternative methods of bringing into Phase I, with few limitations, selected Phase II units and creating excess, new allowances. The Agency concludes that both provisions must be revised in order to eliminate this problem.

Under § 72.41 of the January 11, 1993 regulations, the designated representative for a unit on Table A may include in the Phase I permit application a substitution plan designating, as substitution units, one or more existing units that are Phase II units and so not on Table A. 40 CFR 72.41(b) (1993). There is no express requirement that the substitution unit make reductions beyond those that it would have made without the plan or actually provide allowances for the Table A unit and no express limit on the number of substitution units that a Table A unit may designate. Further, for the most part, the decision whether to designate a particular Phase II unit as a substitution unit is at the discretion of the utility. *See* 58 FR 60952.

Section 72.43 of the January 11, 1993 regulations requires, under certain circumstances, that the designated representative for a Phase I unit submit a reduced utilization plan designating a compensating unit. Such a plan must be submitted if the owners and operators of the unit plan to reduce utilization of the unit below its baseline for purposes of complying with Phase I emissions limitations and to accomplish this by shifting generation to a non-Phase I unit. 40 CFR 72.43(b) (1993). Because of concern that utilities would be unable to designate compensating units and therefore might engage in uneconomic dispatching to avoid reduced utilization requiring such designations, the regulation establishes broad exceptions to the requirement to submit a plan. 40 CFR 72.43(e) (1993); *see also* 58 FR 60958–60959. There is no express requirement that the Phase I unit actually have any reduced utilization or the compensating unit actually provide any compensating generation to the Phase I unit. There is also no express limit on the number of compensating units that a Phase I unit may designate and no express bar on a compensating unit itself designating a compensating unit. Further, as with substitution units, a utility's decision to designate a compensating unit is largely discretionary. *See* 58 FR 60952.

Because utilities generally have broad discretion and flexibility in designating substitution and compensating units, such units will likely be designated only if early entry into Phase I is beneficial, e.g., where early entry creates new allowances because the units have lower actual emissions in Phase I than the allowances they will receive as substitution or compensating units. *See* 58 FR 60953 and n. 2. Before the enactment of title IV, some Phase II units had reduced emissions rates for economic or other reasons and some States had already adopted laws requiring their utilities to reduce emissions rates prior to Phase II. Such reductions occurred, or will occur, for reasons independent of the substitution and reduced utilization provisions. Under the January 11, 1993 regulations, for each Phase I year that a substitution or reduced utilization plan is in effect, each substitution or compensating unit under the plan is allocated a number of allowances equal to the unit's baseline times the lesser of the 1985 actual or allowable emissions rate for the unit. 40 CFR 72.41(c)(3) and (d) and 72.43(c)(4)(ii) and (d) (1993). Consequently, some Phase II units may enter Phase I as substitution or compensating units and convert emission rate reductions into excess, new allowances: i.e., allowances that would not otherwise be available and that reflect emission rate reductions that would occur even without plans allowing early entry into Phase I.

The excess, new allowances may become available to affected units in Phase I and/or in Phase II and enable such units to avoid making emissions reductions that title IV would otherwise require them to make. These allowances may thereby diminish the emissions reductions that Congress intended to be achieved by virtue of title IV. In sum, as explained in the November 18, 1993 preamble, the January 11, 1993 regulations transform the statutory substitution and reduced utilization provisions from provisions for facilitating and protecting anticipated emissions reductions under title IV into potential means of creating excess, new allowances that can be used to avoid such reductions. (58 FR 60953.)

Because the regulations provide alternative means (through substitution plans or reduced utilization plans) of

creating excess, new allowances, the regulations are contrary to Congressional intent and sections 404(b) and (c) and 408(c)(1)(B) of the Act and therefore must be modified to eliminate both alternatives.

*B. Under the January 11, 1993 Regulations, Entry of Phase II Units Into Phase I can Significantly Compromise the Emissions Reduction Goals of Title IV*

The potential number of excess, new allowances created by substitution and compensating units under the January 11, 1993 regulations may be sufficient to compromise significantly the achievement of the emissions reductions intended by Congress under title IV. The Agency estimates that entry into Phase I of Phase II units that will benefit from becoming substitution or compensating units and that reduced emissions rates between 1985 and 1991 for economic or other reasons or were required by federal or State law as of November 15, 1990 to reduce emissions rates between 1985 and 1995 will create about 200,000 allowances per year in Phase I in excess of emissions without such entry.[2] *See* 58 FR 60953 and n. 4; and Calculation of Potential Impacts of Phase I Substitution Units, ICF Inc. at 5 (July 7, 1993). Thus, the current substitution and reduced utilization provisions will potentially result in the creation of excess, new allowances authorizing additional emissions of 1,000,000 tons of sulfur dioxide in all of Phase I.

Congress expected the emission limitations in title IV to result in annual $SO_2$ emissions reductions of 2.8 to 4.4 million tons in Phase I. Senate Rep. No. 101-228 at 327; Cong. Rec. S16980 (Oct. 27, 1990).[3] EPA estimates that the expected reductions by Phase I units alone during Phase I are about 2.4 million tons in 1995 and 1996 and about 3.5 million tons in 1997, 1998, and 1999. Memorandum from T. Larry Montgomery to Brian J. McLean (Oct. 15, 1993). As discussed above, the statutory language and legislative history demonstrate that Congress did not intend these reductions to be eroded by substitution or reduced utilization plans. Yet, under the current regulations, Phase I units can avoid some of these reductions by offsetting their emissions in Phase I with excess, new allowances resulting from such plans. The use of 200,000 excess, new allowances per year in Phase I will negate a significant portion (i.e., 6 to 8 percent) of estimated, expected reductions for Phase I units.

Alternatively, banking these new allowances for use in Phase II will diminish the intended emissions reduction impact of the 8.95 million ton cap established by Congress for Phase II. *See* 58 FR 60954–60955 (explaining the importance of the Phase II cap). The carryover and use of the excess, new allowances created by early entry of Phase II units into Phase I can result in emissions exceeding the cap for each of the first five years of Phase II by as much as 200,000 tons.

The magnitude of potential erosion of expected emissions reductions supports the Agency's conclusion, based on statutory language and legislative history, that Congress did not intend to allow substitution or compensating units to create allowances for pre-Phase II emissions reductions that would have been achieved in the absence of substitution and reduced utilization plans.[4] The Agency's conclusion is also supported by Congress' approach in sections 404(e), 405, and 410 of the Act. As discussed in the November 18, 1993 preamble (58 FR 60954), the fact that in those sections Congress carefully limited the ability of Phase II units to obtain additional allowances for pre-Phase II reductions strongly suggests that sections 404(b) and (c) and 408(c)(1(B) should not be interpreted to allow allowance allocations for all such reductions.

**III. Modifications of the January 11, 1993 Regulations**

*A. Substitution Plans*

The Agency is modifying the January 11, 1993 regulations concerning substitution plans by limiting the allowances allocated to a substitution unit to the baseline times the lesser of: the 1985 actual $SO_2$ emissions rate; the 1985 allowable $SO_2$ emissions rate; the greater of 1989 or 1990 actual $SO_2$ emissions rate; or the most stringent federal or State allowable $SO_2$ emissions rate for Phase I as of November 15, 1990, the date of enactment of title IV of the Act. In addition, the final regulations eliminate the language in the January 11, 1993 regulations providing that a Phase II unit that lacks any common owner or operator but has a common designated representative with a Phase I unit can, without anything more, be designated as a substitution unit.

1. Limiting the Allowances Allocated to Each Substitution Unit

The final rule limits the number of allowances allocated to each substitution unit by calculating the allocation using the lesser of the unit's 1985 $SO_2$ emissions rate or an $SO_2$ emissions rate that is reasonably representative of what would have been achieved without the substitution plan. Specifically, a substitution unit will be allocated allowances equal to baseline times the lesser of: the unit's 1985 actual $SO_2$ emissions rate; the unit's 1985 allowable $SO_2$ emissions rate; the greater of the unit's 1989 or 1990 actual $SO_2$ emissions rate; or the most stringent federal or State allowable $SO_2$ emissions rate as of November 15, 1990 applicable to the unit in 1995–99. The January 11, 1993 regulations consider only the unit's 1985 actual or allowable $SO_2$ emissions rate.

As discussed above, section 404(b)(5) requires that the substitution plan include a demonstration that the "reassigned tonnage limits [under the plan] will, in total, achieve the same or greater emissions reduction than would

[2] This is a conservative estimate of the potential for creation of excess, new allowances. Assuming that all 250 designated substitution and compensating units in existing permit applications are activated as substitution units for all of Phase I, about 385,000 excess, new allowances will be created per year under the January 11, 1993 regulations. Assuming all existing Phase II units (about 2,000 units) will become substitution units for all of Phase I, almost 1,000,000 excess, new allowances will be created per year in Phase I under the January 11, 1993 regulations. *See* Estimates of Allowances Impact of Proposed Permits Rule Revisions and Alternative Regulatory Scenarios at 3, 8, and 52 (Oct. 20, 1993) (comparing "totals" for allowance allocations under "existing" rule and "proposed" rule). The Agency's 200,000-allowance estimate reflects the assumption that only those units (about 200 to 300 units) with projected 1995 emissions lower than their 1985 level will be likely to become substitution units under the current regulations. *See* Calculation of Potential Impacts of Phase I Substitution Units at B-4 ("total" of units with "$SO_2$ decrease" under "CAT7") (July 7, 1993). That estimate also assumes that some allowances that will be created will result from reduced utilization and will be subject to surrender to EPA under §§ 72.91 and 72.92 of the regulations. *Id* at 7 and 9.

[3] Because, as discussed above, Congress did not intend the substitution and compensating unit provisions to create excess, new allowances, commenters erred in claiming that such allowances account for the 2.8 to 4.4 million ton range for estimated Phase I reductions in $SO_2$. Rather, the range reflected, *inter alia*, uncertainty over what emissions decreases or increases would occur at Phase II units that would not be subject to emissions limitations until Phase II. Because of the lack of emissions limitations on such units in Phase I, the Phase I emissions of these units and the impact on total Phase I reductions could only be projected.

[4] Thus, contrary to the assertion of some commenters, the Agency's modification of the current regulations is not based on circular reasoning. The statutory language and legislative history demonstrate that Congress did not intend for substitution or reduced utilization plans to result in fewer reductions than without the plans. The analysis that such plans under the January 11, 1993 regulations can result in about 200,000 excess, new allowances per year in Phase I shows the potential magnitude of the problem and supports today's modification of the regulations to ensure consistency with the statute.

have been achieved by the original affected unit and the substitute unit or units without such substitution." 42 U.S.C. 7651c(b)(5). The Agency interprets this provision to require that the plan achieve total reductions equal to or greater than both (i) the Table A unit's reduction obligation in Phase I and (ii) the reductions that the substitution unit would have made if it had not entered Phase I, including reductions made, or mandated by federal or State law adopted, prior to the passage of title IV.

The preamble of the January 11, 1993 regulations sets forth a different interpretation of section 404(b)(5) that the Agency concludes is erroneous. As EPA explained in the November 18, 1993 preamble (58 FR 60954–60955):

In the January 11, 1993 preamble, the Agency stated that any reductions in emissions rate that have been, or will be, made at the substitution unit after 1985 without the substitution plan (e.g., reductions for economic reasons or required by federal or State law) "will not have resulted from title IV" and so should "*not* be counted as reductions that would have occurred without the plan." 58 FR 3601 (emphasis added). The difficulty with this interpretation is that it appears to read out of section 404(b)(5) the requirement to ensure that a substitution plan does not negate reductions "that would have been achieved by * * * the substitute unit * * * without such substitution." 42 U.S.C. 7651c(b)(5). In the absence of the plan, the substitution unit would not be subject to title IV until Phase II. If only reductions required by title IV were considered under section 404(b)(5), the amount of reductions that would have been achieved by the substitution unit without the plan (i.e., the reductions in Phase I) would always be zero * * *. The reference to such reductions would therefore be meaningless. In interpreting the Act, it should not be presumed that Congress adopted meaningless language.

Some commenters on the November 18, 1993 proposal suggested a third interpretation of section 404(b)(5). They claimed that the provision addresses only situations where, as part of the substitution plan, allowances that would be allocated to the substitution unit are instead allocated by EPA to the Table A unit. Specifically, the commenters alleged that the terms "reassigned tonnage limits" and "such substitution" in section 404(b)(5) are synonymous and refer only to the "allocation of a number of allowances to the Table A unit in addition to those that the Table A unit would otherwise receive." Comments of UARG at 33 n. 54 and 34. Accordingly, it is argued that section 404(b)(5) requires only that the number of additional allowances that are allocated under the plan to the Table A unit cannot be greater than the number of allowances that are subtracted from the allocation that the substitution unit would otherwise receive under the plan.

The Agency rejects this interpretation, which is inconsistent with the substitution plans that the commenters themselves have submitted to the Agency and which would reduce section 404(b)(5) to a triviality. As the commenters noted, section 404(b) describes a substitution plan as "a proposal to reassign, in whole or in part, the affected [Table A] unit's sulfur dioxide reduction requirements to any other unit(s)" under the control of the owner or operator of the Table A unit. 42 U.S.C. 7651c(b) and Comments of UARG at 33. According to the commenters, such reassignment occurs only where allowances otherwise allocated to a substitution unit are instead allocated to the Table A unit. *Id.* at 34 and 40–1. This is allegedly the only circumstance to which section 404(b)(5) would apply.

If the commenters' interpretation were correct, then only those plans that actually provide for such an additional allocation of allowances to the Table A unit would be substitution plans, as defined by section 404(b). However, although § 72.41(c)(4)(ii) of the January 11, 1993 regulations provides the *option* to redistribute allowance allocations in this way, such redistribution is not required by § 72.41. Moreover, EPA has not received a single substitution plan for any units that includes such a redistribution of allowance allocations. *See* 58 FR 32667–32670 (June 11, 1993); 58 FR 34582 (June 25, 1993); 58 FR 38373–38375 (July 16, 1993); 58 FR 39543–39544 (July 23, 1993); 58 FR 40812–40813 (July 30, 1993); 58 FR 42065–42069 (Aug. 6, 1993); and 58 FR 43110 (Aug. 13, 1993) (summarizing the allowance allocations under the proposed plans, none of which included any redistribution of allowances from a substitution unit to a Table A unit). Under the commenters' approach, none of the substitution plans submitted to date are "proposals to reassign * * * reduction requirements" under section 404(b). Further, the commenters' interpretation of section 404(b)(5) would reduce that provision to a trivial requirement that EPA cannot give more additional allowances to the Table A unit than it takes from the substitution unit.[5]

When section 404(b)(5) is properly interpreted, these problems evaporate. The term "reassigned tonnage limits" refers to the total allowance allocations made, in every substitution plan, to the Table A and substitution units under the plan and not simply to redistributed allowances. Thus, section 404(b)(5) requires that each substitution plan must result in "the same or greater" reductions of sulfur dioxide emissions as would have been made by the Table A and substitution units without a substitution plan.[6] 42 U.S.C. 7651c(b)(5).

The Agency concludes that section 404(b)(5) must be interpreted to take into account, and avoid allocating allowances to the substitution unit for, reductions that would otherwise have been made at the substitution unit since 1985 in the absence of a substitution plan. The Agency maintains that there are two categories of reductions that would otherwise have been made and that therefore should be excluded from the allocation of allowances to substitution units: (1) emissions rate reductions that were made voluntarily, for economic or other reasons, by a substitution unit after 1985 and before enactment of title IV; and (2) emissions rate reductions by a substitution unit between 1985 and 2000 that were mandated by federal or State law as of the enactment of title IV.

*a. 1989 or 1990 $SO_2$ emissions rate.* With regard to the first category of emissions reductions, EPA is modifying the January 11, 1993 regulations to provide that substitution units will not be allocated allowances for voluntary emissions rate reductions made before enactment of title IV: i.e., reductions before title IV's enactment that were not mandated by federal or State law and that were made for economic or other reasons. To the extent a unit's emissions rate reductions are caused by economic or other factors that would have existed in Phase I even if the unit did not become a substitution unit, such reductions would have occurred without a substitution plan and therefore must be taken into account under section 404(b)(5) and excluded

[5] Apparently, EPA could, under the commenters' interpretation, allocate fewer additional allowances to the Table A unit than are subtracted from the substitution unit's allowance allocation.

[6] The commenters relied on Senate Report No. 101–228 (at 307 and a floor statement by Senator Baucus (136 Cong. Rec. S16980 (daily ed. Oct. 27, 1990) to support the claim that section 404(b)(5) requires consideration only of the emissions reductions that would be achieved by the Table A unit, and not those by the substitution unit, in the absence of the plan. Such reliance is misplaced because section 404(b)(5) explicitly requires that the emissions reductions at both the Table A and the substitution units without the plan be considered. 42 U.S.C. 7651c(b)(5).

from allowance allocations. In theory, any reductions made by a unit between 1985 and 1999 could potentially be in response to such factors and, if so, could be considered as reductions that would have occurred without the substitution plan.

The Agency maintains that there must be a bright line drawn to determine whether a unit's voluntary reductions in emissions rate would occur even if the unit were not a substitution unit. It would be difficult to make accurate case-by-case determinations, concerning a large number of units, as to whether the owners and operator of a particular unit took actions after 1985 to reduce its emissions rate in anticipation of the unit becoming a substitution unit. Such determinations would require analyzing economic and other factors that may be involved (e.g., fuel costs, the timing for retrofitting of pollution controls, and the regulatory benefits and risks of becoming a substitution unit), balancing the factors favoring or disfavoring action to reduce the emissions rate, and judging what the owners and operator would have done in the past concerning the unit's emissions in the absence of substitution plans.[7] *See* Comments of Environment Defense Fund and the Natural Resources Defense Council at 16 (submitted Feb. 10, 1994). Similar determinations would presumably have to be made for each approved substitution unit, and allowance allocations might have to be adjusted, each time the owners and operators of the unit take actions after approval of the substitution plan that reduce the unit's emissions rate in Phase I.

The Agency concludes that the best approach to developing a reasonable approximation of what a unit's emissions rate would be in Phase I in the absence of a substitution plan is to treat all voluntary emissions rate reductions after 1985 and through 1990 (the year in which title IV of the Act was passed) as reductions that would have occurred in Phase I in the absence of a substitution plan. Prior to enactment of the Clean Air Act Amendments of 1990, utilities had no reasonable expectation that emissions reductions would generate nationally tradable allowances under the Act. The reductions were not made in response to the availability of allowances under substitution plans. December 31, 1990 (rather than November 15, 1990, the specific date of title IV's enactment) is used as the cut-off point for determining what reductions that would have occurred without the plan because emissions rate data is available on a calendar year basis. Even though some reductions after 1990 perhaps would have occurred without the plan, it would be difficult to sort out, for a large number of units, the impact of the availability of substitution plans for the period after the substitution provision was enacted.

Further, reductions reflected in a unit's 1989 or 1990 $SO_2$ emissions rate will be treated as representative of reductions that would continue to be made up through 1999. In the November 18, 1993 proposal, the Agency proposed to use the 1990 actual $SO_2$ emissions rate as the measure of emissions reductions made before passage of title IV. The 1990 rate was proposed because, as the emissions rate closest to November 15, 1990, it is more likely to reflect all the reductions made prior to passage of title IV. The rate for an earlier year is less likely to reflect all reductions made before passage of title IV. However, several commenters expressed concern that a unit's emissions rate for a single year (i.e., 1990) might be unusually low and therefore unrepresentative of its emissions rate prior to the passage of title IV. These commenters suggested that, if post-1985 emissions rates are used, the Agency should use a formula that allows consideration of actual emissions rates for 1988, 1989, and 1990. *See* Comments of Utility Air Regulatory Group at 45 (submitted Feb. 10, 1994); Comments of Northern States Power Company at 6 (submitted Feb. 10, 1994). Other commenters claimed that the 1990 emission rate may be lower than the 1985 emission rate because of normal variability in the sulfur content of coal or in scrubber performance. They suggested a case-by-case determination of whether such variability accounts for the lower 1990 emissions rate.

Balancing these factors, the final rule uses the greater of the 1989 or 1990 actual $SO_2$ emissions rate to reflect pre-title IV emissions rate reductions. A unit's 1989 or 1990 emissions rate (which are the most recent, actual rates prior to the enactment of title IV) will be treated as representative of its emissions rate in Phase I in the absence of a substitution plan. This provides some flexibility to avoid using a single and perhaps unrepresentative year. All voluntary emissions rate reductions made after 1990 will be treated as reductions that would not otherwise have occurred.

Several commenters opposed the use of any post-1985 actual emissions rate in limiting allowance allocations to substitution units. Commenters argued the use of the 1990 actual emissions rate is arbitrary. Allegedly, this approach is arbitrary because it assumes that emissions-reducing actions that were taken before 1991 for economic reasons will not necessarily continue to be taken after passage of the Clean Air Act Amendments of 1990, which changed the economics of such actions. Commenters stated that utilities might redirect low sulfur coal from the potential substitution unit to another unit and burn higher sulfur coal at the former unit. They also suggested that when the lower sulfur coal contract expires, the utility might contract for higher sulfur coal.

There are several problems with these commenters' arguments. A reduction in a unit's 1989 or 1990 emissions rate from 1985 could be the result of several types of actions, including the addition of pollution control equipment or the use of low sulfur coal. To the extent that the reduction reflects a capital investment in pollution control equipment, it is reasonable to assume that the equipment will probably remain in place and continue to be used. Even where the reductions were achieved through the use of low sulfur coal, the use of such coal or switching to high sulfur coal requires, in many cases, capital investment in new equipment. This reduces the likelihood that emissions reductions made before enactment of title IV would be reversed after passage of title IV.

Moreover, in section 404(b)(5), Congress required EPA to ensure that the reductions achieved under each substitution plan be "the same or greater than" the reductions that would otherwise be achieved without the substitution plan. 42 U.S.C. 7651c. Because of the paramount importance apparently placed on the goal of achieving intended emissions reductions, Congress required the Agency to adopt an approach that would ensure no fewer reductions with substitution plans than without such plans but that could result in more reductions with than without the plans. In light of this statutory requirement and the difficulty of determining what reductions would have been made without substitution plans, the Agency concludes that the 1989 or 1990 actual emissions rate is a reasonable proxy for a unit's Phase I emissions rate without the substitution plan. To the extent that the Agency's approach of using 1989 or 1990 emissions rate overstates the reductions that would be achieved without the plan, the approach errs in a direction that ensures achievement of

[7] Thus, particularly where there are a large number of units involved, the Agency does not agree with those commenters that claimed that a showing that post-1990 reductions would not have occurred in the absence of a substitution plan would be "easily" evaluated. *Id.*

the paramount statutory objective and is consistent with section 404(b)(5).

In contrast, commenters' preferred alternative—using only 1985 actual or allowable emissions rates—would guarantee, in some cases, violation of the statutory objective of no fewer reductions with, than without, the plan. One particularly graphic example of that result is where a Phase II unit is voluntarily and permanently shutdown between 1985 and 1991 and is brought into Phase I as a substitution unit. Without a substitution plan, the unit would emit no sulfur dioxide and receive no allowances in Phase I. With the plan, the unit would still have no emissions but would be allocated a significant number of new allowances reflecting its 1985 emissions and other units could use the newly created allowances to authorize emissions that would not otherwise have been allowed. *See, e.g.*, 58 FR 38375 (noticing permit application with plan designating, as substitution units, Poston units 1, 2, and 3, which were permanently shut down in 1987). The Agency's use of the most recent actual emissions rates prior to passage of title IV is a reasonable approach to achieving the purposes of section 404(b)(5).

Commenters also argued that the Agency's approach penalizes those utilities that were "environmentally * * * progressive" and will discourage voluntary emissions reductions in the future. Comments of the Class of '85 Regulatory Response Group at 8 (submitted Feb. 10, 1994). However, each utility that made emissions reductions at Phase II units after 1985 and before the date (January 1, 2000) such reductions are required under title IV already benefits in Phase II of the Acid Rain Program, during which the units are allocated allowances reflecting in part the 1985 emissions rate. *See* Comments of Northern States Power Company at 3 (noting that allocations to most of the utility's units in Phase I and Phase II exceed 1990 emissions levels). The issue here is whether, if such a utility elects to bring selected Phase II units into Phase I, the utility should receive additional benefit (in the form of extra allowances for pre-title IV reductions) that violates section 404(b)(5) of the Act. The Agency believes that the approach in the final rule is a reasonable implementation of section 404(b)(5).

*b. Most stringent federal or State $SO_2$ emissions limitation.* In addition to limiting a substitution unit's allowance allocation using the unit's 1989 or 1990 $SO_2$ emissions rate, EPA is also modifying the January 11, 1993 regulations to provide that a substitution unit will be allocated allowances based on an emissions rate that does not exceed the most stringent $SO_2$ emissions limitation imposed in Phase I by federal or State law, as of November 15, 1990. By definition, emissions rate reductions that were mandated prior to title IV's enactment and that are required regardless of whether the unit is a substitution unit are reductions that would have occurred in the absence of the plan.

The agency recognizes the difficulty of determining whether any particular federal or State emissions reduction requirement (whether a tightening or a loosening of emissions limitations), adopted after title IV's enactment, would have been adopted in the absence of substitution plans under title IV.[8] This is similar to the problem of determining whether voluntary emissions rate reductions after 1990 would have been made without a substitution plan, except that, with regard to federal or State emissions limitations, political factors favoring or disfavoring imposition of the limitations would have to be weighed. Consequently, the Agency maintains that a bright line, based on title IV's date of enactment, should be established and that emissions rate reductions that were mandated by federal or State law adopted after November 15, 1990 should not be treated as reductions that would otherwise have occurred. As explained in the preamble of the November 18, 1993 proposal (58 FR 60956), the most stringent allowable rate for purposes of substitution-unit allowance allocations will be the most stringent rate as of November 15, 1990 after conversion to pounds per mmBtu but without any annualization.

Some commenters argued that the Agency should distinguish between federal emissions limitations and State emissions limitations and consider only federal limitations in allocating allowances to substitution units. They alleged that it is unfair to "penalize" utilities in States "tak[ing] the lead in controlling air emissions" and that title IV references federal, but not State, emissions limitations. Comments of Dairyland Power Cooperative at 2 (submitted Jan. 26, 1994). However, section 404(b)(5) requires that emissions reductions with the substitution plan be no less than reductions without the plan and does not distinguish between reductions without the plan that are due to State law from those due to federal law. Thus, contrary to the commenters, there is no basis for considering only federal, and ignoring State, emissions limitations in applying section 404(b)(5). Further, the Agency reiterates that:

> [S]ince reliance on substitution plans is optional and the use of the most stringent allowable rate (in conjunction with the 1985 actual or allowable rate and the [1989 or] 1990 actual rate) to allocate allowances under such plans is necessary to meet statutory emissions reduction goals, it is difficult to see how such use of the most stringent allowable rate could be viewed as unfair to utilities located in States that mandated reductions. This approach simply prevents the creation of excess, new allowances and thereby ensures that reductions mandated by such States are not used to increase emissions elsewhere above the levels that title IV was intended to achieve.

58 FR 60956.

Using federal or State emissions limitations to limit a particular substitution unit's allowance allocation raises certain questions, particularly where some emissions limitations are not unit specific. For example, under some State laws (e.g., the acid rain laws for Massachusetts and Wisconsin), a utility has a maximum average emissions rate for its units in the State. Under other State laws (e.g., for New Hampshire and Minnesota), a utility has a total tonnage emissions cap for all its units in the State. Maximum average emissions rates or maximum total tonnage limits allow utilities the flexibility to exceed such maximum rates or limits at individual units so long as the maximum rates or limits are met on a utility-wide basis. Since individual units may exceed such maximum rates or limits, the Agency concludes that it should not treat the maximum rates or limits as the most stringent limitation for each individual unit. However, while utility-wide limitations provide some flexibility, such limitations impose bounds on the emissions of individual units, albeit bounds that depend on the emissions from other units owned or operated by the same utility. There is no basis for ignoring the fact that a unit may have to make emissions reductions because of a

[8] In contrast, State emissions limitations adopted prior to passage of title IV do not raise the same question about whether they would have been adopted in the absence of title IV. Such emissions limitations, e.g., the Massachusetts acid rain law passed in 1985, were in fact adopted in the absence of any federal acid rain program. The Massachusetts statute included a provision stating that the Massachusetts legislature intended that reductions made under that statute be credited to Massachusetts' share of required reductions if a federal acid rain program was established in the future. Massachusetts, Acts of 1985, Chap. 590 § 9. Some commenters challenged, as contrary to the intent of the Massachusetts law, the use of the Massachusetts emissions limitations to limit allowance allocations under title IV. However, Congressional intent, not the intent of the Massachusetts legislature, is relevant to interpreting title IV.

utility-wide limitation, just as it may have to reduce emissions because of a unit-specific limitation.

Consequently, the final revised rule provides that the Agency will develop a method for using both the unit-specific and non-unit-specific emissions limitations to limit the allocation of allowances to a substitution unit. This method will not treat non-unit-specific limitations as if they were unit specific and will not allow allocation of allowances for reductions that were necessary to meet non-unit-specific limitations. Because there are significant differences among State laws and the manner in which they express non-unit-specific emissions limitations, the final revised rule gives the Agency the authority to develop this method on a case-by-case basis for each proposed substitution unit. This approach will give the Agency the flexibility to take account of variations among States and will allow interested parties an opportunity, e.g., in proceedings on individual permits, to comment on the method that the Agency proposes to use with regard to a particular non-unit-specific limitation.

Several commenters made specific recommendations concerning the method that EPA should use to apply the unit-specific limitations under Wisconsin's acid rain law. Under the Wisconsin law, each major utility that generates electricity in the State must achieve an annual average sulfur dioxide emissions rate that does not exceed 1.2 lbs per mmBtu starting in 1995 from all fossil fuel-fired boilers under the utility's ownership or control. A Wisconsin utility that meets certain requirements may trade emissions with another Wisconsin utility. One utility accepts—and adds to its annual emissions—emissions from another utility, which subtracts those emissions from its annual emissions and thereby reduces its annual average emissions rate in order to meet the utility-wide limit. Some commenters suggested that, in initially allocating allowances to substitution units in Wisconsin, EPA consider only those Federal and State limitations that are expressed as unit-specific limitations and not the utility-wide limits under Wisconsin's acid rain law. These commenters supported an end-of-year review in which each Wisconsin utility will have to demonstrate whether, if the allowances allocated to its substitution units in Wisconsin are treated as emissions by those units, the utility will still be in compliance for that year with 1.2 lbs per mmBtu limit. In this demonstration, the utility will sum the actual annual emissions of each boiler owned or controlled by the utility, except in the case of a substitution unit where the allocated allowances will be used. Where emissions were traded for the year, traded emissions will be subtracted by one utility from, and added by another utility to, the sum of emissions and allowances. The total will be divided by the sum of the annual mmBtu utilization of all the boilers involved. To the extent that the result exceeds 1.2 lbs per mmBtu, the utility will be required to surrender, and EPA will deduct, allowances allocated to the substitution units for that year. No commenters supported imposing limits on the ability to transfer the substitution unit's allowances prior to the end-of-year review. However, one commenter opposed the use of any end-of-year review to apply the Wisconsin utility-wide emissions limit.

The Agency is not deciding in the instant rulemaking what particular procedure will be used for applying non-specific emissions limitations and whether to adopt an approach involving end-of-year review. However, such review may be the best way to take account of the flexibility that the Wisconsin acid rain law and other State provisions provide to individual units in meeting State emissions limitations. The final revised rule, therefore, allows EPA to decide on a case-by-case basis, e.g., in individual permit proceedings on proposed substitution units, whether to require end-of-year review to apply non-unit-specific emissions limitations. The final revised rule also authorizes the Agency to require allowance surrender, and make allowance deductions, by the allowance transfer deadline as a result of such review.[9]

The Agency maintains that it is unnecessary to impose, pending any end-of-year review, limitations on the ability to transfer a substitution unit's allowances. The risk that a substitution unit will not have allowances in its Allowance Tracking System account to cover the deduction is small. As of the allowance transfer deadline, the unit's account must contain, in any event, sufficient allowances to cover its emissions for the prior year. The deduction of allowances resulting from the substitution unit's end-of-year review must be made before the Agency determines whether the unit's emissions exceeded its available allowances. Consequently, the failure of the substitution unit to have sufficient allowances to cover any deduction resulting from the end-of-year review will constitute a violation of § 72.41 (and so the Clean Air Act itself) and will result in excess emissions and trigger excess emissions penalties. Not only are limitations on transferability unnecesssary, but also they would reduce the compliance flexibility that Congress intended to provide through substitution plans. The final rule therefore does not impose any limits of transferability, pending any end-of-year review.

In sum, the Agency concludes that a substitution unit should be allocated allowances based on the lesser of four emissions rates for the unit: 1985 actual $SO_2$ emissions rate; 1985 allowable $SO_2$ emissions rate; the greater of 1989 or 1990 actual $SO_2$ emissions rate, or the most stringent Federal or State allowable $SO_2$ emissions rate applicable in 1995–99 as of November 15, 1990. The first two emissions rates are set forth in section 404(b)(2) of the Act. The latter rates are added in order to ensure, in accordance with section 404(b)(5), that a substitution plan will result in at least the same amount of reductions that would have occurred without the plan.

This approach requires the submission to EPA of data on the 1989 and 1990 emissions rates and the emissions limitations for 1995–99. For the reasons set forth in the November 18, 1993 preamble (58 FR 60956), the Agency maintains that section 404(b) provides adequate authority to require submission of this data and to use the data to calculate the allowance allocation under the plan.

*c. Baseline.* Under the final revised rule, a substitution unit's allowance allocation is calculated by multiplying the lower of the above-discussed emissions rates by the baseline, which reflects 1985–87 utilization. The January 11, 1993 regulations used baseline (and only the 1985 actual or allowable $SO_2$ emissions rate) to calculate the allowance allocation. In the November 18, 1993 preamble, the Agency discussed the options of basing allocations on utilization at the time a permit application is submitted or requiring utilities to project what future utilization of the substitution units would be in Phase I without the substitution plan and using the projected utilization to allocate allowances. No commenters supported the use of projected utilization, and those that specifically addressed the matter preferred continued use of baseline. For the reasons set forth in the

[9] Contrary to one commenter's claim, the fact that section 402(3) of the Act defines "allowance" as "an authorization * * * to emit * * * one ton of sulfur dioxide" in no way bars the imposition of a requirement, consistent with other sections of the Act, to surrender allowances. 42 U.S.C. 7651a(3). Section 403(f) of the Act states that an allowance allocated under title IV is "a limited authorization to emit sulfur dioxide in accordance with the provisions of this title." 42 U.S.C. 7651b(f).

preamble (58 FR 60956–57), the Agency concludes that a substitution unit's baseline should continue to be used to calculate the allowance allocation.

2. Limiting the Number of Substitution Units

The Agency rejects modifications of the January 11, 1993 regulations making upfront approval of the designation of substitution units and allocation of allowances to such units contingent on an end-of-year review of the need for such units for each year that the plan was in effect. Under such an approach, the Agency would allow only those designations of substitution units that actually proved to be needed. No commenters supported that approach.

Because allowance allocations for substitution units are limited as discussed above, the Agency concludes that requiring end-of-year review of the need for substitution units and thereby limiting the number of such units is unnecessary. If a substitution unit is not allocated allowances for emissions rate reductions that would have occurred without a substitution plan, then the unit will use up all or most of its allocated allowances unless the unit made new emissions rate reductions that would not otherwise have been made. To the extent that a substitution unit frees up allowances by making such new emissions rate reductions, section 404(b)(1)(5) is not violated. *See* 58 FR 60957. In short, because today's final rule prevents any substitution unit from creating new, excess allowances, there is no need to impose further requirements limiting the number of substitution units.

3. Requirement That the Substitution Unit Be Under Control of the Table A Unit's Owner or Operator

The January 11, 1993 regulations provide that the statutory requirement that the substitution unit be under the control of the Table A unit's owner or operator is satisfied where such units have only a common designated representative. This was based on the determination that a common designated representative qualifies, in such cases as an operator. 40 CFR 72.41(b)(1)(i); *see also* 42 U.S.C. 7651c(b). In the November 18, 1993 preamble, the Agency proposed to reverse its interpretation that having a common designated representative, without more, meets this statutory requirement and to revise the regulations accordingly. 58 FR 60957–60958. The Agency today adopts the reasoning, set forth in the November 18, 1993 preamble (*Id.*) and in the preamble of the Acid Rain regulations on nitrogen oxides (59 FR 13554–55), that a designated representative is not, merely by holding that position, also an operator.

In the preamble of the January 11, 1993 regulations, the Agency stated that, under some circumstances, a designated representative's "duties and level of responsibility can be equivalent to that of an operator." 58 FR 3600. One such case, identified by the Agency, was where a designated representative represents multiple sources participating in a substitution plan and otherwise lacking the same owner or operator. In that case, the designated representative's responsibilities are allegedly "broad enough to bring him or her within the definition of operator." *Id.* As discussed in the November 18, 1993 proposal and the March 22, 1994 final $NO_X$ rule, a designated representative's responsibilities in a multi-source substitution plan are not actually any broader or more complex than they are under other compliance options. Therefore, there is no basis for treating a designated representative in such a substitution plan any differently than a designated representative under any other compliance option. In all such cases, a designated representative is not an operator. The final revised rule reflects this conclusion by eliminating language from the January 11, 1993 regulations that provided that units with a common designated representative, and nothing more, could participate in a substitution plan.

Some commenters note that, although § 72.41(b)(1)(i) requires that the substitution and Table A units have "the same owner or operator" (40 CFR 72.41(b)(1)(i) (1993)), section 404(b) itself states that the substitution unit must be "under the control of the owner or operator" of the Table A unit. They argue that, in implementing section 404 (b) and (c), the Agency should focus on whether there is such control. They suggest that the ownership of the units is not necessarily determinative of whether the control requirement is met. They allege that, on one hand, where the units have multiple owners only one of which is in common, the control requirement may not be met. On the other hand, where the units lack the same owner or operator, the control requirement allegedly may be met through contractual arrangements under which the owner and operator of the substitution unit commit, *inter alia*, to make emissions reductions and deliver allowances to the owner and operator of the Phase I unit.

In this final rule, the Agency is not addressing these additional issues concerning under what circumstances a proposed substitution unit is considered to be under the control of the owners or operator of a Phase I unit. EPA is addressing these issues, and the related comments, in a separate direct final rule in this **Federal Register**. In order to preserve these issues for resolution, the Agency is adopting, in today's final rule, the statutory language requiring that the owner or operator of the Phase I unit "control" the substitution unit that it designates.

4. Other Changes

The Agency has adopted several other minor changes to clarify the current § 72.41. For example, as discussed above, a substitution plan may distribute allowances between the substitution unit and the Table A unit. The final rule makes it clear in § 72.41(c)(4)(ii) that, where there is more than one Table A unit in a plan, allowances may be distributed from a substitution unit only to the Table A unit that designated that substitution unit. The final rule also eliminates the superfluous, but potentially confusing, final sentence in that section of the January 11, 1993 rules because the sentence simply repeats the limitation in § 72.41(c)(3)(ii) on the total number of allowances available under a substitution plan. *See* 40 CFR 72.41(c)(4)(ii) (1993).

*B. Reduced Utilization Plans*

The January 11, 1993 regulations implementing substitution and reduced utilization plans pose similar problems concerning the creation of excess, new allowances. However, because section 408(c)(1)(B) of the Act (unlike sections 404(b) and (c)) specifies the formula for allocating allowances, the Agency is adopting a different approach in modifying the requirements for compensating units than the one adopted today for substitution units. In order to ensure that reduced utilization plans are used as a means of accounting for emissions from load shifting from Phase I units and not as a method of creating excess, new allowances through early entry of Phase II units into Phase I, the Agency must limit the circumstances under which Phase II units can become compensating units.

In the November 18, 1993 notice of proposed rulemaking, the Agency suggested two options for limiting the designation of compensating units: the first option requiring that the compensating units be actually needed to compensate for reduced utilization and involving an end-of-year review of need; and the second option limiting up-front the category of units that can qualify to become compensating units.

The Agency is today rejecting the first option and is adopting the second option with some modifications.

1. Limiting the Category of Units That Can Qualify as Compensating Units

Under the option (Option 2 in the November 18, 1993 proposal) adopted today with some changes, the category of units that may be designated as compensating units is limited to those units whose designation cannot create excess, new allowances. The final revised rule provides that a unit can be designated as a compensating unit only if (1) the unit's baseline multiplied by the lesser of the unit's 1985 actual or allowable $SO_2$ emissions rate does not exceed (2) the baseline multiplied by the lesser of (i) the greater of the unit's 1989 or 1990 actual $SO_2$ emissions rate or (ii) the unit's most stringent federally enforceable or State enforceable $SO_2$ emissions limitation for $SO_2$ for 1995–99 as of November 15, 1990 plus (iii) the lesser of 10 percent of the tonnage calculated under (1) or 200 tons.

Consistent with its conclusions concerning substitution units, the Agency maintains that excess allowances may be created by the designation, as a compensating unit, of any Phase II unit whose baseline, multiplied by what its annual $SO_2$ emissions rate in Phase I would be in the absence of the designation, is less than the annual allowances allocated to the unit as a compensating unit. Even if such a Phase II unit increases its own generation to provide compensating generation, the unit may be able to use its own allowance allocation to cover its own emissions without making any more emission rate reductions than it would have otherwise made. In addition, the unit may have extra allowances to transfer, sell, or bank for future use. In order to prevent the creation of excess, new allowances, such units will not be allowed to be designated as compensating units.

For the reasons discussed above, the Agency concludes that excess, new allowances are created when Phase II units entering Phase I (e.g., compensating units) are allocated allowances for emissions rate reductions made, or mandated by federal or State law adopted, before passage of title IV. The general approach in the final rule is to bar, from becoming compensating units, those units that would otherwise receive such allocations if they were compensating units. Units that qualify as compensating units will be allocated allowances under the formula in section 408(c)(1)(B), i.e., baseline times the 1985 actual or allowable emissions rate.[10]

Contrary to some commenters, section 408(c)(1)(B) does not require the Administrator to approve whatever units a utility designates as compensating for reduced utilization. The Administrator must approve only those compensating-unit designations that are consistent with the purposes of title IV. 42 U.S.C. 7651h(c)(2). Section 408(c)(1)(B) does not expressly require the Administrator to consider a unit's 1989 or 1990 actual emissions rate or its most stringent emissions limitation. However, in reviewing proposed compensating units using these factors, the Agency is implementing section 408(c)(1)(B) in a way that precludes "a pattern or practice"—i.e., designation of compensating units that would receive excess, new allowances—"that is counter to the intent of section 404 and * * * title [IV of the Act]." Senate Rep. 101–228 at 334.

This approach is similar to that adopted with regard to substitution units except that, while the final rule allows units to become substitution units and adjusts their allocations, the final rule completely bars certain units from becoming compensating units. Consistent with the provisions concerning substitution units, the provisions for compensating units use the greater of the unit's 1989 or 1990 emissions rate as reasonably reflecting voluntary emissions reductions made before passage of title IV. Similarly, the provisions for substitution units and the provisions for compensating units take the same approach (including the treatment of non-unit-specific emissions limitations) to using the most stringent federal or State emissions limitations. *See* section III(A)(1)(b) of this preamble.

However, because some units could otherwise be completely barred from becoming compensating units because of very small differences (e.g., due to normal variability in coal quality) between their 1985 emissions and their actual or mandated emissions as of the passage of title IV, the Agency is building some extra flexibility into the provisions governing compensating units. The final rule allows the designation of compensating units whose baseline times the 1985 emissions rate is greater by only a very small amount (i.e., the lesser of 10 percent or 200 tons) than their baseline times the lesser of their 1989 (or 1990) emissions rate or their most stringent emissions limitation for Phase I. The flexibility band is measured in tons of emissions in order to ensure that the potential for creating excess, new allowances is restricted. Further, the flexibility band is also limited as a percentage of 1985 emissions because the band must apply to all potential compensating units, which can vary significantly in size and thus in total emissions. Using only a percentage limit or only a specific tonnage would have an inconsistent impact on units of different sizes.

Because of the inherent unreliability of projected utilization figures (discussed above in section III(A)(1)(c) of this preamble), baseline, not projected utilization, will be used to determine whether a unit qualifies as a compensating unit. If a utilization projection less than baseline were used to determine that a unit qualified as a compensating unit but subsequently the unit had a higher actual utilization in Phase I that would have otherwise disqualified the unit, the unit could create excess, new allowances.

In order to be approved, the designation of a compensating unit, of course, must meet the requirements in the January 11, 1993 regulations for reduced utilization plans as well as the additional requirement imposed in today's final revised rule. After determining that a particular proposed compensating unit meets all these upfront requirements, the Agency will approve the designation and allocate allowances for the unit. The Agency will not conduct any end-of-year review of the need for the compensating unit.

If a designated representative of a Phase I unit has no Phase II unit that will provide compensating generation and that meets all the upfront requirements for designation, the designated representative will not be required to submit a reduced utilization plan designating a compensating unit. The allowance surrender provisions in §§ 72.91 and 72.92 will continue to apply.

2. End-of-Year Review of the Need for Compensating Units

Under the rejected option (Option 1 in the November 18, 1993 proposal), units would have been allowed to remain as compensating units and would have retained allocated allowances only where the compensating units were actually needed to account for reduced utilization. *See* 58 FR 60959–60961. The Agency proposed in Option 1 to modify the reduced utilization provisions by granting upfront approval of a reduced utilization plan with compensating units but making approval contingent

[10] Thus, despite the claim of some commenters, Option 2 of the proposal does not change the allocation formula, which applies once it is determined that a unit qualifies as a compensating unit.

on an end-of-year determination by the Administrator that each compensating unit was needed for the year. A unit designated as a compensating unit would have become a Phase I unit and would have been allocated allowances upon upfront approval of the reduced utilization plan. However, a compensating unit would not have been allowed to transfer allowances allocated for any given year in Phase I unless and until an end-of-year determination of need was made for that unit for that year. If the unit was not shown to be needed, the unit would have been retroactively de-designated for the year and the allowances allocated for the year would have been deducted.

Under Option 1, a unit could be deemed, in the end-of-year review, to be needed as a compensating unit only for years in which: the Phase I unit actually had utilization below baseline; the Phase I units in the initial Phase I unit's dispatch system actually had total net utilization below the sum of their baselines after taking account of all sulfur-generation acquired by the dispatch system; and the proposed compensating unit actually provided compensating generation to that dispatch system. Further, the Administrator would determine how much compensating generation each compensating unit proposed for any Phase I unit potentially could have provided. The only compensating unit designations that would be allowed for any Phase I units in the dispatch system would be designations of compensating units whose potential excess generation would have been necessary to meet the potential need for compensating generation for the dispatch system as a whole.

The Agency is rejecting Option 1 because Option 2 is a simpler approach that ensures that, consistent with title IV and Congressional intent, compensating units cannot be used to create excess, new allowances. In contrast to Option 2, Option 1 would require designated representatives to make complicated end-of-year demonstrations of need, summarized above, and EPA to review and evaluate those demonstrations. Trading of allowances allocated to compensating units would be inhibited in that such trading would be barred pending completion of the Agency's review.[11] Further, while Option 1 would reduce the number of compensating units and thus the total amount of excess, new allowances that they could create, that option would not entirely eliminate the problem: those compensating units meeting the requirements of Option 1 could still create some excess, new allowances. Finally, the vast majority of commenters supported the use of Option 2 over Option 1.

3. Reporting and Allowance Surrender

The November 18, 1993 proposal included a number of changes —both substantive and nonsubstantive changes—to §§ 72.43 and 72.91 concerning reporting and allowance surrender requirements. 58 FR 60961-60962 (describing these changes). These changes are included in the final revised rule.

Commenters addressed only two of these changes. Under the proposal and the final revised rule, where a sulfur-free generator is designated outside a unit's dispatch system, the designated representative must submit, as part of the reduced utilization plan, the contractual agreements governing the "acquisition" of electricity by the unit's dispatch system from that generator. In addition, where a shift of generation from any designated sulfur-free generator (whether the generator is within or outside the dispatch system) is claimed, the designated representative must document that at least the amount claimed to have been shifted was actually "acquired" by the unit's dispatch system from the generator. The January 11, 1993 regulations referred to the contractual agreements governing and documentation concerning the "purchase", rather than the "acquisition", of electricity from sulfur-free generators. *See* 48 FR 3672 and 3682 (§§ 72.43(c)(4)(iv) and 72.91(a)(6) (1993)). Commenters supported this change adopted in the November 18, 1993 proposal. Some sulfur-free generators have multiple owners and may be owned in part by the unit's dispatch system. In such cases, the unit's dispatch system may not acquire electricity from the generator through a "purchase" but rather may acquire the electricity based on its ownership share. Further, it is important to ensure that multiple owners of sulfur-free generators claim only their respective shares of the sulfur-free generation. Consequently, the Agency is requiring documentation concerning the "acquisition," which encompasses not only "purchases" (as under the January 11, 1993 rule) but also acquisitions based on ownership. Further, the requirement to document actual acquisition applies to all designated sulfur-free generators.

One commenter stated that the documentation required, under the proposal, for acquisition of sulfur-free generation is more stringent than necessary. The commenter noted that, under the proposal, the designated representative must demonstrate that electricity was actually acquired from "a particular sulfur-free generator." Comments of Oglethorpe Power Corporation at 7. Allegedly, it is "extremely difficult to trace energy back" to the sulfur-free generator. *Id.* The commenter further alleged that requiring that "a unit power or similar power sale agreement" govern the acquisition will result in "significant regulatory or other approval delays." *Id.* at 6. The commenter suggested that, instead of these requirements, the Agency require that the designated representative of the Phase I unit simply obtain the consent of an owner of the sulfur-free generator to claim, for purposes of the reduced utilization plan, some or all of that owner's share of generation from the sulfur-free generator. In order to ensure that the designated representative does not make such claims without actually getting the consent of the generator-owner, the commenter urged that EPA require that a copy of any reduced utilization plan involving a sulfur-free generator be given to all owners of the generator and the designated representative of the Phase I unit certify to EPA that the necessary consent was obtained. *Id.* at 5.

Under the commenter's approach, a Phase I unit would be relieved of the obligation to surrender allowances simply because it obtained the consent of an owner of a sulfur-free generator to "claim" some of that owner's electricity from the generator. As explained by the commenter, there would not have to be any actual acquisition of electricity by the dispatch system of the Phase I unit from the sulfur-free generator. However, the rationale for allowing the Phase I unit to avoid surrendering allowances if it designates a sulfur-free generator is that the Phase I unit is replacing the reduction in its own generation below its 1985–87 level with electricity from a source (i.e., a sulfur-free generator) that does not emit any sulfur dioxide when producing that electricity. To the extent the Phase I unit replaces its own reduced generation with electricity from units that emit sulfur dioxide in the process, allowances must be surrendered in order to account for the emissions consequences of the reduced utilization of the Phase I unit. Otherwise, the Phase I unit could bank its unused allowances "notwithstanding

[11] Because the Agency is rejecting all the limitations, discussed in the November 18, 1993 proposal, on the trading of allowances allocated to compensating or substitution units, the Agency has decided not to adopt any revisions to § 73.52 in the Allowance System rule.

the fact that actual emissions reductions had not been paid for or achieved" at that unit. 56 FR 63019.

The Agency recognizes that the complexity of the movement of electricity through interconnected transmission and distribution systems make it difficult to determine precisely the source of compensating generation. 56 FR 63023. That does not mean that all efforts, in the allowance surrender procedure, to reflect actual electricity transactions and to approximate resulting emissions should be abandoned. Under the commenter's approach, "paper" claims to sulfur-free generation that may have no actual, underlying energy transactions could be used to avoid allowance surrender. Such an approach would run contrary to the rationale for allowing the designation of sulfur-free generators and therefore is rejected.

Thus, the final revised rule includes the requirements that the designated representative of the Phase I unit submit: Contractual agreements that expressly provide for the acquisition of electricity by the unit's dispatch system from the designated sulfur-free generator outside the dispatch system, which generator must be identified in the agreements; and documentation that such acquisition from the identified generator actually took place. (Similarly, to ensure that claims of compensating generation are based on actual transactions, the same approach is taken for compensating units outside the dispatch system. *See* 58 FR 60961 (proposing parallel treatment of sulfur-free generators and compensating units).)

In light of these requirements, commenter's concern—that Phase I units lacking a common owner with a sulfur-free generator may claim to have acquired from the generator electricity that is actually sulfur-free generation retained by an owner of the generator—is misplaced. A sulfur-free generator can be designated only by those Phase I units that meet certain requirements. A Phase I unit whose dispatch system includes the generator may designate that generator.[12] If the generator is outside the dispatch system of a Phase I unit, the Phase I unit may designate the generator if the dispatch system has a contract specifically providing for the acquisition of electricity from the particular generator. A contact to purchase power from the dispatch system of an owner of the sulfur-free generator, where the sulfur-free generator is not specified as the source of the power, is not sufficient. If the dispatch system of the Phase I unit has a contract specifically to purchase power generated at the sulfur-free generator and the contract is with a third party that is not an owner of the generator, the designated representative must show that the third party in turn has an agreement with an owner of the generator specifically to purchase power from the generator. Further, § 72.91(a)(5) and (6) require that the designated representative document the amount of power actually acquired from the sulfur-free generator and that the designated representatives of all Phase I units claiming generation from the same generator must agree on apportionment of the available generation. It is difficult to see how a Phase I unit could take credit for electricity legitimately claimed by an owner of the sulfur-free generator. Consequently, it is unnecessary to impose the additional requirements suggested by the commenter.

[12] No contract to acquire power from the sulfur-free generator is required if the generator is in the Phase I unit's dispatch system. Since a given sulfur-free generator can be included in only one dispatch system, Phase I units in any other dispatch system must have such a contract in order to desigate the generator.

## IV. Applicability of Rule Revisions to Existing Permit Applications

In the November 18, 1993 proposal, the Agency requested comment on how to address any reliance by owners and operators on the January 11, 1993 regulations. The Agency noted that it had proposed in draft Acid Rain permits to approve for 1995, under the January 11, 1993 regulations, those substitution plans and those reduced utilization plans with compensating units that EPA determined to be in compliance with those regulations. 58 FR 60962. In a subsequent extension of the period for comments on the November 18, 1993 proposal, the Agency requested comments on whether any of the allowances allocated to substitution or compensating units under the January 11, 1993 regulations should be returned to EPA at some future time. 59 FR 3660 (Jan. 26, 1994).

In the November 18, 1993 proposal, it was also noted that, in the draft permits, EPA had proposed to defer action on those compliance options with regard to 1996–1999 pending completion of the instant rulemaking. 58 FR 60962–60963. In notices of draft permits, the Agency had stated that it intended to take this approach for all substitution and reduced utilization plans submitted before July 16, 1993 but that, with regard to such plans submitted on or after July 16, 1993, it intended to defer action for all of Phase I on those compliance options until completion of the rulemaking. 58 FR 38371 (July 16, 1993); 58 FR 39542–39543 (July 23, 1993); 58 FR 40812 (July 30, 1993); 58 FR 42065 (Aug. 6, 1993); 58 FR 43107 (Aug. 13, 1993).

The Agency had explained in draft permits, notices of draft permits, and the November 18, 1993 proposal that it was taking the position that it had the authority under the January 11, 1993 regulations to defer action on compliance options. *See, e.g.,* 58 FR 60963. Nevertheless, the Agency proposed, in the November 18, 1993 notice of proposed rulemaking, to add language to §§ 72.62 and 72.82 of the January 11, 1993 regulations "making this authority more explicit." *Id.*

However, the Agency concludes that it is no longer necessary to defer action for any period on any substitution or reduced utilization plans that have been submitted. The Agency has already issued direct final permits addressing these plans for all years during 1995–1999 for which the plans were proposed. *See, e.g.,* 59 FR 37755 (July 25, 1994); 59 FR 38454 (July 28, 1994); 59 FR 39339 (Aug. 2, 1994); and 59 FR 39767 (Aug. 4, 1994). Most of the permits automatically became final. Significant, adverse comment was received on several permits, which were reproposed and have now been issued in final form. *See* 59 FR 49395–49396 (Sept. 28, 1994). As provided in the May 4, 1994 settlement, the substitution and compensating units designated in the plans are allocated allowances in Phase I under settlement provisions consistent with today's final revised rule and receive for one or two years any additional allowances (referred to, in the settlement, as "excess" allowances) that would be provided under the January 11, 1993 regulations. Consistent with the May 4, 1994 settlement, allowances equal to the number of additional allowances allocated for one or two years will be deducted from a future year subaccount in the unit's Allowance Tracking System account.

Consequently, the Agency is withdrawing its position, set forth in draft permits, notices of draft permits, and the November 18, 1993 proposal, that it has the authority under the January 11, 1993 regulations to defer action on compliance options. The Agency is taking no position at this time on whether it has such authority. Further, under these circumstances, the Agency is not adopting the revisions to §§ 72.62 and 72.82 as proposed on November 18, 1993. The comments that were submitted on these proposed revisions and on the Agency's authority to defer action on compliance options

are therefore no longer relevant and require no response at this time.

Moreover, the Agency is not addressing, in this rulemaking, questions concerning whether and how to apply today's final revised rule to permit applications submitted to the Agency prior to the effective date of the final revised rule. These matters—including the question of whether allowances allocated to substitution or compensating units under the January 11, 1993 rules should be returned to EPA in the future—were addressed when, as noted above, the final permits were issued with regard to these permit applications. The Agency considered, in the individual permit application proceedings, both the comments on this matter submitted in this rulemaking and those comments submitted on the draft permits.

## V. Administrative Requirements

### *A. Docket*

The docket is the organized and complete file of all the information considered by EPA in the development of this rulemaking. The Agency notes that, consistent with the May 4, 1994 settlement, several parties withdrew comments or portions of comments that they had submitted concerning matters addressed in the November 18, 1993 proposal. Along with the preamble of the proposal and final rule, the contents of the docket—except for interagency review materials and all comments or portions of comments that were withdrawn prior to the date of the Administrator's signature on this final rule—will constitute the record in case of judicial review. *See* 42 U.S.C. 7607(d)(7)(A).

### *B. Executive Order 12866*

Under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any changes made in response to OMB suggestions or recommendations are documented in the public record. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

### *C. Paperwork Reduction Act*

The information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have been assigned control number 2060–0258.

This collection of information has an estimated burden averaging from 8 to 16 hours per response for about 124 responses. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An Information Collection Request document and estimates of the public reporting burden were prepared in connection with the January 11, 1993 regulations. 56 FR 63098; 58 FR 3650. The regulation modifications contained in today's proposal will not significantly change the reporting burden that was previously estimated.

Send comments regarding this burden analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, EPA, 401 M Street, S.W. (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires each federal agency to consider potential impacts of its regulations on small business "entities." Under 5 U.S.C. 604(a), an agency issuing a notice of proposed rulemaking must prepare and make available for public comment a regulatory flexibility analysis. Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

In the preamble of the January 11, 1993 regulations, the Administrator certified that those regulations, including the provisions revised by today's final rule, would not have a significant impact. 58 FR 3649. The final rule revisions adopted today are not significant enough to change the economic impact addressed in the preamble of the January 11, 1993 regulations, which were certified as not having a significant impact. The revisions will prevent the creation of about 200,000 excess, new allowances and thus will have an annual impact of about $318,000 per year in Phase I, i.e., 200,000 allowances times $159 (the weighted average winning bid for 1995 allowances in the EPA 1994 Allowance Auction on March 28, 1994. *See* 59 FR 19712, 19714 (Apr. 25, 1994)). Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the revised rule will not have a significant, adverse impact on a substantial number of small entities.

### *E. Miscellaneous*

In accordance with section 117 of the Act, publication of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

**List of Subjects in 40 CFR Part 72**

Environmental protection, Acid rain, Air pollution control, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 14, 1994.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

## PART 72—[AMENDED]

1. The authority citation for part 72 is revised to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651, et seq.

2. Section 72.41 is amended by revising paragraphs (b)(1)(i), (c)(3) introductory text, (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(ii), (c)(4)(ii), (d)(2), and (e)(1)(i) and adding paragraphs (c)(3)(i)(D), (c)(3)(iii), and (d)(3) to read as follows:

**§ 72.41 Phase I substitution plans.**

* * * * *

(b)(1) * * *

(i) Each unit under paragraph (a)(2) of this section is under the control of the owner or operator of each unit under paragraph (a)(1) of this section that designates the unit under paragraph (a)(2) of this section as a substitution unit; and

* * * * *

(c) * * *

(3) Demonstration that the total emissions reductions achieved under the substitution plan will be equal to or greater than the total emissions reductions that would have been achieved without the plan, as follows:

(i) * * *

(B) Each of the following: the unit's 1985 actual $SO_2$ emissions rate; the unit's 1985 allowable $SO_2$ emissions rate; the unit's 1989 actual $SO_2$ emissions rate; the unit's 1990 actual $SO_2$ emissions rate; and, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation covering the unit for 1995–1999. For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lbs/mmBtu in accordance with appendix B of this part. Where the most stringent emissions limitation is not the same for every year in 1995–1999, the most stringent emissions limitation shall be stated separately for each year.

(C) The lesser of: the unit's 1985 actual $SO_2$ emissions rate; the unit's 1985 allowable $SO_2$ emissions rate; the greater of the unit's 1989 or 1990 actual $SO_2$ emissions rate; or, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation covering the unit for 1995–99. Where the most stringent emissions limitation is not the same for every year during 1995–1999, the lesser of the emissions rates shall be determined separately for each year using the most stringent emissions limitation for that year.

(D) The product of the baseline in paragraph (c)(3)(i)(A) of this section and the emissions rate in paragraph (c)(3)(i)(C) of this section, divided by 2000 lbs/ton. Where the most stringent emissions limitation is not the same for every year during 1995–1999, the product in the prior sentence shall be calculated separately for each year using the emissions rate determined for that year in paragraph (c)(3)(i)(C) of this section.

(ii)(A) The sum of the amounts in paragraph (c)(3)(i)(D) of this section for all substitution units to be governed by the plan. Except as provided in paragraph (c)(3)(ii)(B) of this section, this sum is the total number of allowances available each year under the substitution plan.

(B) Where the most stringent unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation is not the same for every year during 1995–1999, the sum in paragraph (c)(3)(ii)(A) of this section shall be calculated separately for each year using the amounts calculated for that year in paragraph (c)(3)(i)(D) of this section. Each separate sum is the total number of allowances available for the respective year under the substitution plan.

(iii) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation covers the unit for any year during 1995–1999, the designated representative shall state each such limitation and propose a method for applying the unit-specific and non-unit-specific emissions limitations under paragraph (d) of this section.

(4) * * *

* * * * *

(ii) A list showing any annual distribution of the allowances in paragraph (c)(3)(ii) of this section from a substitution unit to a unit under paragraph (a)(1) of this section that, under the plan, designates the substitution unit.

* * * * *

(d) * * *

(2) In no event shall allowances be allocated to a substitution unit, under an approved substitution plan, for any year in excess of the sum calculated and applicable to that year under paragraph (c)(3)(ii) of this section, as adjusted by the Administrator in approving the plan.

(3) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation covers the unit for any year during 1995–1999, the Administrator will specify on a case-by-case basis a method for using unit-specific and non-unit-specific emissions limitations in allocating allowances to the substitution unit. The specified method will not treat a non-unit-specific emissions limitation as a unit-specific emissions limitation and will not result in substitution units retaining allowances allocated under paragraph (d)(1) of this section for emissions reductions necessary to meet a non-unit- specific emissions limitation. Such method may require an end-of-year review and the adjustment of the allowances allocated to the substitution unit and may require the designated representative of the substitution unit to surrender allowances by the allowance transfer deadline of the year that is subject to the review. Any surrendered allowances shall have the same or an earlier compliance use date as the allowances originally allocated for the year, and the designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, such allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(e) * * *

(1) *Emissions Limitations.* (i) Each substitution unit governed by an approved substitution plan shall become a Phase I unit from January 1 of the year for which the plan takes effect until January 1 of the year for which the plan is no longer in effect or is terminated. The designated representative of a substitution unit shall surrender allowances, and the Administrator will deduct allowances, in accordance with paragraph (d)(3) of this section.

* * * * *

3. Section 72.43 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (b)(1) introductory text, (b)(1)(ii)(A), (b)(3)(i), (c)(4)(i), (c)(4)(ii), (c)(4)(iv), (d), and (f)(1)(ii) and adding paragraph (a)(2) to read as follows:

**§ 72.43 Phase I reduced utilization plans.**

(a) Applicability. This section shall apply to the designated representative of:

(1) Any Phase I unit, including.

* * * * *

(2) Any affected unit that:

(i) Is not otherwise subject to any Acid Rain emissions limitation or emissions reduction requirements during Phase I; and

(ii) Meets the requirement, as set forth in paragraphs (c)(4)(ii) and (d) of this section, that for each year for which the unit is to be covered by the reduced utilization plan, the unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of the unit's 1985 actual $SO_2$ emissions rate or 1985 allowable $SO_2$ emissions rate does not exceed the sum of

(A) The lesser of 10 percent of the amount under paragraph (a)(2)(ii) of this section or 200 tons, plus

(B) The unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of: The greater of the unit's 1989 or 1990 actual $SO_2$ emissions rate; or, as of November 15, 1990, the most stringent federally enforceable or State

enforceable $SO_2$ emissions limitation covering the unit for 1995–1999.

(b)(1) The designated representative of any unit under paragraph (a)(1) of this section shall include in the Acid Rain permit application for the unit a reduced utilization plan, meeting the requirements of this section, when the owners and operators of the unit plan to:

* * * * *

(ii) * * *

(A) Shifting generation of the unit to a unit under paragraph (a)(2) of this section or to a sulfur-free generator; or

* * * * *

(3)(i) Improved unit efficiency measures shall be implemented in the unit after December 31, 1987. Such measures include supply-side measures listed in appendix A, section 2.1 of part 73 of this chapter.

* * * * *

(c) * * *

(4) * * *

(i) Identification of each compensating unit or sulfur-free generator.

(ii) For each compensating unit.

(A) Each of the following: The unit's 1985 actual $SO_2$ emissions rate; the unit's 1985 allowable emissions rate; the unit's 1989 actual $SO_2$ emissions rate; the unit's 1990 actual $SO_2$ emissions rate; and, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation covering the unit for 1995–1999. For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lbs/mmBtu in accordance with appendix B of this part. Where the most stringent emissions limitation is not the same for every year in 1995–1999, the most stringent emissions limitation shall be stated separately for each year.

(B) The unit's baseline divided by 2,000 lbs/ton and multiplied by the lesser of the unit's 1985 actual $SO_2$ emissions rate or 1985 allowable $SO_2$ emissions rate.

(C) The unit's baseline divided by 2000 lbs/ton and multiplied by the lesser of: The greater of the unit's 1989 or 1990 actual $SO_2$ emissions rate; or, as of November 15, 1990, the most stringent unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation covering the unit for 1995–1999. Where the most stringent emissions limitation is not the same for every year in 1995–1999, the calculation in the prior sentence shall be made separately for each year.

(D) The difference between the amount under paragraph (c)(4)(ii)(B) of this section and the amount under paragraph (c)(4)(ii)(C) of this section. If the difference calculated in the prior sentence for any year exceeds the lesser of 10 percent of the amount under paragraph (c)(4)(ii)(B) of this section or 200 tons, the unit shall not be designated as a compensating unit for the year. Where the most stringent unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation is not the same for every year in 1995–1999, the difference shall be calculated separately for each year.

(E) The allowance allocation calculated as the amount under paragraph (c)(4)(ii)(B) of this section. If the compensating unit is a new unit, it shall be deemed to have a baseline of zero and shall be allocated no allowances.

(F) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation covers the unit for any year in 1995–1999, the designated representative shall state each such limitation and propose a method for applying unit-specific and non-unit-specific emissions limitations under paragraph (d) of this section.

* * * * *

(iv) For each compensating unit or sulfur-free generator not in the dispatch system of the unit reducing utilization under the plan, the system directives or power purchase agreements or other contractual agreements governing the acquisition, by the dispatch system, of the electrical energy that is generated by the compensating unit or sulfur-free generator and on which the plan relies to accomplish reduced utilization. Such contractual agreements shall identify the specific compensating unit or sulfur-free generator from which the dispatch system acquires such electrical energy.

* * * * *

(d) *Administrator's Action.* (1) If the Administrator approves the reduced utilization plan, he or she will allocate allowances, as provided in the approved plan, to the Allowance Tracking System account for any designated compensating unit upon issuance of an Acid Rain permit containing the plan, except that, if the plan is conditionally approved, the allowances will be allocated upon revision of the permit to activate the plan.

(2) Where, as of November 15, 1990, a non-unit-specific federally enforceable or State enforceable emissions limitation covers the unit for any year during 1995–1999, the Administrator will specify on a case-by-case basis a method for using unit-specific and non-unit specific emissions limitations in approving or disapproving the compensating unit. The specified method will not treat a non-unit-specific emissions limitation as a unit-specific emissions limitation and will not result in compensating units retaining allowances allocated under paragraph (d)(1) of this section for emissions reductions necessary to meet a non-unit-specific emissions limitation. Such method may require an end-of-year review and the disapproval and de-designation, and adjustment of the allowances allocated to, the compensating unit and may require the designated representative of the compensating unit to surrender allowances by the allowance transfer deadline of the year that is subject to the review. Any surrendered allowances shall have the same or an earlier compliance use date as the allowances originally allocated for the year, and the designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, such allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

* * * * *

(f) * * *

(1) * * *

(ii) The designated representative of any Phase I unit (including a unit governed by a reduced utilization plan relying on energy conservation, improved unit efficiency, sulfur-free generation, or a compensating unit) shall surrender allowances, and the Administrator will deduct or return allowances, in accordance with paragraph (d)(2) of this section and subpart I of this part.

* * * * *

4. Section 72.91 is amended by revising paragraphs (a)(3)(iii) introductory text (formula is unchanged), (a)(3)(iv), (a)(4), (a)(5), (a)(6), and (b)(2) and adding paragraph (a)(7) to read as follows:

**§ 72.91 Phase I unit adjusted utilization.**

(a) * * *

(3) * * *

(iii) "Shifts to designated sulfur-free generators" is the reduction in utilization (in mmBtu), for the calendar year, that is accounted for by all sulfur-free generators designated under the reduced utilization plan in effect for the calendar year. This term equals the sum, for all such generators, of the "shift to sulfur-free generator." "Shift to sulfur-free generator" shall equal the amount, to the extent documented under paragraph (a)(6) of this section, calculated for each generator using the following formula:

* * * * *

(iv) "Shifts to designated compensating units" is the reduction in utilization (in mmBtu) for the calendar year that is accounted for by increased generation at compensating units designated under the reduced utilization plan in effect for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this section, of the unit reducing utilization multiplied by the sum, for all such compensating units, of the "shift to compensating unit" for each compensating unit. "Shift to compensating unit" shall equal the amount of compensating generation (in Kwh), to the extent documented under paragraph (a)(6) of this section, that the designated representatives of the unit reducing utilization and the compensating unit have certified (in their respective annual compliance certification reports) as the amount that will be converted to mmBtus and used, in accordance with paragraph (a)(4) of this section, in calculating the adjusted utilization for the compensating unit.

(4) "Compensating generation provided to other units" is the total amount of utilization (in mmBtu) necessary to provide the generation (if any) that was shifted to the unit as a designated compensating unit under any other reduced utilization plans that were in effect for the unit and for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this section, of such unit multiplied by the sum of each "shift to compensating unit" that is attributed to the unit in the annual compliance certification reports submitted by the Phase I units under such other plans and that is certified under paragraph (a)(3)(iv) of this section.

(5) Notwithstanding paragraphs (a)(3)(i), (ii), and (iii) of this section, where two or more Phase I units include in "plan reductions", in their annual compliance certification reports for the calendar year, expected kilowatt hour savings or reduction in heat rate from the same specific conservation or improved unit efficiency measures or increased utilization of the same sulfur-free generator:

(i) The designated representatives of all such units shall submit with their annual reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings, reduction in heat rate, or increased utilization among such units.

(ii) Each designated representative shall include in the annual report only the respective unit's share of the total kilowatt hour savings, reduction in heat rate, or increased utilization, in accordance with the certification under paragraph (a)(5)(i) of this section.

(6)(i) Where a unit includes in "plan reductions" under paragraph (a)(3) of this section the increase in utilization of any sulfur-free generator, the designated representative of the unit shall submit, with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the "shift to sulfur-free generator" attributed to the sulfur-free generator in the annual report was actually acquired by the unit's dispatch system from the sulfur-free generator.

(ii) Where a unit includes in "plan reductions" under paragraph (a)(3) of this section utilization of any compensating unit, the designated representative of the unit shall submit with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the "shift to compensating unit" attributed to the compensating unit in the annual report was actually acquired by the unit's dispatch system from the compensating unit.

(7) Notwithstanding paragraphs (a)(3)(i), (ii), (iii), and (iv), (a)(4), and (a)(5) of this section, "plan reductions" minus "compensating generation provided to other units" shall not exceed "baseline" minus "actual utilization."

(b) * * *

(2) Notwithstanding paragraph (b)(1)(i) of this section, where two or more Phase I units include in the confirmation report the verified kilowatt hour savings or reduction in heat rate from the same specific conservation or improved unit efficiency measures:

(i) The designated representatives of all such units shall submit with their confirmation reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or reduction in heat rate among such units.

(ii) Each designated representative shall include in the confirmation report only the respective unit's share of the total savings or reduction in heat rate in accordance with the certification under paragraph (b)(2)(i) of this section.

* * * * *

[FR Doc. 94–28708 Filed 11–21–94; 8:45 am]

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# Part V

# Environmental Protection Agency

## 40 CFR Part 72
## Acid Rain Program: Permits; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 72**

**[FRL–5109–6]**

**RIN 2060–AF55**

## Acid Rain Program: Permits

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

**ACTION:** Direct final rule.

**SUMMARY:** Title IV of the Clean Air Act, as amended by Public Law 101–549, the Clean Air Act Amendments of 1990 (the Act), authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On August 10, 1994, EPA and other parties signed a settlement agreement addressing certain substitution plan issues.

Based on a review of the record, the Agency concludes that the January 11, 1993 regulations concerning the eligibility of units to be designated as substitution units should be revised. Under sections 404(b) and (c) of the Act, a unit that is not listed in Table A of section 404 as being subject to Phase I of the Acid Rain Program (i.e., a non-Table A unit) and that is under the control of the owner or operator of a unit listed in Table A of section 404 (i.e., a Table A unit) may be designated as a substitution unit. The January 11, 1993 regulations state that the Table A unit and each non-Table A unit that the Table A unit designates as a substitution unit must have "the same owner or operator." The Agency is revising the regulations in order to specify more clearly the circumstances under which the statutory "control" requirement for substitution plans is met. The rule revision is being issued as a direct final rule because it is consistent with the August 10, 1994 settlement and no adverse comment is expected.

**EFFECTIVE DATE:** This direct final rule will be effective on January 3, 1995 unless significant, adverse comments are received by December 22, 1994. If significant, adverse comments are timely received on any provision of the direct final rule, that provision of the direct final rule will be withdrawn through a document in the **Federal Register.**

**ADDRESSES:** Docket No. A–93–40, containing supporting information used to develop the proposal, copies of all comments received, and responses to comments, is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section (LE–131), Waterside Mall, room 1500, 1st floor, 401 M Street, SW., Washington DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, Attorney-advisor, at (202) 233–9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Acid Rain Hotline at (202) 233–9620.

**SUPPLEMENTARY INFORMATION:** All public comment received on any provision of this direct final rule on which significant, adverse comments are timely received will be addressed in a subsequent final rule based on the relevant portions of the rule revision that is noticed as a proposed rule in the **Proposed Rules Section** of this **Federal Register** and that is identical to this direct final rule.

The contents of the preamble to the final rule are as follows:

I. Control Requirement for Designating Substitution Units
II. Modifications of the January 11, 1993 Regulation Concerning the Control Requirement for Substitution Units
A. Control by Common Owner or Operator
B. Control by Contract
C. Plan Termination if Control Requirement is no Longer Met
III. Administrative Requirements
A. Docket
B. Executive Order 12866
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Miscellaneous

### I. Control Requirement for Designating Substitution Units

Sections 404(b) and (c) of the Act set forth the requirements for submission and approval of substitution plans, under which a unit listed on Table A of section 404 designates one or more non-Table A units as substitution units and brings them into Phase I of the Acid Rain Program. Congress established substitution plans as a compliance option to increase units' compliance flexibility and reduce their overall costs of compliance in Phase I while still achieving the emissions reductions intended by Congress under title IV. See 58 FR 60950–60951 (Nov. 18, 1993).

A substitution plan allows the owner or operator of a Table A unit to reassign the unit's emissions reduction obligations to a designated non-Table A unit "under the control of" that owner or operator. 42 U.S.C. 7651c(b). Upon approval of the reassignment, the non-Table A unit becomes subject to all requirements for Phase I units with regard to sulfur dioxide and is allocated allowances. Emissions reductions by the non-Table A unit may therefore free up allowances, which may be used by the Table A unit (or any other unit) in lieu of making emissions reductions.

Section 71.41 of the January 11, 1993 regulations provided that the statutory requirement of control by the Table A unit's owner or operator over the non-Table A unit is satisfied where such units have "the same owner or operator." 40 CFR 72.41(b)(1)(i) (1993). The regulation also provided that having the same designated representative would be treated as having the same operator and would thus meet the control requirement. *Id.*; see also 58 FR 3600. On March 12, 1993, petitions for review of the January 11, 1993 regulations were filed with the U.S. Court of Appeals for the District of Columbia Circuit. Several petitioners challenged the provisions implementing the control requirement.

On November 18, 1993, the Agency issued proposed revisions to the January 11, 1993 regulations, including the provisions concerning the control requirement. The Agency proposed to reverse its interpretation that having a common designated representative alone meets the statutory control requirement for substitution plans and to revise the regulations accordingly. 58 FR 60957–60958. Several commenters addressed the control requirement in their comments on the November 18, 1993 proposal. Some commenters opposed any change in the January 11, 1993 provisions concerning the control requirement.

Other commenters noted that, although § 72.41(b)(1)(i) requires that the substitution and Table A units have "the same owner or operator" (40 CFR 72.41(b)(1)(i) (1993)), section 404(b) of the Act requires that the substitution unit be under the control of the Table A unit owner or operator. They argued that, in implementing section 404(b) and (c), the Agency should also focus on whether there is such control. They suggested that common ownership of the units is not necessarily determinative of whether the control requirement is met. They alleged that where the units have multiple owners only one of which is in common, the control requirement may not be met, e.g., where the common owner owns only a very small percentage of the proposed substitution unit. On the other hand, where the units lack any common owner or operator, the control requirement allegedly may be met through contractual arrangements under which the owner and operator of the substitution unit commit, *inter alia*, to

make emissions reductions and deliver allowances to the owner and operator of the Phase I unit.

In a separate final rule in this **Federal Register**, the Agency adopted the reasoning, set forth in the November 18, 1993 preamble (58 FR 60957–60958) and in the preamble of the Acid Rain regulations on nitrogen oxides (59 FR 13554–13555 (Mar. 22, 1994)), that a designated representative is not, merely by holding that position, also an operator. In that separate final rule, the Agency revised the January 11, 1993 regulations to use the statutory language requiring control by the Table A unit owner or operator and to provide that having a common designated representative does not alone meet the control requirement for substitution units. However, the Agency did not address in that separate document comments raising issues concerning: under what circumstances the existence of one or more common owners satisfies the control requirement; and whether and, if so, under what circumstances control can be established by contract if there are no common owners or common operators. The Agency addresses below those issues and the comments on those issues.

## II. Modifications of the January 11, 1993 Regulation Concerning the Control Requirement for Substitution Units

### *A. Control by Common Owner or Operator*

Section 404(b) of the Act allows that the "owner or operator" of a Table A unit to designate, as a substitution unit, a non-Table A unit "under the control of such owner or operator." 42 U.S.C. 7651c(b). The Agency agrees with commenters that, like section 404(b), the regulation implementing that section should focus on whether such control exists.

Because many units have multiple owners with varying percentages of ownership, there is a wide range of possible relationships between a Table A unit and a non-Table A unit, ranging, for example, from no common ownership to 100% common ownership and including all the possible variations in between. In order to avoid burdensome case-by-case determinations of whether each particular set of facts meets the control requirement and in order to provide more certainty for utilities and the public concerning what units qualify for inclusion in substitution plans, the Agency is establishing generic criteria for applying the control requirement. Further, the generic criteria are based on the potential ability of owners and operators to exercise control, not the actual exercise of such control potential. Determining what entities actually make decisions governing the operation of a unit could require the Agency to make lengthy case-by-case inquiries into the details of utility operations and involve the Agency in matters beyond its expertise.

In taking this approach, the Agency maintains that section 404(b) should be interpreted to require that owners or operators of a Table A unit have the ability to exercise a significant degree of control over a non-Table A unit. The simplest case for applying this requirement is where the Table A and non-Table A units have only a single owner or where, regardless of their ownership, the units have a common operator. Under these circumstances, it seems clear that the single owner or the operator of the Table A unit has the ability to control the non-Table A unit.

For units with multiple owners, the application of the control requirement becomes somewhat more complex if they do not have a common operator. If one or more owners and operators of a Table A unit own an aggregate share of 50% or more of the capacity of a non-Table A unit, no major decisions concerning the unit can be made without the concurrence of such Table A unit owners and operators. The Agency maintains, therefore, that they can control the non-Table A unit to a significant extent and meet the control requirement.

Even where the aggregate ownership share of the one or more owners and operators of a Table A unit in a non-Table A unit is less than 50%, the degree of control may still be significant. Such control is evidenced by the ability of such non-Table A unit owners to determine the dispatch of their respective shares of electricity generated by the non-Table A unit. Decisions by such owners whether or not to take their shares of generation can significantly affect the overall operation of the unit. While the Agency recognizes that adopting a minimum level of ownership in the non-Table A unit for meeting the control requirement is necessarily somewhat arbitrary, the Agency maintains that, as a matter of logic, there is some level of ownership below which the owners lack significant control. Further, establishing such a minimum level of ownership discourages gaming through the acquisition of minute ownership shares simply to enable the new owner to qualify the non-Table A unit as a substitution unit.

The Agency believes that an aggregate ownership interest of 10% or more, and less than 50%, of the capacity of the non-Table A unit meets the control requirement, provided that such owners have the ability to determine how their respective shares of the non-Table A unit's generation are dispatched. The Agency notes that, in some regions of the country, utilities have entered into power pool agreements under which the utilities agree to centralize in the power pool the dispatch of their units. Power pools with central economic dispatch enable member utilities to minimize operating costs through the use of the units in the pool that have the lowest generation costs. In light of the important benefits of such power pools, the Agency maintains that utilities in power pools should not be disadvantaged under section 404(b). Consequently, the determination of whether owners of a non-Table A unit have, by right of contract, the ability to dispatch their respective shares of the unit's generation should be made without regard to whether owners that had contractual dispatch authority have surrendered that authority to a power pool.

In sum, the Agency is establishing generic criteria for determining whether the control requirement under section 404(b) is met. The first category that meets this requirement is where one or more owners or operators of a Table A unit have an aggregate ownership interest of 50% or more in the non-Table A unit or where the two units have a common operator.[1] The second category that meets the control requirement is where: a Table A and non-Table A unit lack a common operator; one or more owners or operators of a Table A unit have an aggregate ownership interest of 10% or more and less than 50% in the non-Table A unit; and such owners or operators have the contractual ability to determine the dispatch of their respective shares of the non-Table A unit's generation. The final regulation requires the designated representatives submitting substitution plans to state in the submission what category is applicable to the units in the plan and to provide, upon request, documentation supporting such statements. These statements, like all information included in submissions by the designated representative, are covered by the certification required under § 72.21(b) concerning the truth,

[1] In summing the ownership shares of individual Table A unit owners and operators in the capacity of a non-Table unit, a given share, and the generation associated with such share, obviously cannot be double-counted. Otherwise, the sum of the ownership shares of all persons owning a non-Table A unit could exceed 100%.

accuracy, and completeness of the statements.

*B. Control by Contract*

The Agency agrees that, under certain circumstances, control over a substitution unit by the owners and operators of the Table A unit may be established by contract where the above-described criteria based on a common operator or the level of common ownership are not met. The contract must be a binding agreement between the owners and operators of a Table A unit and the owners and operators of the non-Table A unit that is designated as the Table A unit's substitution unit. Several commenters supported an interpretation of section 404(b) that would allow the control requirement to be met through a contract. The final regulation specifies the circumstances under which the Administator will find that control is established by contract.

Several determinations have guided the Agency's development of the regulation concerning control by contract. First, the Agency believes that the regulation should set forth detailed, generic requirements for establishing control by contract. Leaving the specification of detailed requirements to case-by-case development would increase the burden both on the owners and operators interested in submitting contract-based substitution plans and on the Agency, which must review such submissions. A commenter supporting the approval of contract-based substitution plans suggested that the Agency develop generic criteria.

Second, the Agency believes that the control requirement of section 404(b) of the Act should be interpreted in light of the emissions reduction goals of title IV. The Agency maintains that a determination of whether control is established by contract should focus on whether the owners and operators of the Table A unit have the ability, under the contract, to require emissions reductions by the non-Table A unit and thereby to affect the overall operation of the unit. It is not necessary in this context for the Table A unit's owners and operators to have contractual authority over all facets of the non-Table A unit's day-to-day operations.

Third, if the control requirement is to be met by simply showing that Table A unit owners and operators have the ability, by contract, to require emissions reductions by the non-Table A unit, the Agency maintains that the contract must require emissions reductions that are significant, new reductions that would not otherwise have been implemented by the non-Table A unit. It is difficult to see how control could be demonstrated if a contract with a Table A unit merely required a non-Table A unit to "make" reductions that the non-Table A unit had already implemented, was already in the process of implementing, or would have implemented even in the absence of the contract. Further, because a unit might be able to realize relatively minor reductions while making little change in its operations, the scale of the reductions required by contract should be significant in order to demonstrate control of the non-Table A unit by owners and operators that otherwise lack any operational responsibilities for that unit. A commenter suggested that the contract between the Table A and non-Table A units should specify a percentage emissions rate reduction that the non-Table A unit is required to achieve.

To ensure that the contract requires significant, new reductions by the non-Table A unit, the final regulation requires that the contract establish a maximum annual average $SO_2$ emissions rate for the unit. The maximum emissions rate must be less than or equal to 70% of the lesser of the following emissions rates for the non-Table A unit: the 1985 actual $SO_2$ emissions rate; the 1985 allowable $SO_2$ emissions rate; the greater of the 1989 or 1990 actual SO2 emissions rate; the most stringent federally enforceable or State enforceable $SO_2$ emissions limitation, as of November 15, 1990, applicable in Phase I; and the lesser of the average actual $SO_2$ emissions rate or the most stringent federally enforceable or State enforceable $SO_2$ emissions limitation for the four-quarter period immediately preceding the submission of the contract-based substitution plan.[2] The latter set of emissions rates (i.e., the current actual and allowable rates) are included to ensure that the required reduction in the unit's emissions rate is at least 30% of the emissions rate achieved, or required to be achieved, by the non-Table A unit around the time of the submission of the substitution plan. The other emissions rates (i.e., those for 1985, 1989, 1990, and Phase I) are used to ensure that the current actual or allowable rate does not represent a spike in the emissions rate achieved by or required for the unit since 1985.[3] A commenter supported using all of these emissions rates to set a maximum emissions rate for the non-Table A unit.

The Agency maintains that a 30% reduction in the emissions rate that the non-Table A unit would otherwise achieve represents a significant reduction. A commenter supporting approval of contract-based substitution plans asserted that it has identified about 30 Phase II units that lack a common owner or operator with a Table A unit and for which such plans would be economically feasible. The commenter stated that this group of units could reduce their current emissions rates by 50 to 70% and indicated that a 30% reduction might be an acceptable requirement for approval of this type of substitution plan.

As a further means of ensuring that the non-Table A unit's reductions are new, the final regulation requires that the contract-based substitution plan include a description of the actions that will be undertaken so that the non-Table A unit will comply with the maximum emissions rate. Such actions may include, for example, the addition or modification of a scrubber or fuel switching. The owners and operators of the Table A and non-Table A units must show that the described actions will not be implemented in Phase I unless the non-Table A unit is approved as a substitution unit. The description of the actions that will be taken must be sufficiently detailed so that the Agency can determine whether the showing has been made. Information relevant to the showing includes, *inter alia*, whether contracts implementing these actions were entered into before submission of the substitution plan. Under the regulation, the owners and operators must implement the described actions but may seek to amend the substitution plan to change the required actions.

In general, the Agency maintains that it is difficult to make determinations, particularly in a large number of cases, of whether owners and operators will take certain future actions in the absence of a substitution plan. However, the Agency must make a determination of this type in reviewing the actions described in each contract-based substitution plan in order to make sure that the non-Table A unit is really obligated to make new reductions. This

[2] Some units are subject to a non-unit-specific emissions limit (e.g., a utility-wide emissions tonnage or rate limit). The final regulation provides that if such a unit is designated as a substitution unit in a contract-based substitution plan, the Administrator will determine on a case-by-case basis how to apply the non-unit-specific limit in setting the maximum annual $SO_2$ emissions rate. If a non-unit-specific Federal limit was in effect and applicable to the unit in 1985, that limit is already reflected in the 1985 allowable $SO_2$ emissions rate (in the National Allowance Data Base), which will be treated as representing the non-unit- specific Federal limit.

[3] For the reasons set forth in a separate final rule in this **Federal Register**, these other emissions rates are also used to allocate allowances for any substitution unit and to ensure that allowances are not allocated for emissions reductions that would have been made without a substitution plan.

will be a one-time determination made when the plan is approved (or disapproved) unless the designated representative subsequently seeks to modify the description of actions in the plan. Further, the Agency does not expect a large number of contract-based substitution plans to be submitted. As noted above, commenters have identified only about 30 units for which such a plan would be economic.

Fourth, it is important to ensure that the contract imposes an effective emissions reduction requirement—i.e., a requirement that is likely to be enforced by Table A unit owners and operators claiming control of the non-Table A unit. Consequently, the contract should include a meaningful remedy in the event that the required emissions reductions are not achieved. The concept of requiring a meaningful remedy in the event of default was supported by a commenter.

If the Table A unit owners and operators must surrender allowances to the Administrator to the extent that the non-Table A unit fails to make the required emissions reductions, then the Table A owners and operators will bear responsibility for the reductions that they claim to control and will have the incentive to take actions to ensure achievement of the reductions. This puts the Table A owners and operators in a position similar to that of owners and operators that control a unit directly by owning or operating the unit. If, instead of such allowance surrender by the Table A unit, the non-Table A unit had to give allowances to the Table A unit (or to the Agency), then the Table A unit owners and operators would bear no responsibility for the non-Table A unit that they claim to control. Further, without elaborate limitations on the transfer of allowances between the Table A and non-Table A units, there would be no way of preventing the units from arranging a future return to the non-Table A unit of any allowances surrendered by the non-Table A unit to the Table A unit.

Under the final regulation, if the non-Table A unit fails to comply with the maximum emissions rate during the year, the Table A unit owners and operators must surrender a number of allowances equal to the non-Table A unit's baseline multiplied by the difference between the actual emissions rate for the year and the maximum emissions rate. This approach segregates out the effect of utilization changes and leaves such changes to be handled under the reduced utilization and allowance surrender provisions (e.g., §§72.43, 72.91, and 72.92) applicable to all Phase I units. The surrendered allowances must have the same or an earlier compliance use date as the allowances allocated to the non-Table A unit for the year, and the surrender must be made on or before the allowance transfer deadline. In order to encourage early reductions at non-Table A units and innovative approaches to achieving such reductions, the surrender and deduction of allowances will be the only remedy under the Act for failure to meet the maximum emissions rate. Of course, the deduction of allowances for failure to achieve the maximum emissions rate may result in a unit having insufficient allowances to cover its annual emissions, and the full panoply of remedies for excess emissions will then apply.

Finally, in order to facilitate the Table A unit owners' and operators' exercise of control and the Agency's review and enforcement, where necessary, of the substitution plan, the units involved should have a common designated representative. A commenter supported the need for a common designated representative for this type of substitution plan.[4] The final regulation provides that the requirement to have a common designated representative is not met by simply having a common alternate designated representative. This is because, as explained in the preamble of the November 18, 1993 proposed rule, an alternate designated representative does not carry the same level of responsibilities as, and thus is not equivalent to, a designated representative. 58 FR 60958.

*C. Plan Termination if Control Requirement is no Longer met*

The January 11, 1993 regulations provide that where, as a result of ownership or other changes, the units in a substitution plan no longer meet the common owner or operator requirement in those regulations, the substitution plan must be terminated. The final regulation adopted here takes a similar approach. If there are changes that result in the control requirement no longer being met, the designated representative must terminate the plan, whether the plan is based on common owners or operators or on a contract. The Administrator may, on his or her own motion, terminate the plan under such circumstances.

[4] The commenter also suggested that the non-Table A owners and operators be required to submit quarterly and annual reports to the Table A unit owners and operators and to indemnify such owners and operators for any violations at the non-Table A unit. These requirements are not in the final rule because the Agency believes that these matters are not central to the issue of control and are better left to the owners and operators of the two units.

The only exception to this requirement is for substitution plans approved, and included in final permits issued, under the January 11, 1993 regulations and the Partial Settlement in *Environmental Defense Fund* v. *Carol M. Browner*, No. 93–1203 (D.C. Cir. 1993) (signed May 4, 1994). So long as the Table A and non-Table A units under each plan continue to meet the common owner, operator, or designated representative requirement in the January 11, 1993 regulations, such plans will not be terminated for the first year (and, in some cases, for the second year) for which the substitution unit received a total number of allowances equal to the number provided in those regulations. This exception is consistent with both the May 4, 1993 settlement and the Second Partial Settlement in *Environmental Defense Fund* v. *Carol M. Browner*, No. 93–1203 (D.C. Cir. 1993) (signed August 10, 1994). The Agency maintains that both settlements reasonably resolve the substitution plan issues raised in the litigation, including the issues relating to the control requirement.

**III. Administrative Requirements**

*A. Docket*

The docket is the organized and complete file of all the information considered by EPA in the development of this rulemaking. Along with the preamble of the direct final rule, the contents of the docket—except for interagency review materials—will constitute the record in case of judicial review. See 42 U.S.C. 7607(d)(7)(A).

*B. Executive Order 12866*

Under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any changes made in response to OMB suggestions or recommendations are documented in the public record. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

*C. Paperwork Reduction Act*

The information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have been assigned control number 2060–0258.

This collection of information has an estimated burden averaging 17.5 to 28 hours per response for about 43 responses. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An Information Collection Request document and estimates of the public reporting burden were prepared in connection with the January 11, 1993 regulations. 56 FR 63098; 58 FR 3650. The regulation modifications contained in this document will not significantly change the reporting burden that was previously estimated.

Send comments regarding this burden analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, EPA, 401 M Street, SW., (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires each Federal agency to consider potential impacts of its regulations on small business "entities." Under 5 U.S.C. 604(a), an agency issuing a notice of proposed rulemaking must prepare and make available for public comment a regulatory flexibility analysis. Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

In the preamble of the January 11, 1993 regulations, the Administrator certified that those regulations, including the provisions revised by today's final rule, would not have a significant impact. 58 FR 3649. The final rule revisions adopted today are not significant enough to change the economic impact addressed in the preamble of the January 11, 1993 regulations, which were certified as not having a significant impact. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the revised rule will not have a significant, adverse impact on a substantial number of small entities.

*E. Miscellaneous*

In accordance with section 117 of the Act, publication of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and Federal departments and agencies.

**List of Subjects in 40 CFR Part 72**

Environmental protection, Acid rain, Air pollution control, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 14, 1994.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651 *et seq.*

2. Section 72.41 is amended by revising paragraphs (c)(5) and (e)(3)(iv) and adding paragraphs (c)(6), (c)(7), and (e)(1)(iii) to read as follows:

**§ 72.41 Phase I substitution plans.**

* * * * *

(c) * * *

(5) A demonstration that the substitution plan meets the requirement that each unit under paragraph (a)(2) of this section is under the control of the owner or operator of each unit under paragraph (a)(1) of this section that designates the unit under paragraph (a)(2) of this section as a substitution unit. The demonstration shall be one of the following:

(i) If the unit under paragraph (a)(1) of this section has one or more owners or operators that have an aggregate percentage ownership interest of 50 percent or more in the capacity of the unit under paragraph (a)(2) of this section or the units have a common operator, a statement identifying such owners or operators and their aggregate percentage ownership interest in the capacity of the unit under paragraph (a)(2) of this section or identifying the units' common operator. The designated representative shall submit supporting documentation upon request by the Administrator.

(ii) If the unit under paragraph (a)(1) of this section has one or more owners or operators that have an aggregate percentage ownership interest of at least 10 percent and less than 50 percent in the capacity of the unit under paragraph (a)(2) of this section and the units do not have a common operator, a statement identifying such owners or operators and their aggregate percentage ownership interest in the capacity of the unit under paragraph (a)(2) of this seciton and stating that each such owner or operator has the contractual right to direct the dispatch of the electricity that, because of its ownership interest, it has the right to receive from the unit under paragraph (a)(2) of this section. The fact that the electricity that such owner or operator has the right to receive is centrally dispatched through a power pool will not be the basis for determining that the owner or operator does not have the contractual right to direct the dispatch of such electricity. The designated representative shall submit supporting documentation upon request by the Administrator.

(iii) A copy of an agreement that is binding on the owners and operators of the unit under paragraph (a)(2) of this section and the owners and operators of the unit under paragraph (a)(1) of this section, provides each of the following elements, and is supported by documentation meeting the requirements of paragraph (c)(6) of this section:

(A) The owners and operators of the unit under paragraph (a)(2) of this section must not allow the unit to emit sulfur dioxide in excess of a maximum annual average $SO_2$ emissions rate (in lbs/mmBtu), specified in the agreement, for each year during the period that the substitution plan is in effect.

(B) The maximum annual average $SO_2$ emissions rate for the unit under paragraph (a)(2) of this section shall not exceed 70 percent of the lesser of: the unit's 1985 actual $SO_2$ emissions rate; the unit's 1985 allowable $SO_2$ emissions rate; the greater of the unit's 1989 or 1990 actual $SO_2$ emissions rate; the most stringent federally enforceable or State

enforceable $SO_2$ emissions limitation, as of November 15, 1990, applicable to the unit in Phase I; or the lesser of the average actual $SO_2$ emissions rate or the most stringent federally enforceable or State enforceable $SO_2$ emissions limitation for the unit for four consecutive quarters that immediately precede the 30-day period ending on the date the substitution plan is submitted to the Administrator. If the unit is covered by a non-unit-specific federally enforceable or State enforceable $SO_2$ emissions limitation in the four consecutive quarters or, as of November 15, 1990, in Phase I, the Administrator will determine, on a case-by-case basis, how to apply the non-unit-specific emissions limitation for purposes of determining whether the maximum annual average $SO_2$ emissions rate meets the requirement of the prior sentence. If a non-unit-specific federally enforceable $SO_2$ emissions limitation is not different from a non-unit-specific federally enforceable $SO_2$ emissions limitation that was effective and applicable to the unit in 1985, the Administrator will apply the non-unit-specific $SO_2$ emissions limitation by using the 1985 allowable $SO_2$ emissions rate.

(C) For each year that the actual $SO_2$ emissions rate of the unit under paragraph (a)(2) of this section exceeds the maximum annual average $SO_2$ emissions rate, the designated representative of the unit under paragraph (a)(1) of this section must surrender allowances for deduction from the Allowance Tracking System account of the unit under paragraph (a)(1) of this section. The designated representative shall surrender allowances authorizing emissions equal to the baseline of the unit under paragraph (a)(2) of this section multiplied by the difference between the actual $SO_2$ emissions rate of the unit under paragraph (a)(2) of this section and the maximum annual average $SO_2$ emissions rate and divided by 2000 lbs/ton. The surrender shall be made by the allowance transfer deadline of the year of the exceedance, and the surrendered allowances shall have the same or an earlier compliance use date as the allowances allocated to the unit under paragraph (a)(2) of this section for that year. The designated representative may identify the serial numbers of the allowances to be deducted. In the absence of such identification, allowances will be deducted on a first-in, first-out basis under § 73.35(c)(2) of this chapter.

(D) The unit under paragraph (a)(2) of this section and the unit under paragraph (a)(1) of this section shall designate a common designated representative during the period that the substitution plan is in effect. Having a common alternate designated representative shall not satisfy the requirement in the prior sentence.

(E) Except as provided in paragraph (c)(6)(i) of this section, the actual $SO_2$ emissions rate for any year and the average actual $SO_2$ emissions rate for any period shall be determined in accordance with part 75 of this chapter.

(6) A demonstration under paragraph (c)(5)(iii) of this section shall include the following supporting documentation:

(i) The calculation of the average actual $SO_2$ emissions rate and the most stringent federally enforceable or State enforceable $SO_2$ emissions limitation for the unit for the four consecutive quarters that immediately preceded the 30-day period ending on the date the substitution plan is submitted to the Administrator. To the extent that the four consecutive quarters include a quarter prior to January 1, 1995, the $SO_2$ emissions rate for the quarter shall be determined applying the methodology for calculating $SO_2$ emissions set forth in appendix C of this part. This methodology shall be applied using data submitted for the quarter to the Secretary of Energy on United States Department of Energy Form 767 or, if such data has not been submitted for the quarter, using the dataprepared for such submission for the quarter.

(ii) A description of the actions that will be taken in order for the unit under paragraph (a)(2) of this section to comply with the maximum annual average $SO_2$ emissions rate under paragraph (c)(5)(iii) of this section.

(iii) A description of any contract for implementing the actions described in paragraph (c)(6)(ii) of this section that was executed before the date on which the agreement under paragraph (c)(5)(iii) of this section is executed. The designated representative shall state the execution date of each such contract and state whether the contract is expressly contingent on the agreement under paragraph (c)(5)(iii) of this section.

(iv) A showing that the actions described under paragraph (c)(6)(ii) of this section will not be implemented during Phase I unless the unit is approved as a substitution unit.

(7) The special provisions in paragraph (e) of this section.

* * * * *

(e) * * *

(1) * * *

(iii) Where an approved substitution plan includes a demonstration under paragraphs (c)(5)(iii) and (c)(6) of this section.

(A) The owners and operators of the substitution unit covered by the demonstration shall implement the actions described under paragraph (c)(6)(ii) of this section, as adjusted by the Administrator in approving the plan or in revising the permit. The designated representative may submit proposed permit revisions changing the description of the actions to be taken in order for the substitution unit to achieve the maximum annual average $SO_2$ emissions rate under the approved plan and shall include in any such submission a showing that the actions in the changed description will not be implemented during Phase I unless the unit remains a substitution unit. The permit revision will be treated as an administrative amendment, except where the Administrator determines that the change in the description alters the fundamental nature of the actions to be taken and that public notice and comment will contribute to the decision-making process, in which case the permit revision will be treated as a permit modification or, at the option of the designated representative, a fast-track modification.

(B) The designated representative of the unit under paragraph (a)(1) of this section shall surrender allowances, and theAdministrator will deduct allowances, in accordance with paragraph (c)(5)(iii)(C) of this section. The surrender and deduction of allowances as required under the prior sentence shall be the only remedy under the Act for a failure to meet the maximum annual average $SO_2$ emissions rate, provided that, if such deduction of allowance results in excess emissions, the remedies for excess emissions shall be fully applicable.

* * * * *

(3) * * *

(iv)(A) If there is a change in the ownership interest of the owners or operators of any unit under a substitution plan approved as meeting the requirements of paragraph (c)(5)(i) or (ii) of this section or a change in such owners' or operators' right to direct dispatch of electricity from a substitution unit under such a plan and the demonstration under paragraph (c)(5)(i) or (ii) of this section cannot be made, then the designated representatives of the units governed by this plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made.

(B) Where a substitution plan is approved as meeting the requirements

of paragraph (c)(5)(iii) of this section, if there is a change in the agreement under paragraph (c)(5)(iii) of this section and a demonstration that the agreement, as changed, meets the requirements of paragraph (c)(5)(iii) cannot be made, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made. Where a substitution plan is approved as meeting the requirements of paragraph (c)(5)(iii) of this section, if the requirements of the first sentence of paragraph (e)(1)(iii)(A) of this section are not met during a calendar year, then the designated representative of the units governed by the plan shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of such calendar year.

(C) If the plan is not terminated in accordance with paragraphs (e)(3)(iv)(A) or (B) of this section, the Administrator, on his or her own motion, will terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

(D) Where a substitution unit and the Phase I unit designating the substitution unit in an approved substitution plan have a common owner, operator, or designated representative during a year, the plan shall not be terminated under paragraphs (e)(3)(iv)(A), (B), or (C) of this section with regard to the substitution unit if the year is as specified in paragraph (e)(3)(iv)(D)(*1*) or (*2*) of this section and the unit received from the Administrator for the year, under the Partial Settlement in *Environmental Defense Fund* v. *Carol M. Browner*, No. 93–1203 (D.C. Cir. 1993) (signed May 4, 1993), a total number of allowances equal to the unit's baseline multiplied by the lesser of the unit's 1985 actual $SO_2$ emissions rate or 1985 allowable $SO_2$ emissions rate.

(*1*) Except as provided in paragraph (e)(3)(iv)(D)(*2*) of this section, paragraph (e)(3)(iv)(D) of this section shall apply to the first year in Phase I for which the unit is and remains an active substitution unit.

(*2*) If the unit has a Group 1 boiler under part 76 of this chapter and is and remains an active substitution unit during 1995, paragraph (e)(3)(iv)(D) of this section shall apply to 1995 and to the second year in Phase I for which the unit is and remains an active substitution unit.

(*3*) If there is a change in the owners, operators, or designated representative of the substitution unit or the Phase I unit during a year under paragraph (e)(3)(iv)(D)(*1*) or (*2*) of this section and, with the change, the units do not have a common owner, operator, or designated representative, then the designated representatives for such units shall submit a notification to terminate the plan so that the plan will terminate as of January 1 of the calendar year during which the change is made. If the plan is not terminated in accordance with the prior sentence, the Administrator, on his or her own motion, will terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

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Part VI

# Department of Transportation

Federal Highway Administration
Federal Transit Administration

## Axle Weights of Public Transit Buses; Extension of Exclusion Period; Notice

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

### Axle Weights of Public Transit Buses; Extension of Exclusion Period

**AGENCIES:** Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Congress directed the Secretary of Transportation to study and provide recommendations to address the matter of public transit buses that exceed Interstate System axle weight limits. The Congress also excluded public transit buses from Interstate System axle weight limits for 2 years (until October 6, 1994) and provided that the Secretary could extend the exclusion for an additional year. The study was transmitted to the Congress on September 20, 1994, but legislation would be required to implement its recommendation to allow higher bus axle weights until lighter buses can be developed and this will require additional time. Therefore, renewing the exclusion for 1 more year will allow public transit buses to continue to operate on the Interstate System at axle weights authorized by each state while a permanent solution is implemented.

**DATES:** The exclusion of public transit buses from the Interstate System axle weight limits is extended to October 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Klimek, Office of Motor Carrier Information Management, at (202) 366–2212, or Mr. Charles Medalen, Office of Chief Counsel, at (202) 366–1354, Federal Highway Administration; Mr. Bart W. Mancini, Office of Engineering Evaluation, at (202) 366–0224, or Mr. Richard Wong, Office of Chief Counsel, at (202) 366–1936, Federal Transit Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Section 341 of the FY 1993 Department of Transportation and Related Agencies Appropriations Act (Pub. L. 102–388, 106 Stat. 1520, at 1552) amended section 1023 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914, at 1951) by adding a new paragraph (h). Paragraph (h)(2) required the Secretary to conduct a study of the maximum axle weight limits of "public transit vehicles" on the Interstate System. Paragraph (h)(1) excluded "any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus" from the single- and tandem-axle weight limits imposed on the Interstate System by the second sentence in 23 U.S.C. 127 for 2 years from the effective date of the legislation, October 6, 1992, and authorized the Secretary to renew the exclusion for an additional year.

States that fail to enforce the Interstate System weight limits could be penalized by the loss of their Federal highway funds under 23 U.S.C. 141(c)(2). Before the exclusion became effective, buses were, on occasion, stopped by State enforcement personnel and forced to unload passengers until they were no longer overweight.

The study required by paragraph (h)(2) was transmitted to the Congress on September 20, 1994. However, action to address overweight axles of public transit buses on the Interstate System will require additional time. A 1-year extension will allow public transit buses to continue to operate on the Interstate System without the threat of possible funding sanctions or the removal of passengers while a permanent solution to the problem is implemented.

Therefore, any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus is excluded, until October 6, 1995, from the second sentence of section 23 U.S.C. 127 relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways.

**Authority:** Sec. 1023, Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240, 105 Stat. 1914, at 1951, as amended by sec. 341, Pub. L. 102–388, 106 Stat. 1520, at 1552.

Issued on: November 15, 1994.

**Rodney E. Slater,**

*Federal Highway Administrator.*

Issued on: November 15, 1994.

**Gordon J. Linton,**

*Federal Transit Administrator.*

[FR Doc. 94–28770 Filed 11–21–94; 8:45 am]

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# Part VII

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 71

**Proposed Alteration of the Los Angeles, CA, Class B Airspace; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 93–AWA–13]**
**RIN 2120–AF38**

## Proposed Alteration of the Los Angeles, CA, Class B Airspace

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

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

**SUMMARY:** This notice proposes to alter the Los Angeles, CA, Class B airspace area. This proposal would lower the ceiling of the Los Angeles Class B airspace area from 12,500 feet mean sea level (MSL) to 10,000 feet MSL; raise the base altitude west of Santa Monica, CA, from 4,000 feet MSL to 7,000 feet MSL to provide for more airspace for uncontrolled traffic to navigate outside of the Los Angeles Class B airspace area; and expand the eastern, southern and southeastern boundaries for additional airspace for the arrival of high performance aircraft. This action would improve aviation traffic flow and enhance safety in the Los Angeles area while accommodating the concerns of airspace users.

**DATES:** Comments must be received on or before January 23, 1995.

**ADDRESSES:** Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 93–AWA–13, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWA–13." 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 the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also 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, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91–78 to part 91 of the Federal Aviation Regulations (35 FR 7782) which provided for the establishment of Terminal Control Areas (TCA's).

On June 21, 1988, the FAA published a final rule which requires Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except for those aircraft not originally certified with an engine driven electrical system or which have not subsequently been certified with such a system installed (53 FR 23356).

On October 14, 1988, the FAA published a final rule that revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) requires the pilot in command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

On December 17, 1991, the FAA published a final rule on airspace reclassification (56 FR 65655) of those airspace designations described in part 71 of the FAR. As a result of this reclassification, that airspace formerly referred to as the Los Angeles, CA, Terminal Control Area was reclassified to the Los Angeles, CA, Class B airspace, effective September 16, 1993.

### Background

The Class B airspace (TCA prior to September 16, 1993) program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace area designations. The FAA is proposing to take action to modify or implement additional Class B airspace areas to provide greater protection of air

traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994. The Class B airspace area listed in this document would be published subsequently in the Order.

The standard configuration of a Class B airspace area consists of 3 concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the Class B airspace area should normally not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate for operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and other factors unique to the area.

**Pre-NPRM Public Input**

As announced in the **Federal Register** on April 22, 1992, pre-NPRM airspace meetings were held on June 23, 25, 30 and July 1, 1992, at Brentwood, San Diego, Los Alamitos, and Walnut, California, respectively, to encourage the public and airspace users to participate in developing the design for the Los Angeles Class B airspace area modification 57 FR 14670. Comments on this proposed modification were provided by private citizens, local government agencies, user groups, and local airport authorities. These comments were considered in the proposed modification of the Los Angeles Class B airspace area.

Pilot groups were concerned more about the aviation aspects of the proposal, while some homeowners were more concerned with the non-aviation aspects. Lowering the ceiling of the proposed airspace from 12,500 to 10,000 feet MSL generated positive response from most pilots, because pilots would be able to overfly the Class B airspace area and descend south of the Class B airspace area while conforming to the mode C requirement. Some homeowners viewed this modification negatively. Current flight tracks bring aircraft over their homes, and lowering the ceiling of the proposed airspace would bring these aircraft in closer proximity to their homes. It should be noted that this proposed action does not propose a change to these flight tracks, as they now exist.

Both groups had positive comments on raising the floor in the Malibu area to provide additional VFR operations. Expansion of the Class B airspace boundaries generated conflicting comments. Homeowners saw the regulatory airspace as growing for no reason, while pilots viewed the growth of regulatory airspace as providing additional controlled airspace for high performance aircraft from the east, southeast and south. Other comments are discussed below in the "Proposal" section.

**The Proposal**

The FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the existing Los Angeles Class B airspace area, based on safety and operational needs. The FAA's responsibility is to manage efficiently and safely the airspace surrounding the Los Angeles area. This proposal would lower the ceiling of the Los Angeles Class B airspace area from 12,500 feet mean seal level (MSL) to 10,000 feet MSL; raise the base altitude west of Santa Monica, CA, from 4,000 feet MSL to 7,000 feet MSL to provide more airspace for uncontrolled traffic to navigate outside of the Los Angeles Class B airspace area; and expand the eastern, southern and southeastern boundaries for additional controlled airspace for the high performance aircraft. The proposed alteration is depicted in the attached chart.

The following proposed modifications of the Los Angeles Class B airspace area are as follows:

Area A. That airspace extending from the surface to 10,000 feet MSL bounded by a line beginning at lat. 34°00'08"N., long. 118°45'01"W.; to lat. 34°00'33"N., long. 118°32'56"W.; to lat. 33°57'42"N., long. 118°27'23"W. (Ballona Creek/ Pacific Ocean); to lat. 33°57'42"N., long. 118°22'10"W. (Manchester/405 Fwy); to lat. 33°58'54"N., long. 118°16'41"W. (Broadway/64th St.); to lat. 33°55'52"N., long. 118°16'43"W. (Broadway/Imperial Hwy); to lat. 33°55'51"N., long. 118°26'05"W. (Imperial Hwy/Pacific Ocean); to lat. 33°45'34"N., long. 118°27'01"W. (LIMBO intersection); to lat. 35°45'14"N. long. 118°32'29"W. (INISH intersection); to the point of beginning.

This change is necessary because of the concentration of high performance aircraft operating very close to the surface as they arrive and depart Los Angeles International (LAX), the Class B airspace primary airport. The proposed modification, which incorporates the suggestion made by the Southern California Airspace User's Group to relocate the boundary of the area, would reduce the area size to the north of Los Angeles, thereby enabling aircraft utilizing the VFR Special Flight Rules Area to enter the traffic pattern sooner for the Santa Monica Airport. Additionally, this would allow aircraft at Santa Monica Airport to enter the traffic pattern at a more reasonable altitude. General aviation user groups actively supported this modification with the assurance that the VFR Special Flight Rules Area would remain available for transition through the Class B airspace.

The number of turboprop aircraft operating at LAX has increased. The proposed modification would accommodate the requirement to contain turboprop operations within the Class B airspace area, segregating them from jet operations. Overwater portions of this area, used by VFR traffic for banner tows and low level sightseeing, would not be adversely affected by this change.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°58'54"N., long. 118°16'41"W. (Broadway/64th St.); to lat. 34°00'01"N., long. 118°07'58"W. (Garfield/Washington Blvd); to lat. 33°56'10"N., long. 118°07'21"W. (Stonewood Center); thence to lat. 33°55'52"N., long. 118°16'43"W. (Broadway/Imperial Hwy); to the point of beginning.

The proposed Area B is designed to allow more airspace with less restrictions for use by emergency support aircraft.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06'00"N., long. 118°14'27"W. (Railroad Freight Yard); to lat. 34°06'00"N., long. 118°11'23"W. (Ernest E. Debs Regional Park); to lat. 34°02'03"N., long. 118°03'39"W. (Legg Lake); to lat. 33°58'40"N., long. 118°01'49"W. (Whittier College); to lat. 33°54'10"N., long. 118°01'49"W.; to lat. 33°53'35"N., long. 118°10'55"W. (Dominguez High School); to lat. 33°55'52"N., long. 118°16'43"W. (Broadway/Imperial Hwy); to lat. 33°56'10"N., long. 118°07'21"W. (Stonewood Center); to lat. 34°00'01"N., long. 118°07'58"W. (Garfield/Washington Blvd); to lat. 33°58'54"N., long. 118°16'41"W. (Broadway/64th St.); to lat. 33°57'42"N., long. 118°22'10"W. (Manchester/405 Fwy); to lat. 33°00'20"N., long. 118°23'05"W. (West Los Angeles College); to lat. 34°02'49"N., long. 118°21'48"W.; to the point of beginning.

The proposed modification would ease the restrictions on aircraft transiting north from Santa Monica and make navigation between the Los Angeles Class B airspace area and the Burbank-Glendale-Pasadena Airport, CA, Class C airspace area less difficult.

Reducing this area of the Class B airspace area would increase the usable airspace for GA and emergency response aircraft as well as facilitate navigation clear of the Class B airspace area.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′03″N., long. 118°03′39″W. (Legg Lake); to lat. 34°00′45″N., long. 117°54′03″W.; to lat. 33°57′40″N., long. 117°53′35″W.; to lat. 33°54′26″N., long. 117°54′21″W. (Brea Municipal Golf Course); to lat. 33°54′10″N., long. 118°01′49″W.; to lat. 33°58′40″N., long. 118°01′49″W. (Whittier College); to the point of beginning.

The proposed change would move the northern boundary of this area south and remove V–186, below 8,000 feet MSL, from the Class B airspace. This will make navigation simpler and reduce the probability of an inadvertent Class B airspace violation. Currently, Area D contains a portion of V–186 from 4,000 feet to 12,500 feet MSL and is located 20 to 25 miles east of Los Angeles. V–186 is a primary route used for VFR navigation around the Los Angeles Class B airspace. To remain clear of the Class B airspace, VFR aircraft must navigate north of this airway. Navigation in this area is difficult for VFR traffic because of the rising terrain.

Areas E and F. *Area E* is that airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′03″N., long. 118°03′39″W. (Legg Lake); to lat. 34°02′50″N., long. 117°50′43″W. (Mt. San Antonio College); to lat. 33°59′28″N., long. 117°50′42″W. (SUZZI Intersection); to lat. 33°54′34″N., long. 117°52′10″W. (Imperial Golf Course); to lat. 33°54′26″N., long. 117°54′21″W. (Brea Municipal Golf Course); to lat. 33°57′40″N., long. 117°53′35″W.; to lat. 34°00′45″N., long. 117°54′03″W.; to the point of beginning. *Area F* is that airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′50″N., long. 117°50′43″W. (Mt. San Antonio College); to lat. 34°03′15″N., long. 117°47′00″W. (General Dynamics); to lat. 33°59′55″N., long. 117°45′55″W. (ARNES Intersection/Water Tower); to lat. 33°54′39″N., long. 117°46′57″W.; to lat. 33°54′34″N., long. 117°52′10″W. (Imperial Golf Course); to lat. 33°59′28″N., long. 117°50′42″W. SUZZI Intersection); to the point of beginning.

With regard to Areas E and F, arrival traffic to Los Angeles from the east descends on the CIVET Southern California Terminal Airspace Realignment (STAR) arrival profile. This allows aircraft to descend on the glideslope, approximately 50 miles from the airport. This is the busiest route in the Los Angeles Basin. Traffic on this route must descend through an area surrounded by numerous VFR flyways with a mix of IFR traffic arriving, departing, and overflying the various airports in the Los Angeles Basin. Because of the analysis of near midair collision reports (NMAC), concern exists regarding the airspace between the outer boundary of the current Class B airspace and the Ontario Class C airspace, approximately 35 miles east of Los Angeles. In this area, high performance aircraft are descending out of 10,000 feet MSL, and VFR aircraft are navigating around the Class B airspace. This proposal would provide additional airspace for large jet aircraft within the Class B airspace area. Terrain features would be used to provide an easily discernible boundary to assist VFR aircraft in avoiding the Class B airspace. The extension of the Class B airspace area between 25 nautical miles (NM) and 35 NM east provides additional airspace for high performance aircraft in the Class B airspace area and provides better separation from other aircraft operating near the Class B airspace.

Areas G, H, I, and J. *Area G* is that airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°55′51″N., long. 118°26′05″W. (Imperial Hwy/Pacific Ocean); to lat. 33°55′52″N., long. 118°16′43″W. (Broadway/Imperial Hwy); to lat. 33°53′35″N., long. 118°10′55″W. (Dominguez High School); to lat. 33°54′10″N., long. 118°01′49″W.; to lat. 33°47′00″N., long. 118°03′17″W. (Seal Beach VORTAC/Los Alamitos Armed Forces Reserve Center); to lat. 33°46′28″N., long. 118°11′54″W. (Long Beach VA Hospital); to lat. 33°45′34″N., long. 118°27′01″W. (LIMBO Intersection); to the point of beginning. *Area H* is that airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°54′10″N., long. 118°01′49″W.; to lat. 33°54′26″N., long. 117°54′21″W. (Brea Municipal Golf Course); to lat. 33°47′23″N., long. 117°57′40″W. (Garden Grove Mall); to lat. 33°47′00″N., long. 118°03′17″W. (Seal Beach VORTAC/Los Alamitos AFRC); to point of beginning. *Area I* is that airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°47′00″N., long. 118°03′17″W. (Seal Beach VORTAC/Los Alamitos AFRC); to lat. 33°47′23″N., long. 117°57′40″W. (Garden Grove Mall); to lat. 33°28′56″N., long. 117°51′49″W.; to lat. 33°26′40″N., long. 118°00′54″W.; to lat. 33°34′42″N., long. 118°07′48″W.; to lat. 33°46′28″N., long. 118°11′54″W. (Long Beach VA Hospital); to the point of beginning. *Area J* is that airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45′34″N., long. 118°27′01″W. (LIMBO Intersection); to lat. 33°46′28″N., long. 118°11′54″W. (Long Beach VA Hospital); to lat. 33°34′42″N., long. 118°07′48″W.; to lat. 33°35′58″N., long. 118°25′39″W.; to the point of beginning.

With regard to Areas G, H, I, and J, major airspace modifications are proposed because of the implementation of the STAR (Southern California Terminal Airspace Realignment) plan and the resultant increase in the traffic routed inbound to LAX from the south. The Coast Terminal Radar Approach Control Facility (TRACON) sequences traffic from Asia and the Pacific arriving over the Santa Catalina Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) with arrival traffic from Mexico, South America, and San Diego routed over the Seal Beach VORTAC (SLI). It is important that this traffic descend in a timely manner, as delays could affect the eastbound departure traffic. To facilitate this mix of traffic, the proposed Areas G, H, and I are designed to facilitate both the arrival and departure traffic without interfering with existing VFR routes. Area G would allow aircraft arriving from the south to remain within the Class B airspace as they descend to the final approach course. Depicted VFR flyways at 3,500 and 4,500 feet MSL will remain unaffected. Area H would allow VFR aircraft to climb eastbound, east of the Seal Beach VORTAC, while enabling Los Angeles approach to utilize altitudes compatible with the final approach course. Area I has been proposed using geographical coordinates and terrain features to facilitate the efficient use of this airspace. Area J would allow VFR flight at 7,500 feet MSL which user input indicated was a commonly used altitude for VFR flight to and from Santa Catalina. This proposed area would not eliminate established VFR transition routes.

Area K. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45′34″N., long. 118°27′01″W. (LIMBO Intersection); to lat. 33°35′58″N., long.

118°25'39"W.; to lat. 33°32'52"N., long. 118°36'54"W., to lat. 33°44'27"N., long. 118°42'23"W.; to lat. 33°45'14"N., long. 118°32'29"W. (INISH Intersection); to the point of beginning.

Located entirely offshore, Area K is designed to accommodate high performance traffic departing LAX, via the LAXX ONE Departure, as well as arrival traffic when Los Angeles is in an east flow configuration. This area is not utilized by VFR aircraft on a routine basis; however, based on the recommendations of local pilots, the area was designed to accommodate GA operations offshore south of Palos Verdes, CA.

Area L. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45'14"N., long. 118°32'29"W. (INISH Intersection); to lat. 33°44'27"N., long. 118°42'23"W.; to lat. 33°59'44"N., long. 118°55'22"W.; to lat. 34°00'08"N., long. 118°45'01"W.; to the point of beginning.

The proposed Area L aligns with V–27. This would allow navigation along V–27, while in the Class B airspace area.

Area M. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06'00"N., long. 118°56'33"W.; to lat. 34°06'00"N., long. 118°47'06"W.; to lat. 34°00'08"N., long. 118°45'01"W.; to lat. 33°59'44"N., long. 118°55'22"W.; to the point of beginning.

The proposed Area M would contain high performance aircraft arriving from the north, when LAX is in an east traffic flow configuration. To mitigate the impact of this area on VFR traffic and to prevent adverse effects, the floor of the Class B airspace area in this area is proposed to be 7,000 feet MSL. This would provide additional airspace for VFR operations.

Area N. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06'00"N., long. 118°47'06"W.; to lat. 34°06'00"N., long. 118°14'27"W. (Railroad Freight Yard); to lat. 34°02'49"N., long. 118°21'48"W.; to lat. 33°00'20"N., long. 118°23'05"W. (West Los Angeles College); to lat. 33°57'42"N., long. 118°22'10"W. (Manchester/405 Hwy); to lat. 33°57'42"N., long. 118°27'23"W. (Ballona Creek/Pacific Ocean); to lat. 34°00'33"N., long. 118°32'56"W.; to lat. 34°00'08"N., long. 118°45'01"W.; to the point of beginning.

The proposed Area N modification would allow for more airspace for aircraft departing LAX and would allow aircraft, northbound over Santa Monica, to execute an earlier turn westbound. Additionally, this change would benefit VFR operations by providing additional airspace for uncontrolled VFR aircraft to overfly Point Dume, CA.

**Regulatory Evaluation Summary**

The FAA has determined that this rulemaking is not a "significant regulatory action" as defined by Executive Order 12866, and therefore no Regulatory Impact Analysis is required. Nevertheless, in accordance with the Department of Transportation policies and procedures, the FAA has evaluated the anticipated costs and benefits, which are summarized below. For more detailed economic information, see the full regulatory evaluation contained in the docket.

*Benefit-Cost Analysis*

The proposal would improve aviation traffic flow and enhance aviation safety by altering Class B airspace in and around LAX while accommodating the legitimate concerns of airspace users.

Costs

The FAA has determined that there would be little or no costs associated with implementation of the proposed modification to the LAX Class B airspace area to either the agency or aircraft operators. The determination for each potential cost is discussed below.

The proposed rule would not impose any additional administrative costs on the FAA for either personnel or equipment. The additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources which are already in place. The cost of revising aeronautical charts to reflect the change of the airspace would not add to the normal requirement of routine and periodic updating of the charts.

Aircraft operating in the vicinity of the proposed expanded Los Angeles Class B airspace area should already have two-way radio communications capability because the proposed expanded LAX Class B airspace area is surrounded by Class C and D airspace areas. Thus, little if any, additional communication equipment should be required by this proposal. To minimize any radio installation costs that may occur, the FAA would provide cutouts along the floor of the proposed expanded Class B airspace area. In addition, procedural agreements between ATC and affected satellite airports could be used to avoid imposing radio installation costs on operators at these airports. Additionally, the cost to pilots who avoid the Los Angeles Class B airspace area should not increase significantly. Only small deviations from the current flight paths would be required to avoid the proposed expanded Los Angeles Class B airspace area.

Ordinarily, aircraft operating in and above the proposed expanded LAX Class B airspace area would be required to have Mode C transponders as a result of the Mode C rule. However, all of the airspace that would be included in the proposed expanded Class B airspace area lies entirely within the Los Angeles Mode C Veil centered around LAX. Therefore, the FAA contends that all aircraft operating in or above the proposed expanded LAX Class B airspace area already have Mode C transponders.

Benefits

The proposed rule is expected to generate benefits primarily in the form of improved traffic flow while enhancing safety. Enhancements to safety come in the lowered risk of midair collisions (despite the rise in traffic density) due to the increased ATC control of the modified airspace.

This proposed rule would benefit GA aircraft operators by reducing the size of the various subareas of the Class B airspace area, thus increasing usable airspace for GA aircraft. Additionally, it would simplify the airspace and reduce possible pilot confusion. Also, areas B and C would be reduced to allow more airspace with less restrictions for emergency response aircraft.

In view of the minimal cost of compliance versus enhancements to aviation safety and efficiency, the FAA has determined that the proposed rule is cost-beneficial.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules which may have a significant economic impact on a substantial number of small entities. The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Only those unscheduled aircraft operators without the capability to operate under IFR conditions would be potentially impacted by the proposed rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators fly regularly in

airports where radar approach control services have been established. Therefore, the FAA believes this proposed rule would have a significant economic impact on a substantial number of small entities.

**International Trade Impact Assessment**

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of United States products or services in foreign countries. The proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (United States or foreign).

**Federalism Implications**

This proposed rule would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Analysis**

The procedures implemented by this rule have been determined to not significantly affect the quality of the human environment. Pursuant to the Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), this action is categorically excluded per Appendix 3, paragraph 4e(2).

**Paperwork Reduction Act**

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

**International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)**

The FAA has determined that this proposal, if adopted, would not conflict with any international agreements of the United States.

**Conclusion**

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis and Review of Regulations. A final regulatory evaluation of the proposed regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

**List of Subjects in 14 CFR Part 71**

Airspace, Federal Aviation Administration, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

## PART 71—[AMENDED]

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

**Authority:** 49 U.S.C. 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 3000—Subpart B—Class B Airspace*

* * * * *

AWP CA B Los Angeles, CA [Revised]
Los Angeles International Airport (Primary Airport)
(lat. 33°56′33″N., long. 118°24′29″W.)

Boundaries.

*Area A.* That airspace extending upward from the surface to 10,000 feet MSL bounded by a line beginning at lat. 34°00′08″N., long. 118°45′01″W.; to lat. 34°00′33″N., long. 118°32′56″W.; to lat. 33°57′42″N., long. 118°27′23″W. (Ballona Creek/Pacific Ocean); to lat. 33°57′42″N., long. 118°22′10″W. (Manchester/405 Fwy); to lat. 33°58′54″N., long. 118°16′41″W. (Broadway/64th St.); to lat. 33°55′52″N., long. 118°16′43″W. (Broadway/Imperial Hwy); to lat. 33°55′51″N., long. 118°26′05″W. (Imperial Hwy/Pacific Ocean); to lat. 33°45′34″N., long. 118°27′01″W. (LIMBO intersection); to lat. 33°45′14″N., long. 118°32′29″W. (INISH intersection); to the point of beginning.

*Area B.* That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°58′54″N., long. 118°16′41″W. (Broadway/64th St.); to lat. 34°00′01″N., long. 118°07′58″W. (Garfield/Washington Blvd); to lat. 33°56′10″N., long. 118°07′21″W. (Stonewood Center); thence to lat. 33°55′52″N., long. 118°16′43″W. (Broadway/Imperial Hwy); to the point of beginning.

*Area C.* That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06′00″N., long. 118°14′27″W. (Railroad Freight Yard); to lat. 34°06′00″N., long. 118°11′23″W. (Ernest E. Debs Regional Park); to lat. 34°02′03″N., long. 118°03′39″W. (Legg Lake); to lat. 33°58′40″N., long. 118°01′49″W. (Whittier College); to lat. 33°54′10″N., long. 118°01′49″W.; to lat. 33°53′35″N., long. 118°10′55″W. (Dominguez High School); to lat. 33°55′52″N., long. 118°16′43″W. (Broadway/Imperial Hwy); to lat. 33°56′10″N., long. 118°07′21″W. (Stonewood Center); to lat. 34°00′01″N., long. 118°07′58″W. (Garfield Washington Blvd); to lat. 33°58′54″N., long. 118°16′41″W. (Broadway/64th St.); to lat. 33°57′42″N., long. 118°22′10″W. (Manchester/405 Fwy); to lat. 33°00′20″N., long. 118°23′05″W. (West Los Angeles College); to lat. 34°02′49″N., long. 118°21′48″W.; to the point of beginning.

*Area D.* That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′03″N., long 118°03′39″W. (Legg Lake); to lat. 34°00′45″N., long. 117°54′03″W.; to lat. 33°57′40″N., long. 117°53′35″W.; to lat. 33°54′26″N., long. 117°54′21″W. (Brea Municipal Golf Course); to lat. 33°54′10″N., long. 118°01′49″W.; to lat. 33°58′40″N., long. 118°01′49″W. (Whittier College); to the point of beginning.

*Area E.* That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′03″N., long. 118°03′39″W. (Legg Lake); to lat. 34°02′50″N., long. 117°50′43″W. (Mt. San Antonio College); to lat. 33°59′28″N., long. 117°50′42″W. (SUZZI Intersection); to lat. 33°54′34″N., long. 117°52′10″W. (Imperial Golf Course); to lat. 33°54′26″N., long. 117°54′21″W. (Brea Municipal Golf Course); to lat. 33°57′40″N., long. 117°53′35″W., to lat. 34°00′45″N., long. 117°54′03″W.; to the point of beginning.

*Area F.* That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°02′50″N., long. 117°50′43″W. (Mt. San Antonio College); to lat. 34°03′15″N., long. 117°47′00″W. (General Dynamics); to lat. 33°59′55″N., long. 117°45′55″W. (ARNES Intersection/Water Tower); to lat. 33°54′39″N., long. 117°46′57″W.; to lat. 33°54′34″N., long. 117°52′10″W. (Imperial Golf Course); to lat. 33°59′28″N., long. 117°50′42″W. (SUZZI Intersection); to the point of beginning.

*Area G.* That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°55′51″N., long 118°26′05″W. (Imperial

Hwy/Pacific Ocean); to lat. 33°55′52″N., long. 118°16′43″W. (Broadway/Imperial Hwy); to lat. 33°53′35″N., long. 118°10′55″W. (Dominguez High School); to lat. 33°54′10″N., long 118°01′49″W.; to lat. 33°47′00″N., long. 118°03′17″W. (Seal Beach VORTAC/Los Alamitos Armed Forces Reserve Center); to lat. 33°46′28″N., long. 118°11′54″W. (Long Beach VA Hospital); to lat. 33°45′34″N., long. 118°27′01″W. (LIMBO Intersection); to the point of beginning.

*Area H.* That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°54′10″N., long. 118°01′49″W.; to lat. 33°54′26″N., long. 117°54′22″W. (Brea Municipal Golf Course); to lat. 33°47′23″N., long. 117°57′40″W. (Garden Grove Mall); to lat. 33°47′00″N., long. 118°03′17″W. (Seal Beach VORTAC/Los Alamitos AFRC); to point of beginning.

*Area I.* That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°47′00″N., long. 118°03′17″W. (Seal Beach VORTAC/Los Alamitos AFRC); to lat. 33°47′23″., long. 117°57′40″W. (Garden Grove Mall); to lat. 33°28 ′56″N., long. 117°51′49″W.; to lat. 33°26′40″N., long. 118°00′54″W.; to lat. 33°34′42″., long. 118°07′48″W.; to lat. 33°46′28″N., long. 118°11′54″W. (Long Beach VA Hospital); to the point of beginning.

*Area J.* That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45′34″N., long. 118°27′01″W. (LIMBO Intersection); to lat. 33°46′28″N., long. 118°11′54″W. (Long Beach VA Hospital); to lat. 33°34′42″N. 118°07′48″W.; to lat. 33°35′58″N., Long. 118°25′39″W.; to the point of beginning.

*Area K.* That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 33°45′34″N., long. 118°27′01″W. (LIMBO Intersection); to lat. 33°35′58″N., long. 118°25′39″W.; to lat. 33°32′52″N., long. 118°36′54″W.; to lat. 33°44′27″N., long. 118°42′23″W.; to lat. 33°45′14″N., long. 118°32′29″W. (INISH Intersection); to the point of beginning.

*Area L.* That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat 33°45′14″N., long. 118°32′29″W. (INISH Intersection); to lat. 33°44′27″N., long. 118°42′23″W.; to lat. 33°59′44″N., long. 118°55′22″W.; to lat. 34°00′08″N., long. 118°45′01″W.; to the point of beginning.

*Area M.* That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06′00″N., long. 118°56′33″W,; to lat. 34°06′00″N., long. 118°47′06″W.; to lat. 34°00′08″N., long. 118°45′01″W.; to lat. 33°59′44″N., long. 118°55′22″W.; to the point of beginning.

*Area N.* That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 34°06′00″N., long. 118°47′06″W.; to lat. 34°06′00″N., long. 118°14′27″W. (Railroad Freight Yard); to lat. 34°02′49″N., long. 118°21′48″W.; to lat. 33°00′20″N., long. 118°23′05″W. (West Los Angeles College); to lat. 33°57′42″N., long. 118°22′10″W. (Manchester/405 Hwy); to lat. 33°57′42″N., long. 118°27′23″W. (Ballona Creek/ Pacific Ocean); to lat. 34°00′33″N., long. 118°32′56″W.; to lat. 34°00′08″N., long. 118°45′01″W.; to the point of beginning.

* * * * *

Issued in Washington, DC, on November 8, 1994.

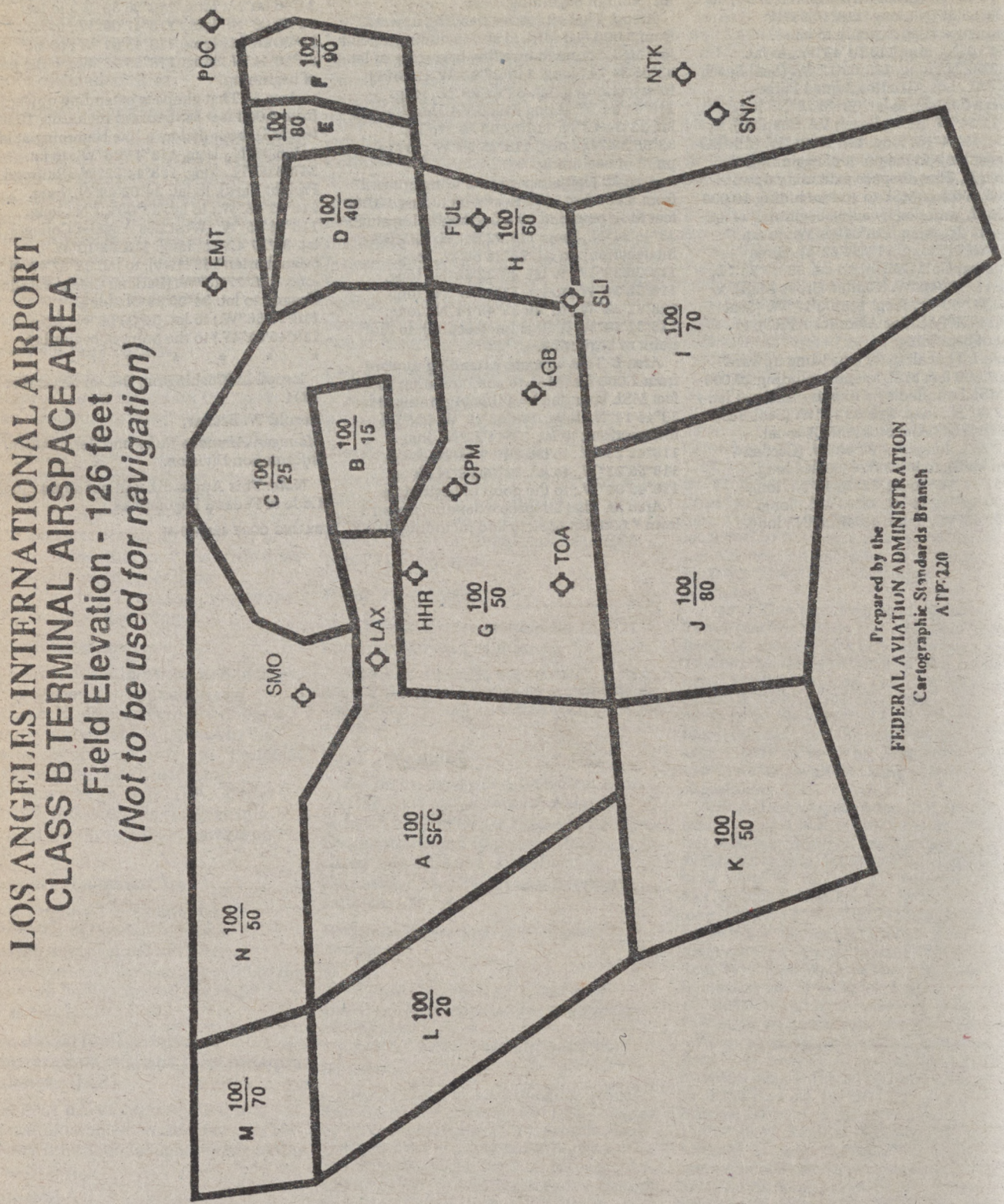
**Herold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

**Note:** This Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–13–M

Appendix—Los Angeles International Airport, Class B Airspace




[FR Doc. 94-28314 Filed 11-21-94; 8:45 am]

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federal register

Tuesday
November 22, 1994

# Part VIII

# Department of the Interior

## Fish and Wildlife Service

50 CFR Part 17

**Establishment of a Nonessential Experimental Population of Gray Wolves in Yellowstone National Park in Wyoming, Idaho, Montana, Central Idaho and Southwestern Montana; Final Rules**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AC86**

# Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Gray Wolves in Yellowstone National Park in Wyoming, Idaho, and Montana

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) will reintroduce the gray wolf (*Canis lupus*), an endangered species, into Yellowstone National Park, which is located in Wyoming, Idaho, and Montana. These wolves will be classified as nonessential experimental wolves according to section 10(j) of the Endangered Species Act of 1973 (Act), as amended. Gray wolf populations have been extirpated from most of the Western United States. They presently occur in a small population in extreme northwestern Montana, and as incidental occurrences in Idaho, Wyoming, and Washington due to wolves dispersing from populations in Montana and Canada. This reintroduction plan is to reestablish a viable wolf population in the Yellowstone area, one of three wolf recovery areas identified in the Northern Rocky Mountain Wolf Recovery Plan. Potential effects of this final rule were evaluated in an Environmental Impact Statement (EIS) completed in May 1994. This gray wolf reintroduction does not conflict with existing or anticipated Federal agency actions or traditional public uses of park lands, wilderness areas, or surrounding lands.

**EFFECTIVE DATE:** November 18, 1994.

**ADDRESSES:** Comments or other information may be sent to Gray Wolf Reintroduction, U.S. Fish and Wildlife Service, P.O. Box 8017, Helena, Montana 59601. The complete file for this final rule is available for inspection, by appointment, during normal business hours at 100 North Park, Suite 320, Helena, Montana.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward E. Bangs, at the above address, or telephone (406) 449–5202.

**SUPPLEMENTARY INFORMATION:**

## Background

1. *Legal:* The Endangered Species Act Amendments of 1982, Pub. L. 97–304, made significant changes to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, including the creation of section 10(j), which provides for the designation of specific animals as "experimental." Under previous authorities in the Act, the U.S. Fish and Wildlife Service (Service) was permitted to reintroduce a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts from certain parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the utility of reintroduction as a management tool.

Under section 10(j), a listed species reintroduced outside of its current range, but within its historic range, may be designated, at the discretion of the Secretary of the Interior (Secretary), as "experimental." This designation increases the Service's flexibility and discretion in managing reintroduced endangered species because such experimental animals may be treated as a threatened species. The Act requires that animals used to form an experimental population be separated geographically from nonexperimental populations of the same species.

Additional management flexibility is possible if the experimental animals are found to be "nonessential" to the continued existence of the species in question. Nonessential experimental animals located outside national wildlife refuges or national park lands are treated for purposes of section 7 of the Act, as if they were only proposed for listing. Consequently, only two provisions of section 7 would apply to animals located outside of national wildlife refuges and national parks—section 7(a)(1) and section 7(a)(4). Section 7(a)(1) requires all Federal agencies to establish conservation programs for the particular species. Utilization of Federal public lands, including national parks and national forests, is consistent with the legal responsibility of these agencies to sustain the native wildlife resources of the United States and to use their authorities to further the purposes of the Act by carrying out conservation programs for endangered and threatened species. Section 7(a)(4) requires all Federal agencies to informally confer with the Service on actions that will likely jeopardize the continued existence of the proposed to be listed as threatened or endangered species. The results of a conference are advisory in nature, and agencies are not required to refrain from committing resources to projects as a result of a conference. In addition, section 10(j) of the Act states that nonessential experimental animals are not subject to the formal consultation of the Act unless they occur on land designated as a national wildlife refuge or national park. Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized, or carried out by a Federal agency.

Specimens used to establish an experimental population may be removed from a source or donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits have been issued in accordance with 50 CFR 17.22. Gray wolves for the reintroduction will be obtained from healthy Canadian wolf populations with permission from the Canadian and Provincial governments. Gray wolves are common in western Canada (tens of thousands) and Alaska (about 7,000). No adverse biological impact is expected from the removal of about 150 wolves from the Canadian population. Consequently, the Service finds that wolves to be used in the reintroduction effort meet the definition of "nonessential" (50 CFR 17.80(b)) because the loss of the reintroduced wolves is not likely to appreciably reduce the likelihood of survival of the species in the wild.

In 1967, the timber wolf was listed as a subspecies (*Canis lupus lycaon*) as endangered (32 FR 4001), and in 1973 the northern Rocky Mountain subspecies, as then understood, (*C. l. irremotus*) was also listed as endangered, as was the Texas subspecies (*C. l. monstrabilis*) (38 FR 14678). In 1978, the legal status of the gray wolf in North America was clarified by listing the Minnesota wolf population as threatened and other members of the species south of Canada were listed as endangered, without referring to subspecies (43 FR 9607).

2. Biological: This final rule deals with the gray wolf (*Canis lupus*), an endangered species of carnivore that was extirpated from the western portion of the conterminous United States by about 1930. The gray wolf is native to most of North America north of Mexico City, except for the southeastern United States, where a similar species, the red wolf (*Canis rufus*), is found. The gray wolf occupied nearly every area in North America that supported populations of hoofed mammals (ungulates), its major food source.

Twenty-four distinct subspecies of gray wolf had been recognized in North America. Recently, however, taxonomists have suggested that there

are five or fewer subspecies or group types of gray wolf in North America and that the wolf type that once occupied the northern Rocky Mountains of the United States was more widely distributed than was previously believed.

The gray wolf occurred historically in the northern Rocky Mountains, including mountainous portions of Wyoming, Montana, and Idaho. The drastic reduction in the distribution and abundance of this species in North America was directly related to human activities, such as the elimination of native ungulates, conversion of wildland into agricultural lands, and extensive predator control efforts by private, State, and Federal agencies. The natural history of wolves and their ecological role was poorly understood during the period of their eradication in the conterminous United States. As with other large predators, wolves were considered a nuisance and threat to humans. Today, the gray wolf's role as an important and necessary part of natural ecosystems is better understood and appreciated.

For 50 years prior to 1986, no detection of wolf reproduction was found in the Rocky Mountain portion of the United States. However in 1986, a wolf den was discovered near the Canadian border in Glacier National Park. This find was presumably due to the southern expansion of the Canadian wolf population. The Glacier National Park wolf population has steadily grown to about 65 wolves and now exists throughout northwestern Montana.

Reproducing wolf populations are not known to occur in Idaho or Wyoming. Wolves have occasionally been sighted in these States, but do not constitute a population as defined by scientific experts (Service 1994). Historical reports suggest that wolves may have produced young in these States; however, based on extensive surveys and interagency monitoring efforts (Service 1994), no wolf population presently persists in these States.

3. *Wolf Recovery Efforts:* In the 1970's, the State of Montana led an interagency recovery team, established by the Service, that developed a recovery plan for the Northern Rocky Mountain Gray Wolf. The 1980 recovery plan recommended a combination of natural recovery and reintroduction be used to recover wolves in the area around Yellowstone National Park (the Park) north to the Canadian border, including central Idaho.

A revised recovery plan was approved by the Service in 1987 (Service 1987). It identified a recovered wolf population as being at least 10 breeding pairs of wolves, for 3 consecutive years, in each of 3 recovery areas (northwestern Montana, central Idaho, and Yellowstone). A population of this size would be comprised of about 300 wolves. The plan recommended natural recovery in Montana and Idaho. If two wolf packs did not become established in central Idaho within 5 years, the plan recommended that conservation measures other than natural recovery be considered. The plan recommended use of the Act's section 10(j) authority to reintroduce experimental wolves in the Park. By establishing a nonessential experimental population, more liberal management practices may be implemented to address potential negative impacts or concerns regarding the reintroduction.

In 1990 (Pub. L. 101–512), Congress directed appointment of a Wolf Management Committee, composed of three Federal, three State, and four interest group representatives, to develop a plan for wolf restoration in the Park and central Idaho. That committee provided a majority, but not unanimous, recommendation to Congress in May 1991. Among the measures recommended was a declaration by Congress directing reintroduction of wolves in the Park, and possibly central Idaho, as special nonessential experimental populations with flexible management practices by agencies and the public to resolve potential conflicts. Wolves and ungulates would be intensively managed by the States with Federal funding; thus, implementation was expected to be costly. Congress took no action on the committee's recommendation which would have required an amendment to the Act.

In November 1991 (Pub. L. 102–154), Congress directed the Service, in consultation with the National Park Service and Forest Service, to prepare an Environmental Impact Statement (EIS) to consider a broad range of alternatives on wolf reintroduction in Yellowstone National Park and central Idaho. In 1992 (Pub. L. 102–381), Congress directed the Service to complete the EIS by January 1994 and indicated the preferred alternative should be consistent with existing law.

The Service formed and funded an interagency team to prepare the EIS. Team participants were the National Park Service; Forest Service; the States of Wyoming, Idaho, and Montana; USDA Animal Damage Control; and Wind River and Nez Perce Tribes. The Gray Wolf EIS program emphasized public participation. In the spring of 1992, the news media and nearly 2,500 groups/individuals interested in wolves were contacted to publicize the EIS process.

In April 1992, a series of 27 "issue scoping" open houses were held in Montana, Wyoming, and Idaho, as well as 7 other locations throughout the United States. The meetings were attended by nearly 1,800 people, and thousands of brochures were distributed. In total, nearly 4,000 people gave comments on EIS issues. In July 1992, a report narrating the public comments was mailed to 16,000 people.

In August 1992, 27 additional "alternative scoping" open houses and 3 additional hearings were held in Wyoming, Montana, and Idaho. Hearings were also held in Seattle, Washington; Salt Lake City, Utah; and Washington, D.C. Two major newspapers with circulation in Montana, Wyoming, and Idaho (total circulation about 250,000) distributed a copy of the alternative scoping brochure in the Sunday edition. Nearly 2,000 people attended the meetings, and nearly 5,000 comments were received on methods for managing reintroduced wolves. Public comments typified the strong polarization of concerns regarding wolf management. A report on the public's ideas and suggestions was mailed to about 30,000 people in November 1992. In April 1993, a Gray Wolf EIS planning update report was published. It discussed the status of the EIS, provided factual information on wolves, and requested the public to report wolf observations in the northern Rocky Mountains. It was mailed to nearly 40,000 interested individuals residing in all 50 States and over 40 foreign countries.

The public comment period on the draft EIS (DEIS) began on July 1, 1993, and the notice of availability was published on July 16. The DEIS documents were mailed to potentially affected agencies, public libraries, interested groups, and anyone who requested a copy. Additionally, a flyer containing the DEIS summary, a schedule of the 16 public hearings, and a request to report wolf sightings was inserted into the Sunday edition of 6 newspapers (combined circulation of about 280,000) in Wyoming, Montana, and Idaho. In mid-June 1993, the Service mailed a letter to over 300 groups, primarily in Wyoming, Montana, and Idaho, offering a presentation on the DEIS. This resulted in 31 presentations to about 1,000 people during the comment period.

During the DEIS public review period (July 1 to November 26, 1993) over 160,200 individuals, organizations, and government agencies commented. The magnitude of the response shows the

strong interest people have in wolf management. In early March 1994, a summary of the public comments was mailed to about 42,000 people on the EIS mailing list.

The final EIS was filed with the Environmental Protection Agency on May 4, 1994, and the notice of availability was published on May 9, 1994. The EIS considered five alternatives: (1) Reintroduction of Wolves Designated as Experimental, (2) Natural Recovery (No action), (3) No Wolves, (4) Wolf Management Committee Recommendations, and (5) Reintroduction of Wolves Designated as Nonexperimental. After careful review, the Service's proposed action was to reintroduce nonessential experimental gray wolves in the Park and central Idaho.

The Secretary signed the EIS Record of Decision on June 15, 1994. A letter of concurrence was signed by the Secretary of Agriculture on July 13, 1994. The decision directed the Service to implement its proposed action plan as soon as practical.

Two nonessential experimental population proposed rules, one for the Park and one for central Idaho, were published in the **Federal Register** on August 16, 1994 (59 FR 42108 and 59 FR 42118, respectively). On September 6, 1994, a brochure containing the Record of Decision, proposed rules, and schedule of public hearings was mailed to about 50,000 people. From September 14–22, 1994, a legal notice announcing the proposed rules, hearings, and inviting public comment was published in the Seattle Post-Intelligencer, Olympia Olympian, New Paper Agency (Salt Lake City Papers), Washington Times, Lewiston Morning Tribune, The Idaho Statesman, Wyoming Tribune, Casper Star Tribune, Bozeman Daily Chronicle, and Billings Gazette.

The Service held six public hearings on the proposed rules. The availability of the Record of Decision, public hearings, and proposed rules was published in the **Federal Register** on September 14, 1994 (59 FR 47112). Copies of the proposed rules were distributed to all interested parties. Public hearings were held on September 27, 1994, in Boise, Idaho; Cheyenne, Wyoming; and Helena, Montana, and on September 29, 1994, in Salt Lake City, Utah; Washington, D.C.; and Seattle, Washington. About 90 people testified at these hearings and about 330 people submitted written comments. Comments on the proposed rules were accepted until October 17, 1994.

In Montana, the Service has an active wolf management program due to the presence of breeding pairs of wolves. The Service's program monitors wolves to determine their status, encourages research, provides the public with accurate information, and controls wolves that attack domestic livestock. Wolves that depredate on livestock are translocated or removed. Such action is required to reduce livestock losses, to foster local tolerance, and promote and enhance conservation of wolves. The relocation of wolves under the control program is not intended to accelerate the natural expansion of wolves into unoccupied historic habitat. Although 19 wolves have been removed under the control program, the number of wolves has continued to expand in Montana at about 22 percent per year for the past 9 years.

4. *Reintroduction Site:* The Service decided to reintroduce wolves into the Park because of the following factors. The Park is under Federal jurisdiction, it has high-quality wolf habitat and good potential wolf release sites. It is also far from the natural southern expansion of wolf packs from Montana. Thus, any wolf pack documented inside the Yellowstone experimental population area would probably be from reintroduction efforts rather than from naturally dispersing extant wolf populations in Canada or northwestern Montana. The Service will also reintroduce wolves into central Idaho as a nonessential experimental population published under a separate rule in the **Federal Register**.

The Service determined that reintroduction of wolves into the Park had the highest probability to succeed due to ecological and political considerations (Service 1994). The reintroduction effort will enhance wolf viability by increasing genetic diversity through genetic interchange between segments of the population. The reintroduction plan for the Park should help in achieving wolf recovery goals 20 years sooner than under current natural recovery policy.

Because reintroduced gray wolves will be classified as a nonessential experimental population, the Service's management practices can reduce local concerns about excessive government regulation of private lands, uncontrolled livestock depredations, excessive big game predation, and the lack of State government involvement in the program.

Establishment of gray wolves in the Park will initiate wolf recovery in one of the three recovery areas described as necessary for the species recovery in the northern Rocky Mountains. No existing or anticipated Federal or State actions identified for this release site are expected to have major effects on the experimental population. Central Idaho is identified as the only other alternative site, and it will also receive wolves for reintroduction which will facilitate recovery in that experimental area.

5. *Reintroduction Protocol:* The wolf reintroduction project is undertaken by the Service in cooperation with the National Park Service, Forest Service, other Federal agencies, potentially affected tribes, the States of Wyoming, Montana, and Idaho, and entities of the Canadian government. To obtain wolves, the Service will enter into formal agreements with the Canadian and Provincial governments and/or resource management agencies.

The Park's wolf reintroduction plan requires transferring 45 to 75 wolves from southwestern Canada, representing various sex and age classes, over a 3- to 5-year period. The capture of about 15 wild wolves from several different packs using standard capture techniques will be done annually over 3 to 5 years. Captured wolves will be transported to the Park. Wolves from the same pack will be placed in individual holding pens of about 0.4 hectare (1 acre) for up to 2 months for acclimation to the new environment. The acclimation pens will be isolated to protect the wolves from other animals and to prevent habituation to humans. During the acclimation period but after release, each wolf will be monitored by radiotelemetry to ensure quick retrieval, if necessary. Carcasses of natural prey taken in the Park will be provided to the wolves. Veterinary care, including examinations and vaccinations, will be provided as needed.

Once acclimated, the wolves will be released into the Park. Food (ungulate carcasses) will be provided until the wolves no longer use it. Initially, all wolves will be closely monitored with a gradual reduction over time. Previous experiences with reintroduced wolves have shown that they may not remain together. In general, attempts to locate and/or move lone wolves dispersing throughout the Park will not be done. However, wolves may be moved on a case-by-case basis, if necessary, to enhance wolf recovery in the experimental area. Reintroduced wolves will remain in the wild, as long as they are capable of sustaining themselves on carrion or wild prey. Conflicts between wolves and humans may result in the recapture and/or removal of a wolf in accordance with procedures successfully used with other problem wolves.

An overall assessment of the success of the reintroduction will be made after the first year and for every year thereafter. Procedures for subsequent

releases could be modified, if information from the previous reintroduction warrants such changes. The physical reintroduction phase should be completed within 3–5 years. Once the reintroduced wolves form two packs with each pack raising two pups, for 2 consecutive years, management practices would allow the wolves to grow naturally toward recovery levels. Wolves would only be monitored, and no further reintroduction would take place unless fewer than two litters were produced in a single year. This reintroduction effort is consistent with the recovery goals identified in the 1987 recovery plan for the northern Rocky Mountain Gray Wolf.

It is estimated that the Park's reintroduction effort with a similar effort in central Idaho, plus the natural recovery occurring in northwestern Montana, could result in a viable recovered wolf population (10 breeding pairs in each of 3 recovery areas for 3 consecutive years) by the year 2002.

The Service will continue to ask private landowners and agency personnel adjacent to the Park to immediately report any wolf observations to the Service or other authorized agencies. An extensive information and education program will discourage the taking of gray wolves by the public. Initially, all wolves will be monitored by radio telemetry and, therefore, easy to locate if necessary. Public cooperation with the Service will be encouraged to ensure close monitoring of the wolves and quick resolution of any conflicts that might arise.

Specific information on wolf reintroduction procedures can be found in Appendix 4 "Scientific techniques for the reintroduction of wild wolves" in the environmental impact statement: "The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho" (Service 1994).

**Status of Reintroduced Populations**

In accordance with section 10(j) of the Act, wolves reintroduced into the Park are designated as nonessential experimental. Such designation allows the wolves to be treated as a threatened species or species proposed for listing for the purposes of sections 4(d), 7, and 9 of the Act. This allows the Service to establish a less restrictive special rule rather than using the mandatory prohibitions covering endangered species. The biological status of the wolf and the need for management flexibility resulted in the Service designating gray wolves reintroduced into the Park as "nonessential." The Service determined that the "nonessential" designation, with other protective measures, will conserve and recover the gray wolf in the Yellowstone ecosystem.

It is anticipated that released wolves will come into contact with humans and domestic animals inside and outside of the Park. Public opinion surveys, public comments on wolf management planning, and the positions taken by elected local, State, and Federal government officials indicate that wolves should not be reintroduced without assurances that current uses of public and private lands will not be disrupted by wolf recovery activities. The following provisions respond to these concerns. There would be no violation of the Act for unintentional, nonnegligent, and accidental taking of wolves by the public, provided the take was incidental to otherwise lawful activities, it did not result from negligent conduct lacking reasonable due care or was in defense of human life. Such wolf takings would need to be reported to the Service or other authorized agency within 24 hours. The Service may designate certain Federal, State, and/or tribal employees to take wolves that required special care or pose a threat to livestock or property. Private land owners or their designates would be permitted to harass wolves in an opportunistic noninjurious manner on their leases or private property, provided such harassment was reported within 7 days to the Service or other authorized agency.

Under the "nonessential" status, private landowners or their designates would be permitted to take (injure or kill) a wolf in the act of wounding or killing livestock on private land. However, physical evidence (wounded or dead livestock) of such an attack would be required to document that the attack occurred simultaneously with the taking. A report of such a take would need to be immediately (within 24 hours) reported to the Service or other authorized agency personnel for investigation. Once six or more breeding pairs are established in the Park or experimental area, livestock owners or their designates could receive a permit from a Service-designated agency to take (injure or kill) gray wolves that are attacking livestock on permitted public livestock grazing allotments. Such a take would be only permitted after due notification to Service-designated agencies and unsuccessful capture efforts.

Wolves that repeatedly (two times in a calendar year) attack domestic animals other than livestock (fowl, swine, goats, etc.) or pets (dogs or cats) on private land would be designated as problem wolves and relocated from the area by the Service or a designated agency. After one relocation, wolves that continued to depredate on domestic animals would be considered chronic problem wolves and would be removed from the wild.

It is unlikely that wolf predation on big game populations would be primary cause for failure of the States or tribes to meet their specific big game management objectives outside of the national parks and national wildlife refuges. The Service could, however, determine that wolves responsible for excessive depredation should be translocated to other sites in the experimental area. Such actions are expected to be rare and unlikely to impact the overall recovery rate. States and tribes would need to define such situations in their Service-approved wolf management plans before such actions could be taken. Under the nonessential designation, wolves could not be deliberately killed solely to resolve predation conflicts with big game.

The States of Wyoming, Montana, and Idaho and potentially affected tribes will be encouraged to enter into cooperative agreements for management of the gray wolf outside of national parks and national wildlife refuges. These cooperative agreements would be reviewed annually by the Service to ensure that the States and tribes have adequate regulatory authority to conserve listed species, including the gray wolf. The National Park Service will be the primary agency implementing the experimental population rule inside the boundaries of national parks. States and tribes are anticipated to be the primary agencies implementing this experimental population rule outside of national parks and national wildlife refuges after their wolf management plans are approved by the Service. The Service will provide oversight, coordinate wolf recovery activities, and provide technical assistance. If the States and tribes do not assume wolf management responsibilities or adhere to provisions of their wolf management plans, the Service would assume management authority. If for unforeseen reasons the wolf population failed to sustain positive growth toward recovery levels for 2 consecutive years, the influencing factors would be identified. The Service, and affected States or tribes would be responsible for determining if any management strategies needed modification. The Service in coordination with the States and tribes would implement those strategies to ensure wolf population recovery.

The Service finds that protective measures and management practices are

necessary and advisable for the conservation and recovery of the gray wolf and that no additional Federal regulations are required. The Service also finds that the nonessential experimental status is appropriate for gray wolves taken from wild populations and released in the Park. The nonessential status for such wolves allows for additional management flexibility. Nonessential experimental populations located outside of a national park or national wildlife refuge are treated under the Act as if they were only proposed for listing, and not listed. Only section 7(a)(1) and section 7(a)(4) apply to Federal actions outside national parks and wildlife refuges. Presently, there are no conflicts envisioned with any current or anticipated management actions of the Forest Service or other Federal agencies in the areas. The national forests are beneficial to the reintroduction effort in that they form a natural buffer to private properties and are typically managed to produce wild animals that wolves could prey upon. The Service finds the less restrictive section 7 requirements associated with the nonessential designation do not pose a threat to the recovery effort and continued existence of the gray wolf.

The full provisions of section 7 apply to nonessential experimental populations in a national park or national wildlife refuge. Consequently, the Service, National Park Service, Forest Service, or any other Federal agency is prohibited from authorizing, funding, or carrying out an action within a national park or national wildlife refuge that is likely to jeopardize the continued existence of the gray wolf. Pursuant to 50 CFR 17.83(b), section 7 determinations must consider all experimental and nonexperimental wolves as a listed species for analysis purposes in national parks. The Service has reviewed all ongoing and proposed uses of the parks and refuges and determined that none are likely to jeopardize the continued existence of the gray wolf, nor will they adversely affect the success of the reintroduction program.

Most of the reintroduction area is remote and sparsely inhabited wild lands. However, there are some risks to wolf recovery associated with take of wolves in regard to other land uses and various recreational activities. Potential threats are hunting, trapping, animal damage control activities, and high speed vehicular traffic. Hunting, trapping, and USDA Animal Damage Control programs are prohibited or strictly regulated in national parks, as well as closely regulated by State and Federal law and policy. There are very few paved or unpaved roads in the proposed reintroduction area or immediately outside of it. The unpaved roads typically have low vehicle traffic, are constructed for low speeds and used only seasonally. Thus, wolves should encounter vehicles infrequently. In accordance with existing labeling, the use of toxicants lethal to wolves in areas occupied by wolves is prohibited. Overall, the possible risks and threats that could impact the success of the reintroduction effort are thought to be minimal.

**Location of Experimental Population**

The release site for reintroducing wolves will be in Yellowstone National Park. The designated experimental population area will include the State of Wyoming; that portion of Idaho east of Interstate Highway 15; and the State of Montana east of Interstate Highway 15 and south of the Missouri River east of Great Falls, Montana, to the Montana/North Dakota border.

**Management**

To date, the experimental population area does not currently support any reproducing pairs of wolves. It is also unlikely that wolves from the natural southern expansion from northwestern Montana have arrived in the Park. Except for the gray wolves in northwestern Montana, only an occasional, isolated wolf has been reported, killed, or otherwise documented in Idaho, Wyoming, Montana, or other Western States. Single packs have been reported throughout the northern Rocky Mountains. However, these reported wolves or groups of wolves, if factual, apparently disappeared for unknown reasons and did not establish recoverable "populations" as defined by wolf experts. A wolf population is defined as at least two breeding pairs of gray wolves that each successfully raise at least two young to December 31 of their birth year for 2 consecutive years (Service 1994). Thus, the Service has determined that there is no population of wolves in the Park and therefore, the Park reintroduction is consistent with provisions of section 10(j) of the Act; specifically, that experimental wolves need to be geographically separate from other nonexperimental populations. It is possible that prior to 2002, other wolves may appear in the wild and be attracted to the experimental area occupied by the reintroduced wolves. Any "new" arrivals would be classified as part of the experimental population. These wolves could assist in the recovery and expansion of the experimental population to where wolves could be dispersing into central Idaho and Montana.

Wolves dispersing into areas in Idaho and Montana, outside of the experimental area, would continue to receive endangered species protection under the Act, as did the wolves that recolonized an area near Glacier National Park in 1982. It is also possible, but not probable, that during the next 3 years wolves could move between recovery areas and enhance the genetic diversity between natural recovery areas and reintroduction sites. It is not anticipated that such exchange will significantly alter the recovery rate in the Park's experimental population area.

Although the Service determined that there is no existing wolf population in the recovery area that would preclude reintroduction and establishment of an experimental population in the Park, the Service will continue to determine the presence of any wild wolves. Prior to any reintroduction, the Service would evaluate the status of any wolves found in the experimental population area. If a wolf population is discovered in the proposed experimental area, no reintroduction of wolves would occur. Instead, the success of the naturally occurring wolf population would be monitored to determine if recovery was continuing. If a natural wolf population is located in the experimental area prior to the effective date of the final rule, then the final rule would not be implemented and there would be no reintroduction program. Wolves naturally occurring would be endangered and managed as such, with full protection under the Act. If the natural wolf population failed to maintain positive growth for two consecutive years, then the reintroduction effort could proceed or other recovery measures taken. After reintroduction is completed, according to the Reintroduction Protocol (section 5 above), management of the experimental population will begin.

Once this rule is effective and wolves have been released into the recovery area, the rule would remain in effect until wolf recovery occurs or a scientific review indicates that modifications in the experimental rule are necessary to achieve wolf recovery.

If a wolf population is discovered in the Park's recovery area, after the effective date of the experimental population rule but before release, reintroduction under the rule would not occur in that area and any such wolves would be managed as a natural recovering population. Boundaries of the proposed experimental population

area would be changed, as needed, to encourage recovery of the naturally occurring, breeding wolf population. No experimental population area will contain a portion of the home range of any active breeding pairs of wolves that have successfully raised young, prior to the establishment of the experimental area.

Management of the nonessential experimental wolf population would allow reintroduced wolves to be killed or moved by Service authorized Federal, State, and tribal agencies for domestic animal depredations and excessive predation on big game populations. Under special conditions, the public could harass or kill wolves attacking livestock (cattle, sheep, horses, and mules). There would be no Federal compensation program, but compensation from existing private funding sources would be encouraged. When six or more wolf packs are documented in the experimental population area outside of the national parks and national wildlife refuges, there would be no land-use restrictions, including areas around den sites or other critical areas.

Wolves have a relatively high reproductive rate. Projected recruitment would off-set the anticipated 10 percent mortality resulting from management control actions. An additional 10 percent loss could occur from other mortality sources. Once reintroduced wolves reach the goal of six wolf packs, the reproductive output of the packs would provide a population increase at or near 22 percent per year. Closely regulated public control (taking of depredating wolves) would effectively focus on only individual problem wolves. Agency control actions would more likely target groups of wolves containing problem individuals.

The Service, and States or tribes as authorized, could move wolves that are negatively impacting ungulate populations. Such wolves would be moved to other places within the experimental population area. Two examples when this would occur are (1) when wolf predation is dramatically affecting prey availability because of unusual habitat or weather conditions (e.g., bighorn sheep in areas with marginal escape habitat) and (2) when wolves cause prey to move onto private property and mix with livestock, increasing potential conflicts. The States and tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or tribal management plans which are to be approved by the Service through cooperative agreement before such control actions are conducted. Wolves will not be deliberately killed solely to address ungulate-wolf conflicts. Control actions by the States or tribes likely to be significant or beyond the provisions of the experimental rule as determined by the Service would have to be specifically incorporated into an amendment of this experimental rule and subject to national public comment and review.

Management of wolves in the experimental population would not cause major changes to existing private or public land-use restrictions (except at containment facilities during reintroduction) after six breeding pairs of wolves are established in this experimental area. When five or fewer breeding pairs are in the experimental area, land-use restrictions could be used, as needed, to control intrusive human disturbance on public lands. Their implementation would be at the discretion of land management and natural resources agencies. Before five or fewer breeding wolf pairs are established, temporary restrictions on human access near active wolf den sites may be required between April 1 and June 30. Any restrictions on private land would only occur with complete landowner cooperation and concurrence.

The Service, and Federal, State, or tribal agencies, after they have been authorized by the Service, could promptly remove any wolf from the experimental population once the Service, or its authorized agencies, has determined it was presenting a threat to human life or safety. Although not a management option *per se*, it is noted that a person can legally kill or injure wolves in response to an immediate threat to human life. The incidental, unavoidable, unintentional, accidental take in the course of otherwise lawful activity, or in defense of human life, would be permitted by the Service and its authorized agencies, provided that such taking was not resulting from negligent conduct lacking reasonable due care, due care was exercised to avoid taking a wolf, and the taking was immediately (within 24 hours) reported to the appropriate authorities. Shooters have the responsibility to identify their target before shooting. The act of taking a wolf that is wrongly identified as another species, for purposes of this rule, will be considered as intentional, negligent, and not accidental. Such take may be referred to the appropriate authorities for prosecution.

The Service, and other Federal, State, or tribal agencies, after they have been designated by the Service, may control wolves that attack livestock (cattle, sheep, horses, and mules) by aversive conditioning, nonlethal control. and/or moving wolves when five or fewer breeding pairs are established, or by other previously described measures. Killing wolves or placing them in captivity may only be considered when there are six or more breeding pairs established in the experimental population area. When depredation occurs on public land and prior to the establishment of six breeding pairs, depredating females and their pups would be captured and released, at or near the site of capture, one time prior to October 1. If depredations continue, or if six packs are present, females and their pups would be removed. Wolves on private land under these same circumstances would be moved. Wolves that attack other domestic animals or pets on private land twice in a calendar year would be moved, and chronic problem wolves would be removed from the wild.

The Service, other Federal agencies, and State or tribal wildlife personnel would be authorized and trained to take wolves under special circumstances. Wolves could be live-captured and translocated to resolve conflicts with State or tribal big-game management objectives, when they are located outside of the experimental areas, or to enhance wolf recovery. If the captured animal is clearly unfit to remain in the wild, it could be placed in a captive facility. Killing of any wolves would be a last resort and only authorized when live capture attempts fail or there is some clear danger to human life.

The Service and authorized agencies of the Service would use the following conditions and criteria to determine the status of problem wolves within the nonessential experimental population area:

(1) Wounded livestock or the partial remains of a livestock carcass must be presented with clear evidence (Roy and Dorrance 1976; Fritts 1982) that the livestock injury or death was directly caused by a wolf or wolves. Such evidence is essential for justifying any control action because wolves may feed on carrion they did not kill. Additionally, there must be an indication that additional livestock losses may occur if the problem wolf or wolves are not controlled.

(2) No evidence of artificial or intentional feeding of wolves can be present. Improperly disposed livestock carcasses located in the area of depredation will be considered attractants. On Federal lands, removal or a decision on the use of such attractants must accompany any control action. If livestock carrion or carcasses are not being used as bait for an

authorized control action on Federal lands, it must be removed or otherwise disposed of so that they will not attract wolves.

(3) On Federal lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

Federal responsibility for protecting gray wolves under the experimental population provisions of the Act would continue until formal delisting rulemaking procedures are completed. In accordance with the Act, delisting may occur when analysis of the best available scientific and commercial information shows that gray wolves are no longer threatened with extinction due to: (1) Loss of habitat, (2) overutilization, (3) disease or predation, (4) inadequacy of existing regulatory mechanisms, and (5) other natural or manmade factors. In addition to the above, the following criteria must be met: (1) For 3 consecutive years, a minimum of 10 breeding pairs are documented in each of the 3 recovery areas described in the revised wolf recovery plan (Service 1987); (2) protective legal mechanisms are in place; and (3) the EIS evaluation has been completed (Service 1994). After delisting, the Act specifies a species population must be monitored for a 5-year period. After delisting, if in any 1 of the 3 recovery areas the wolf population fell below the minimum of 10 breeding pairs for 2 consecutive years, then wolves in that recovery area would be considered for protective status under the Act.

All reintroduced wolves designated as nonessential experimental will be removed from the wild and the experimental status and regulations revoked when (1) legal actions or lawsuits change the wolves status to endangered under the Act or (2) within 90 days of the initial release date, naturally occurring wolves, consisting of two breeding pairs that for 2 consecutive years have each successfully raised two offspring, are discovered in the experimental population area. The naturally occurring wolves would be managed and protected as endangered species under the Act.

**Summary of Comments and Recommendations**

Two proposed nonessential experimental population rules for the areas of Yellowstone National Park and central Idaho were published in the **Federal Register** on August 16, 1994 (59 FR 42108 and 59 FR 42118, respectively) (Service 1994a). The Record of Decision, notification of the proposed rules, and tentative schedule for public hearings were mailed to nearly 50,000 people on September 6, 1994. All interested parties were requested to submit factual reports or information that might contribute to the development of the final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A legal notice announcing the proposed rules, hearings, and inviting public comment were published in the Seattle Post-Intelligencer, Olympia Olympian, New Paper Agency (Salt Lake City Papers), Washington Times, Lewiston Morning Tribune, The Idaho Statesman, Wyoming Tribune, Casper Star Tribune, Bozeman Daily Chronicle, and Billings Gazette beginning on September 14, 1994.

The Service held six public hearings on the proposed rules. A notification of the hearings and availability of the Record of Decision and proposed rules was published in the **Federal Register** on September 14, 1994 (59 FR 47112). Copies of the proposed rules were distributed to all interested parties. Public hearings were held on September 27, 1994, in Boise, Idaho; Cheyenne, Wyoming; and Helena, Montana, and on September 29, 1994, in Salt Lake City, Utah; Washington, D.C.; and Seattle, Washington. About 90 people testified at these hearings and about 330 people submitted written comments. Comment on the proposed rules was accepted until October 17, 1994.

A total of 426 written and oral responses, representing 621 signatures, were received during the proposed rule 34-day comment period. Several letters, including letters from the Governor of the State of Wyoming and the Colorado Wool Growers Association, were received after comment period closed. However, these letters were reviewed and considered. From October 17 to 24, 1994, a specialized interagency team analyzed the public comments. After October 31, 1994, the team's report was distributed to agency cooperators and to anyone requesting it (Service 1994c). In addition to the public comments, three Notices of Intent to Sue were received. The Service has completed its review and consideration of all written and oral comments. All of the issues raised by the public on the proposed rules were previously identified and addressed in the final EIS. Analysis of the comments revealed 25 issues which are identified and discussed below.

*Changes in final rule as a result of public comment:* The following minor changes and clarifications were made to the final rule or to discussions of the final rule based on public comments on the proposed rule. These individual or cumulative changes do not alter the predicted impact or effect of the final rule.

1. Several conditions on when wolves may be harassed or taken were removed from the final rule. The following conditions are not part of the final rule: (1) Distinction between adult wolves and pups, and (2) harassment may only occur for 15 minutes.

2. In the background discussion of the final rule, it was clarified that after a private individual takes a depredating wolf, no additional agency actions will be conducted to control problem wolves in an area, unless more livestock depredations occur. This assumes that the problem wolf was killed, and therefore, no other control actions are required.

3. Several terms in the final rule were clarified and defined, including: "opportunistic noninjurious harassment," "unintentional take," "disposal of livestock carrion," issuance criteria for a wolf take permit to a grazing lessee on public lands, and criteria for resolving wolf/ungulate conflicts.

4. A termination clause was added to the final rule. The clause clarifies the Service's role and responsibilities regarding the establishment of an experimental population.

5. Three years following the initial reintroduction of wolves, a thorough review will be conducted. The review will determine if further reintroductions are required and if, to date, the management program has been successful. A provision to the rule was added that if the reintroduction and management practices under the experimental population rule did not result in wolf recovery, the Service would take appropriate actions. Such actions would be caused by the failure of the wolf population to maintain positive growth for 2 consecutive years. All corrective actions would be coordinated with affected States, tribes, and other Federal agencies.

6. Language regarding scientific or technical decisions in the background discussion of the rule was changed. Study design and reintroduction techniques may be changed or modified when expert and skilled biologists determine such changes are necessary and prudent.

A list of relevant issues based on public comments and the Service's response to those issues follows.

*Issue 1:* The subspecies of wolf that occupied the Yellowstone area was

*Canis lupus irremotus.* The reintroduction program will use wolves from Canada which were once classified as a different subspecies; therefore, this violates the experimental population provision of the Act.

*Service Response:* In recent times, there have been several revisions to the taxonomic classification of wolves in North America. Several scientific investigations have dealt with this issue (Brewster and Fritts 1994, Nowak 1994, Wayne et al. 1994). These investigations concluded (1) there were fewer wolf subspecies than previously believed, (2) *irremotus* was not a distinct subspecies, and (3) that wolves might be better classified as types or representative groups of geographic or climatic conditions rather than distinct subspecies. The northern Rocky Mountains are within the historic range of *Canis lupus.* Investigators conclude that reintroduction of wolves from Canada to the Park or central Idaho would accelerate the ongoing natural southern expansion of the species. Additionally, it was determined that current taxonomic discussions of wolf subspecies should not affect wolf recovery efforts in the northern Rocky Mountains of the United States.

*Issue 2:* The amendment to section 10(j) of the Act states that experimental populations may only be designated when there is geographical separation between the experimental population and other existing populations of the species. The occasional occurrence of lone wolves in the areas of central Idaho and Yellowstone would prohibit the use of the experimental population designation since there would be no geographic separation between natural occurring and experimental wolves. Comments also stated that the boundaries of the experimental areas should be adjusted or the reintroduction program should be delayed, particularly, in central Idaho due to the presence of naturally occurring wolves.

*Service Response:* For many years, the Service and other agencies have tried to document wolf activity in Montana, Idaho, and Wyoming (Service 1994a Appendix 12). Since the 1970's, wolf observations particularly from Montana, Wyoming, and Idaho, have been reported. However, to date the only documented breeding groups of wolves are in northwestern Montana. Based on scientific inquiry, the Service defines a wolf population as at least two breeding pairs of wild wolves each successfully raising at least two young each year, for 2 consecutive years, and that a population is composed of breeding groups of wolves (Service 1994a, Appendix 9). Presently, there are no known breeding pairs of wolves within the experimental area. Nor does the experimental area contain any portions of home ranges of any breeding pairs of wolves. The Service finds that there is no geographic overlap between any Montana wolf population home range and the experimental area. The northern boundary of the Idaho experimental population area was moved further south because, in 1990 and 1992, there were a few instances when an active breeding group of wolves from Montana were located south of the experimental boundary recommended in the proposed rule. The rulemaking language now allows revocation of this rule and removal of all reintroduced wolves, if within 90 days after the initial reintroduction a naturally occurring wolf population is discovered in the experimental area. Any naturally occurring wolves will be managed as endangered species under the Act and afforded the same terms and conditions as wolves in Montana. The Service has had a wolf monitoring program in place in Idaho, Montana and Wyoming for over two years. This system is designed to accept reports from anyone, and when a report focuses on a particular area a wolf biologist investigates to verify the presence or absence of wolves. Through this method the Service has identified newly formed packs in northwestern Montana. Within the experimental area, no confirmation of wolves from provided reports has occurred.

*Issue 3:* The experimental population rules did not utilize the best scientific and commercial data available to reach decisions, as required by the Act.

*Service Response:* The Service contends that this rule and the Secretary's decision to reintroduce wolves used the best scientific data available and underwent peer review and scientific analysis. The EIS on the impacts of this rule includes several appendices and a list of persons who contributed their expert opinions or relevant data to the decisionmaking process (Service 1994a). Professional wildlife biologists and scientific organizations complimented the Service on the depth and detail of its scientific investigation in regards to the reintroduction of wolves.

*Issue 4:* The reintroduction plan does not enhance the conservation and recovery of wolves, as required by the Act. Reintroduction, particularly in central Idaho, should not be conducted or should be delayed for several years while a search for existing wolves is conducted.

*Service Response:* For the past 20 years and presently, the Service and others have searched for wolves in the northern Rocky Mountains. Reviews of correspondence from the past 25 years show the longstanding and widespread view that wolves already occupied Idaho and the discovery of their presence imminent. Very extensive monitoring within the experimental population area has not confirmed the presence of wolves. This particular species is not habitat limited and if allowed to get into the experimental area would reproduce and survive. The translocation of wild wolves from Canada to the Park will provide the opportunity to start a wolf population. This translocation effort will greatly facilitate recovery of the gray wolf in the Yellowstone ecosystem. The 1987 Rocky Mountain wolf recovery plan recommended an additional 5 years of monitoring for natural wolf recovery in Idaho. However, the recovery plan provided other options if two breeding pairs of wolves had not become established in Idaho during the 5 years. Because no breeding pairs have been located, the draft and final EIS and Record of Decision allow the simultaneous reintroduction of wolves into central Idaho and the Park in an effort to ensure the viability and conservation of wolves in the Rocky Mountains (Service 1994a, Appendix 16).

*Issue 5:* The Service proposed a very liberal experimental rule to accommodate concerns of local residents and the affected States. However, it did not make allowances for unforeseen circumstances that may impede or prevent wolf population growth and recovery. Options such as increased management or greater numbers of reintroductions should be allowed if required.

*Service Response:* The Service believes that, as proposed, reintroduction and management techniques will result in wolf population recovery and delisting by about 2002. Rulemaking language was added clarifying that take activities must lead to eventual recovery of the wolf. Additionally, if there is no progress in achieving wolf population recovery (i.e., if wolves in a recovery area do not exhibit positive growth for 2 consecutive years), then factors impacting population growth will be investigated. Information from the investigation will be made available to the public and appropriate Federal, State, and tribal agencies. Within a year, the agencies may recommend and implement new management actions or modifications to their wolf management plans to correct factors negatively impacting wolf recovery. Only as a last

resort would changes or modifications to sections of the experimental rule be made.

*Issue 6:* The proposed rules' requirements that "only adult wolves (greater than 50 pounds) can be harassed" and then "only for 15 minutes" and "only adult wolves that are witnessed attacking livestock on private land can be killed by private parties" are overly restrictive. The provision that wolves can only be killed under a special permit when (1) seen attacking livestock for the third time on Federal lands, (2) six or more wolf packs are present in the experimental population, and (3) all agency control efforts have failed, does not address the issues in a timely or efficient manner. The implication that land-use restrictions may be employed on private lands when five or fewer wolf packs are present in the experimental area also needs clarification.

*Service Response:* The Service agrees and has eliminated (1) the distinction between adult wolves and pups for both noninjurious harassment and take and (2) the length of time wolves may be harassed (as long as physical injury is not incurred). Permittees with grazing rights on public land can readily obtain a written take permit for wolves seen attacking livestock. However, issuance criteria still require that prior to issuing the 45-day take permit (1) six or more wolf packs must be present in the experimental population area, (2) authorized agencies must confirm that a wolf caused the livestock injury or death, and (3) other agency control actions have failed to resolve the problem. The final rule also clarifies that no land-use restrictions will be exercised by Federal agencies on private land at any time.

*Issue 7:* Certain parts of the rule need to be more specific, so that potential management situations are individually described and addressed in the final rule. Commenters provided a variety of scenarios as examples.

*Service Response:* The Service added or clarified definitions and/or language in the final rule. However, the wolf reintroduction program is complex and has many unforeseen variables. It is impossible to imagine or describe in detail every situation that might arise during its implementation. Some situations can only be accurately addressed on a case-by-case basis and judged by their particular circumstances. It is the intent of the Service to use the experimental rule to aid the conservation, recovery, and eventual delisting of wolf populations in the northern Rocky Mountains of the United States. The Service in cooperation with other Federal, State, and tribal agencies will use the flexibility of the experimental rule to address local concerns and unforeseen situations. The professional expertise and experience of wildlife managers will facilitate the implementation and any modifications needed to improve the wolf reintroduction program. Additional language was added to the rule, clarifying that management flexibility is required as the program is implemented and refined.

*Issue 8:* The Service should make a clear commitment to fund all aspects of wolf reintroduction and management, including compensation to the States and tribes for their efforts. The Service should closely monitor the compliance of other agencies to the experimental population rules.

*Service Response:* To date, the Federal government has funded the participation of affected States and tribes in regard to wolf restoration program. The Service plans to continue its funding commitment with Congressional appropriations until wolves are delisted. The public stated its concern over the use of taxpayer dollars and the need for government to wisely spend tax dollars. The Service, therefore, must keep expenses for wolf reintroduction as low as possible while maintaining an effective program. The Service will encourage the States and tribes to submit reasonable budgets for wolf management programs, as well as search for ways to pool and coordinate resources so that overall costs are reduced. It is the legal responsibility of the Service to monitor the progress and adherence of State and tribal agencies to their management plans. The Service will ensure and work cooperatively with others to meet the stated recovery goals.

*Issue 9:* The wolf reintroduction effort needs to have a federally funded livestock damage compensation program. Wolf reintroduction will result in the "taking" of constitutionally protected private property rights.

*Service Response:* In Montana, the Defenders of Wildlife implemented a private livestock compensation program. Because the Defenders Program has been successful, it was expanded to include Idaho and Wyoming. The Service will not directly fund a livestock compensation program. The Service will encourage livestock producers to utilize private compensation programs when depredation occurs. The Service and USDA Animal Damage Control will aid livestock producers by maintaining an effective control program that minimizes livestock losses due to wolves. The rule addresses the concerns of private property owners by (1) providing an effective control program, (2) allowing landowners to take wolves on their private land when justified, and (3) invoking no land-use restrictions on private land. The Service has reviewed the constitutionality of this rule in regard to protected private property rights. The review concludes the Service's actions do not violate the private property rights of individuals (Service 1994a, Appendix 6).

*Issue 10:* The Act requires the Service to consult with appropriate Federal, State, tribal, and local entities or private landowners, to the maximum extent practicable, prior to promulgating regulations. The Service has failed to meet such requirements.

*Service Response:* It is well documented that the Service made an extraordinary effort to involve the public and other government entities in developing management practices and the experimental population rules regarding the wolf reintroduction program. During the past 3 years, the Service held over 100 meetings, open houses, and hearings. The Service distributed over 750,000 documents and reviewed and considered nearly 170,000 public comments during development of the rule. Federal agencies and affected States and tribes were active participants during the process. This final rule represents the participatory work and consensus of affected agencies and others interested or impacted by the rulemaking.

*Issue 11:* Further discussion and detail are needed on how State and tribal agencies will manage wolf predation and ungulate population levels. The public needs to know exactly what will be done in regard to this issue.

*Service Response:* The Service is confident in the States' and tribes' ability to evaluate the impact wolf predation may have on ungulate populations and, when appropriate, implement corrective management actions. An evaluation of possible impacts and/or actions in regard to a specific ungulate species and location is best accomplished by biologists most familiar with the situation. The Service, States, and tribes will coordinate wolf management plans to ensure that State and tribal interests in native ungulate management are met while meeting the Service's mandate for wolf recovery. Rulemaking language was added to the section on how States and tribes will manage ungulate/wolf conflicts. States and tribes are required to prepare acceptable management plans for approval by the Service. It is expected that since these management plans may

affect State wildlife management programs, the States will go through a public review process as part of their development. Such plans will indicate the point at which wolf/ungulate conflicts become so critical that corrective action must be taken. A decision to translocate wolves to reduce such conflicts must serve to enhance, or at a minimum not inhibit, wolf recovery.

*Issue 12:* The timeframe for submitting a report on the harassing and/or taking of wolves by the public should be changed (both shortened or lengthened were mentioned).

*Service Response:* The timeframes for a person to report the harassing (7 days) and/or the unintentional taking (24 hours) of wolves were not changed. The harassing or taking of a wolf is a critical and potentially serious event. A person who harasses a wolf is best served by reporting the incident as soon as possible so agency management actions can be implemented, if necessary. Submission of a report on wolf harassment provides a record which can document the continuation of suspected or actual livestock depredations or rationale for taking a wolf. The immediate reporting of livestock depredation by a wolf also allows the immediate investigation of the incident and gathering of fresh evidence. In Montana, agency professionals who investigate livestock depredations are readily accessible during the night, weekends, and holidays. During the past 9 years in Montana, the reporting, documenting, and resolution of livestock depredations have not been significant issues. Therefore, they are not anticipated to be a problem for wolf reintroductions into the experimental population areas. The United States legal system often takes into account unusual mitigating circumstances, such as the remoteness of a livestock allotment interfering with an individual being able to report an incident as required by regulation. The Service could determine that an incident would not be referred for prosecution, when a person failed to meet the reporting requirements and could justify their action.

*Issue 13:* The delisting criteria should be clearly identified. The delisting of one recovery area should be independent of the status of other recovery areas.

*Service Response:* In accordance with the Act, delisting may occur when analysis of the best available scientific and commercial information shows that gray wolves are no longer threatened with extinction due to: (1) Loss of habitat, (2) overutilization, (3) disease or predation, (4) inadequacy of existing regulatory mechanisms, and (5) other natural or manmade factors. In addition to the above, the final EIS, states that the following criteria must be met: (1) For 3 consecutive years, a minimum of 10 breeding pairs are documented in each of the 3 recovery areas described in the revised wolf recovery plan (Service 1987); (2) protective legal mechanisms are in place; and (3) the EIS evaluation has been completed (Service 1994). After delisting, the Act specifies a species population must be monitored for a 5-year period. After delisting, if in any 1 of the 3 recovery areas the wolf population fell below the minimum of 10 breeding pairs for 2 consecutive years, then wolves in that recovery area would be considered for protective status under the Act. Delisting procedures have been discussed (Service 1994a, Appendix 11). Endangered wolves in northwestern Montana can be downlisted to threatened once 10 breeding pairs are documented for 3 consecutive years. Experimental populations of wolves cannot be downlisted because their protective status is based on the experimental population rule. Experimental population rules can be withdrawn when wolf numbers have reached recovery levels, no further protection under the Act is required, and the wolf is delisted.

*Issue 14:* The reintroduction of wolves will negatively affect the recovery of other species listed under the Act. This issue was not addressed in the rule.

*Service Response:* The Service prepared and published an intra-Service evaluation of its proposed action in the draft and final EIS (Service 1994a, Appendix 7). The evaluation concluded that wolf reintroduction and implementation of the experimental rules would not adversely impact other endangered or threatened species. In November 1994, Service field offices in Idaho, Montana, and Wyoming reviewed the proposed rules and came to the same conclusion. The Service finds that the impact of the final rules, like the predicated impact reviewed of the proposed rules, will not adversely affect other protected species.

*Issue 15:* The proposed rules did not discuss how potential wolf/dog hybrids or wolf/coyote hybrids will be addressed.

*Service Response:* The hybridization of wolves with other canids may occur; however, it is not a significant problem anywhere in North America where ranges of wolves, domestic dogs, coyotes, and foxes overlap (Service 1994a, Chapter 1). Thus, it is not anticipated to be a problem in the northern Rocky Mountains. The rules state the Service or other authorized agencies may remove reintroduced wolves that breed with domestic dogs, coyotes, or foxes, or their hybrid-offspring. Individual animals that agency biologists suspect to be domesticated wolves or wild wolf/other canid species hybrids would be removed from the wild after examination of the canid's physical or behavioral characteristics.

*Issue 16:* The experimental population rule improperly removes full endangered species protection and bestows experimental status on any naturally occurring wolves found inside the experimental population boundaries.

*Service Response:* It is documented that individual wolves may disperse over 500 miles. However, for the past 10 years, there has been no evidence of naturally occurring wolves dispersing to and producing a viable wolf population in the central Idaho or Yellowstone areas. After the effective date of the experimental population rules, any such wolves and their offspring would be treated as experimental population animals. From a practical wildlife management perspective, the Service cannot be expected to determine if an individual wolf had naturally dispersed into the area or been reintroduced. The initial reintroduced animals will be radio collared and differentiated. Once they have reproduced it would be impossible to determine if the wolf was a wild dispersing animal or progeny of experimental wolves. The rule as written helps avoid the possible conflict. Such a distinction, therefore, cannot be treated separately by regulation. Undoubtedly, the establishment of a viable wolf population and recovery of the species will be enhanced by the reintroduction of 30 wolves annually for the next 3–5 years. The presence of reintroduced wolves may increase the probability of naturally dispersing wolves from northwestern Montana or Canada to move into, stay, and reproduce in an experimental area. While this event would contribute to population recovery, it would not greatly impact the overall population growth rate since the majority of breeding wolves would be reintroduced animals.

*Issue 17:* Denning and rendezvous sites must be protected, even after 6 packs are established. There needs to be more types of land use restrictions (road closures) to protect wolves.

*Service Response:* Wolves are adaptable to a wide variety of human activities, except for deliberate killing. Experiences in North America indicate

that human disturbance, even around active den sites, is not a significant factor affecting wolf survival or population growth (Service 1994a, Appendix 13). The rule protects active wolf dens during the earliest stages of wolf recovery, if necessary. Killing wolves is illegal except for a very few limited exceptions. The rule allows flexibility to reconsider land use restrictions if wolf populations do not grow toward recovery levels. Wolves in Montana have not needed land-use restrictions and, at this time, land-use restrictions do not appear necessary for wolf populations to recover in Idaho or Wyoming.

*Issue 18:* Private individuals should not be able to kill wolves, even by permit.

*Service Response:* The opportunity for private individuals to kill wolves in the experimental population areas is limited to when wolves are actually in the act of killing livestock. The Service has determined that wolves that exhibit this behavior do not further conservation of the species and for that reason are currently controlled (Service 1988). The selective removal of this type of individual by the public is warranted in certain limited circumstances and their removal contributes to conservation of the species. Agency control would be initiated anyway and, under tight regulation, public control can be more likely to remove the specific problem individual than agency control actions. If a wolf is taken in the act of depredating, further agency control would not be conducted unless additional depredations occur. This limited taking of wolves by the private sector could reduce the total number of wolves that might be taken in response to livestock depredations and reduces the opportunity for other wolves to feed on or learn to depredate on livestock.

*Issue 19:* The Secretary has not made the determination that use of an experimental rule and reintroduction of wolves would further the conservation of the species as required by 50 CFR 17.81.

*Service Response:* As stated in the Service's EIS, in the proposed rule, and in the final rule, removal of wolves from Canadian populations would not significantly impact those populations (59 FR 42110); the likelihood that wolf populations would become permanently established and grow to recovery level is extremely high (59 FR 42111); reintroduction would greatly accelerate wolf population recovery, enhance wolf population viability, and lead to subsequent delisting (59 FR 42110); and the reintroduced wolves and subsequent population that developed would not be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (59 FR 42112), therefore, the release of the experimental wolves would further the conservation of the species (Service 1994a, Service 1994b).

*Issue 20:* Wolf management should remain with the Service until delisting. The States or federal agencies like Animal Damage Control should not be involved in wolf recovery.

*Service Response:* The rule clarifies that while the States and Tribes are encouraged to lead implementation of the experimental rule, the Service will monitor and is ultimately responsible for the recovery of the species. Should progress toward wolf recovery not be evident (two years of no growth would trigger other conservation measures), the Service will cooperate with the states and tribes to assure steps are taken to resume progress toward recovery. The states and tribes already have highly professional wildlife management programs in place and their expertise, authorities, knowledge, and organizations can greatly enhance recovery of the species. Animal Damage Control is a professional federal wildlife management agency that has the responsibility, like all federal agencies, to use their authorities to enhance the recovery of listed species. Animal Damage Control has been a valuable and necessary component of wolf recovery activities in Montana and Minnesota.

*Issue 21:* There should be a mortality limit that triggers more restrictive management or reintroduced wolves that are killed should be quickly replaced.

*Service Response:* The measure of success in the wolf recovery program is not the level of wolf population mortality but growth of the wolf population. Wolf populations can withstand varying levels of mortality and individual wolf mortality is very difficult to measure accurately. Language was added to the final rule that clarifies the need to modify the state and tribal plans, which must be in compliance with the rule, if wolf population growth is not evident. Wolf population growth is easier to accurately monitor and is the criteria that is used to implement other provisions in the rule (e.g. when lethal control may be used, when a population is established, when reintroductions stop, and when wolf populations are recovered). A "put and take" strategy does not address the problem of a wolf population failing to maintain growth and is an expensive process to conduct. It is more productive to identify the factors preventing wolf population growth and correct them before simply continually adding more wolves that may die from the same causes. A population that required constant reintroductions to compensate for excessive mortality rates could not be delisted.

*Issue 22:* The experimental population boundaries are not scientifically based and should be modified.

*Service Response:* The Service determined the boundaries of the experimental populations based upon the distribution of the wolf population in Montana. The experimental population boundaries do not include any portion of any known area used by breeding wolves in Montana. It was also determined that any wolf population inside the experimental boundaries would most likely be the result of reintroduced wolves and any breeding groups of wolves outside the experimental boundaries would likely be the result of natural dispersal of wolves from northwestern Montana or Canadian populations. The definition of a wolf population underwent scientific peer review (Service 1994a, Appendix 8). The rationale and location of the experimental population boundaries were also reviewed, and no better consensus of a way to define the geographic range of a wolf population was brought to the Service's attention.

*Issue 23:* Wolves should be reintroduced for more than 3 years.

*Service Response:* Once a wolf population is established in an experimental area there is no need to conduct further reintroductions and to do so would not be cost effective. The soonest the "wolf population" criteria could be met is in three years. At that time about 45 wolves would have been reintroduced to each area, assuring substantial genetic diversity, and 10–20 pups should be born annually.

*Issue 24:* What does legally present livestock mean? Who is responsible for determining livestock husbandry practices?

*Service Response:* The provisions on legally present livestock are part of the rule so that control of problem wolves will occur only when livestock are present on public land in a manner already allowed by conditions in their federal, state, or tribal grazing permit. No new conditions are expected because of wolf reintroduction. Control of wolves that attack livestock should not be expected when livestock are illegally present on federal lands. Proper livestock husbandry practices means the current community standards and practices used by livestock producers as

already determined by the land management agency issuing the permit. No changes from the standard livestock grazing practices already being used on federal grazing leases are envisioned. Wolf management in Montana has not affected livestock management practices on public lands and would likely not affect those practices in other areas. Issues like proper disposal of livestock carrion are already being addressed in the Yellowstone area because of other concerns such as grizzly bear recovery. Language in the final rule reflects that carrion must be managed in such a way as not to present a continuing attractant to wolves if problems occur, but leaves the livestock producer and land management agency to determine how best to address potential problems.

*Issue 25:* Nearly every one of the 39 issues addressed in the public scoping process and review of the draft EIS were again discussed, questioned, or disagreed with during public comment about the proposed rule.

*Service Response:* The Service has reviewed public concern about the accuracy of its early responses to issues raised in the draft and final EIS and which were also raised by persons commenting on the proposed rule. At this time, the information provided during the public comment period on the proposed rule does not provide sufficient data or cause for the Service to significantly change any of its earlier findings which were published in the final EIS regarding the issues of: Amending the Endangered Species Act, wolves as a missing component of the ecosystem, humane treatment of wolves, enjoying wolves, regulated public take, cost of the program, state, tribal, and federal authority, viable population, travel corridors, range requirements, control strategies, illegal killing, compensation, delisting, need for public education, spiritual and cultural significance, social and cultural environment, recovery areas, ungulate populations, hunter harvest, domestic livestock, land use, visitor use, economics, wolves not native to Yellowstone, wolf rights, federal subsides, human health and safety, predators and scavengers, other endangered species, other plants, invertebrates, fish, reptiles, amphibians, birds, and mammals, diseases and parasites, private property rights, wolf recovery in other areas, existing wolves in Idaho and Yellowstone, existing wolves in northwestern Montana, wolf subspecies, wolf/dog/coyote hybridization, and the need for research (Service 1994a).

The Service adjusted the experimental population boundaries to exclude any portion of known wolf pack territories in an effort to reduce the likelihood that any naturally dispersing breeding groups of wolves would fall under the proposed experimental rule regulations.

Based on the above, and using the best scientific and commercial data available, in accordance with 50 CFR 17.81, the Service finds that releasing wolves into Yellowstone National Park constitutes reintroduction into a high-priority site and will further advance conservation and recovery of this species.

## National Environmental Policy Act

A Final Environmental Impact Statement under the National Environmental Policy Act is available to the public (see **ADDRESSES**). This rule is an implementation of the proposed action and does not require revision of the EIS statement on the reintroduction of gray wolves to Yellowstone National Park and central Idaho.

## Required Determinations

This rule was reviewed under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the experimental population area, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action and the rule contains no recordkeeping requirements, as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

Due to biological requirements, the wolf reintroduction program needs to be conducted in November through February, as recommended by wolf scientists during the EIS process. The nonessential experimental population rule has been extensively debated and thoroughly investigated during development of the EIS and draft rules. Because of the extensive public review of the EIS, Record of Decision, and proposed rules, all being similar to this final rule, implementation of the wolf reintroduction program should start as of the date of publication, without a 30-day waiting period. Therefore, for good cause and in accordance with 5 U.S.C. 553(d)(3), the Service has determined that the rule should become effective immediately upon filing for public inspection.

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## Author

The principal author of this rule is Edward E. Bangs (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

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

## Regulation Promulgation

Accordingly, the Service hereby amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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. In § 17.11(h), the table entry for "Wolf, gray" under "MAMMALS" is revised to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | | * | * |
| Wolf, gray | *Canis lupus* | Holarctic | U.S.A. (48 conterminous States, except MN and where listed as an experimental population). | E | 1, 6, 13, 15, 35, 561 | 17.95(a) | NA |
| Do | do | do | U.S.A. (MN) | T | 35 | 17.95(a) | 17.40(d) |
| Do | do | do | U.S.A. (WY and portions of ID and MT—see § 17.84(i)). | XN | 561 | NA | 17.84(i) |
| * | * | * | * | * | | * | * |

3. Section 17.84 is amended by adding paragraph (i) to read as follows:

**§ 17.84 Special rules—Vertebrates.**

* * * * *

(i) Gray wolf (*Canis lupus*).

(1) The gray wolves identified in paragraph (i)(7) of this section are nonessential experimental. These wolves will be managed in accordance with the respective provisions of this section.

(2) The Service finds that reintroduction of nonessential experimental gray wolves, as defined in (i)(7), will further the conservation of the species.

(3) No person may take this species in the wild in an experimental population area except as provided in paragraphs (i)(3), (7), and (8) of this section.

(i) Landowners on their private land and livestock producers (i.e., producers of cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service) that are legally using public land (Federal land and any other public lands designated in State and tribal wolf management plans as approved by the Service) may harass any wolf in an opportunistic (the wolf cannot be purposely attracted, tracked, waited for, or searched out, then harassed) and noninjurious (no temporary or permanent physical damage may result) manner at any time, *Provided* that such harassment is non-lethal or is not physically injurious to the gray wolf and is reported within 7 days to the Service project leader for wolf reintroduction or agency representative designated by the Service.

(ii) Any livestock producers on their private land may take (including to kill or injure) a wolf in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), *Provided* that such incidents are to be immediately reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service, and livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves must be evident. Service or other Service authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iii) Any livestock producer or permittee with livestock grazing allotments on public land may receive a written permit, valid for up to 45 days, from the Service or other agencies designated by the Service, to take (including to kill or injure) a wolf that is in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), *Provided* that six or more breeding pairs of wolves have been documented in the experimental population area and the Service or other agencies authorized by the Service has confirmed that the livestock losses were caused by wolves and have completed agency efforts to resolve the problem. Such take must be reported immediately within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service. There must be evidence of freshly wounded or killed livestock by wolves. Service or other agencies, authorized by the Service, will investigate and determine if the livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iv) Potentially affected States and tribes may capture and translocate wolves to other areas within an experimental population area as described in paragraph (i)(7), *Provided* the level of wolf predation is negatively impacting localized ungulate populations at an unacceptable level. Such translocations cannot inhibit wolf population recovery. The States and tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or tribal wolf management plans. These plans must be approved by the Service before such movement of wolves may be conducted.

(v) The Service, or agencies authorized by the Service, may promptly remove (place in captivity or kill) any wolf the Service or agency authorized by the Service determines to present a threat to human life or safety.

(vi) Any person may harass or take (kill or injure) a wolf in self defense or in defense of others, *Provided* that such

take is reported immediately (within 24 hours) to the Service reintroduction project leader or Service designated agent. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) The Service or agencies designated by the Service may take wolves that are determined to be "problem" wolves. Problem wolves are defined as: wolves that in a calendar year attack livestock (cattle, sheep, horses, and mules) or as defined by State and tribal wolf management plans approved by the Service, or wolves that twice in a calendar year attack domestic animals (all domestic animals other than livestock). Authorized take includes, but is not limited to non-lethal measures such as: aversive conditioning, nonlethal control, and/or translocating wolves. Such taking may be implemented when five or fewer breeding pairs are established in a experimental population area. If the take results in a wolf mortality, then evidence that the mortality was nondeliberate, nonnegligent, accidental, and unavoidable must be provided. When six or more breeding pairs are established in the experimental population area, lethal control of problem wolves or permanent placement in captivity will be authorized but only after other methods to resolve livestock depredations have been exhausted. Depredations occurring on Federal lands or other public lands identified in State or tribal wolf management plans and prior to six breeding pairs becoming established in an experimental population area, may result in capture and release of the female wolf with pups, and her pups at or near the site of capture prior to October 1. All wolves on private land, including female wolves with pups, may be relocated or moved to other areas within the experimental population area if continued depredation occurs. Wolves attacking domestic animals other than livestock, including pets on private land, two or more times in a calendar year will be relocated. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity). The following three criteria will be used in determining the status of problem wolves within the nonessential experimental population area:

(A) There must be evidence of wounded livestock or partial remains of a livestock carcass that clearly shows that the injury or death was caused by wolves. Such evidence is essential since wolves may feed on carrion which they found and did not kill. There must be reason to believe that additional livestock losses would occur if no control action is taken.

(B) There must be no evidence of artificial or intentional feeding of wolves. Improperly disposed of livestock carcasses in the area of depredation will be considered attractants. Livestock carrion or carcasses on public land, not being used as bait under an agency authorized control action, must be removed or otherwise disposed of so that it will not attract wolves.

(C) On public lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

(viii) Any person may take a gray wolf found in an area defined in paragraph (i)(7), *Provided* that the take is incidental to an otherwise lawful activity, accidental, unavoidable, unintentional, not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking a gray wolf. Such taking is to be reported within 24 hours to a Service or Service-designated authority. Take that does not conform with such provisions may be referred to the appropriate authorities for prosecution.

(ix) Service or other Federal, State, or tribal personnel may receive written authorization from the Service to take animals under special circumstances. Wolves may be live captured and translocated to resolve demonstrated conflicts with ungulate populations or with other species listed under the Act, or when they are found outside of the designated experimental population area. Take procedures in such instances would involve live capture and release to a remote area, or placement in a captive facility, if the animal is clearly unfit to remain in the wild. Killing of wolves will be a last resort and is only authorized when live capture attempts have failed or there is clear endangerment to human life.

(x) Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild in the experimental population area, pursuant to terms of the permit.

(xi) Any employee or agent of the Service or appropriate Federal, State, or tribal agency, who is designated in writing for such purposes by the Service when acting in the course of official duties, may take a wolf from the wild within the experimental population area, if such action is for:

(A) Scientific purposes;

(B) To relocate wolves to avoid conflict with human activities;

(C) To relocate wolves within the experimental population areas to improve wolf survival and recovery prospects;

(D) To relocate wolves that have moved outside the experimental population area back into the experimental population area;

(E) To aid or euthanize sick, injured, or orphaned wolves;

(F) To salvage a dead specimen which may be used for scientific study; or

(G) To aid in law enforcement investigations involving wolves.

(xii) Any taking pursuant to this section must be reported immediately (within 24 hours) to the appropriate Service or Service-designated agency, which will determine the disposition of any live or dead specimens.

(4) Human access to areas with facilities where wolves are confined may be restricted at the discretion of Federal, State, and tribal land management agencies. When five or fewer breeding pairs are in an experimental population area, land-use restrictions may also be employed on an as-needed basis, at the discretion of Federal land management and natural resources agencies to control intrusive human disturbance around active wolf den sites. Such temporary restrictions on human access, when five or fewer breeding pairs are established in an experimental population area, may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites and would only apply to public lands or other such lands designated in State and tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed outside of national parks or national wildlife refuges, unless wolf populations fail to maintain positive growth rates toward population recovery levels for 2 consecutive years. If such a situation arose, State and tribal agencies would identify, recommend, and implement corrective management actions within 1 year, possibly including appropriate land-use restrictions to promote growth of the wolf population.

(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (i) of this section or in violation of applicable State or tribal fish and

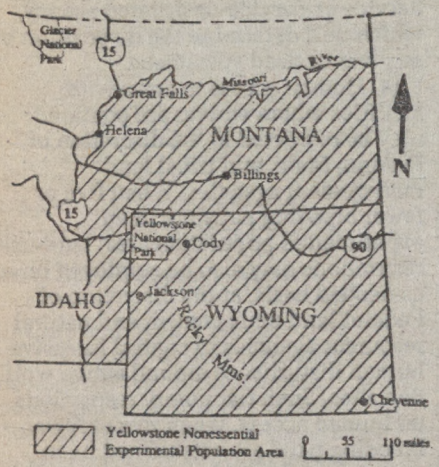
wildlife laws or regulations or the Endangered Species Act.

(6) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this section.

(7) The site for reintroduction is within the historic range of the species:

(i) [Reserved]

(ii) The Yellowstone Management Area is shown on the following map. The boundaries of the nonessential experimental population area will be that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.




(iii) All wolves found in the wild within the boundaries of this paragraph (i)(7) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not likely to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it will be kept in captivity or killed.

(8) The reintroduced wolves will be monitored during the life of the project, including by the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases and parasites prevalent in canids, as appropriate, prior to release and during subsequent handling. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or Service-designated agencies and given appropriate care. Such an animal will be released back into its respective reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(9) The status of the experimental population will be reevaluated within the first 3 years, after the first year of releases of wolves, to determine future management needs and if further reintroductions are required. This review will take into account the reproductive success and movement patterns of the individuals released in the area, as well as the overall health and fate of the experimental wolves. Once recovery goals are met for downlisting or delisting the species, a rule will be proposed to address downlisting or delisting.

(10) The Service does not intend to reevaluate the "nonessential experimental" designation. The Service does not foresee any likely situation which would result in changing the nonessential experimental status until the gray wolf is recovered and delisted in the northern Rocky Mountains according to provisions outlined in the Act. However, if the wolf population does not demonstrate positive growth toward recovery goals for 2 consecutive years, the affected States and tribes, in cooperation with the Service, would, within 1 year, identify and initiate wolf management strategies, including appropriate public review and comment, to ensure continued wolf population growth toward recovery levels. All reintroduced wolves designated as nonessential experimental will be removed from the wild and the experimental status and regulations revoked when (i) legal actions or lawsuits change the wolves status to endangered under the Act or (ii) within 90 days of the initial release date, naturally occurring wolves, consisting of two breeding pairs that for 2 consecutive years have each successfully raised two offspring, are discovered in the experimental population area. The naturally occurring wolves would be managed and protected as endangered species under the Act.

Dated: November 15, 1994.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 94–28746 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–55–P

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**50 CFR Part 17**

**RIN 1018–AC86**

## Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Gray Wolves in Central Idaho and Southwestern Montana

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) will reintroduce the gray wolf (*Canis lupus*), an endangered species, into central Idaho, including a portion of southwestern Montana. These wolves will be classified as a nonessential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended (Act). Gray wolf populations have been extirpated from most of the Western United States. They presently occur in a small population in extreme northwestern Montana, and as incidental occurrences in Idaho, Wyoming, and Washington as a result of wolves dispersing from existing populations in Montana and Canada. The purpose of this reintroduction plan is to reestablish a viable wolf population in central Idaho, one of three wolf recovery areas identified in the Northern Rocky Mountain Wolf Recovery Plan. Potential effects of this final rule were evaluated in an Environmental Impact Statement (EIS) completed in May 1994. This gray wolf reintroduction does not conflict with existing or anticipated Federal agency actions or traditional public uses of park lands, wilderness areas, or surrounding lands.

**EFFECTIVE DATE:** November 18, 1994.

**ADDRESSES:** Comments or other information may be sent to Gray Wolf Reintroduction, U.S. Fish and Wildlife Service, P.O. Box 8017, Helena, Montana 59601. The complete file for this final rule is available for inspection, by appointment, during normal business hours at 100 North Park, Suite 320, Helena, Montana.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward E. Bangs, at the above address, or telephone (406) 449–5202.

**SUPPLEMENTARY INFORMATION:**

**Background**

1. *Legal:* The Endangered Species Act Amendments of 1982, Pub. L. 97–304, made significant changes to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), including the creation of section 10(j), which provides for the designation of specific animals as "experimental." Under previous authorities in the Act, the U.S. Fish and Wildlife Service (Service) was permitted to reintroduce a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts from certain parties concerned about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the utility of reintroduction as a management tool.

Under section 10(j), a listed species reintroduced outside of its current range, but within its historic range, may be designated, at the discretion of the Secretary of the Interior (Secretary), as "experimental." This designation increases the Service's flexibility and discretion in managing reintroduced endangered species because such experimental animals may be treated as a threatened species. The Act requires that animals used to form an experimental population be separated geographically from nonexperimental populations of the same species.

Additional management flexibility is possible if the experimental animals are found to be "nonessential" to the continued existence of the species in question. Nonessential experimental animals located outside national parks or national wildlife refuges are treated, for purposes of section 7 of the Act, as if they were only proposed for listing. Consequently, only two provisions of section 7 would apply to animals located outside of national wildlife refuges and national parks—section 7(a)(1) and section 7(a)(4). Section 7(a)(1) requires all Federal agencies to establish conservation programs for federally listed species. Utilization of Federal public lands, including national parks and national forests, is consistent with the legal responsibility of these agencies to sustain the native wildlife resources of the United States and to use their authorities to further the purposes of the Act by carrying out conservation programs for endangered and threatened species. Section 7(a)(4) requires all Federal agencies to informally confer with the Service on actions that will likely jeopardize the continued existence of species proposed to be listed as threatened or endangered. The results of a conference are advisory in nature, and agencies are not required to refrain from committing resources to projects as a result of a conference. In addition, section 10(j) of the Act states that nonessential experimental animals are not subject to the formal consultation provision of the Act unless they occur on land designated as a national wildlife refuge or national park. Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized, or carried out by a Federal agency.

Specimens used to establish an experimental population may be removed from a source or donor population, provided their removal is not likely to jeopardize the continued existence of the species and appropriate permits have been issued in accordance with 50 CFR 17.22. Gray wolves for the reintroduction will be obtained from healthy Canadian wolf populations with permission from the Canadian and Provincial governments. Gray wolves are common in western Canada (tens of thousands) and Alaska (about 7,000). No adverse biological impact is expected from the removal of about 150 from the Canadian population. Consequently, the Service finds that wolves to be used in the reintroduction effort meet the definition of "nonessential" (50 CFR 17.80(b)) because the loss of the reintroduced wolves is not likely to appreciably reduce the likelihood of survival of the species in the wild.

In 1967, the timber wolf was listed as a subspecies (*Canis lupus lycaon*) as endangered (32 FR 4001), and in 1973 the northern Rocky Mountain subspecies, as then understood, (*C. l. irremotus*) was also listed as endangered, as was the Texas subspecies (*C. l. monstrabilis*) (38 FR 14678). In 1978, the legal status of the gray wolf in North America was clarified by listing the Minnesota wolf population as threatened and other members of the species south of Canada as endangered, without referring to subspecies (43 FR 9607).

2. *Biological:* This final rule deals with the gray wolf (*Canis lupus*), an endangered species of carnivore that was extirpated from the western portion of the conterminous United States by about 1930. The gray wolf is native to most of North America north of Mexico City, except for the southeastern United States, where a similar species, the red wolf (*Canis rufus*), was present. The gray wolf occupied nearly every area in North America that supported populations of hoofed mammals (ungulates), its major food source.

Twenty-four distinct subspecies of gray wolf had been recognized in North America. Recently, however, taxonomists have suggested that there are five or fewer subspecies or group types of gray wolf in North America and that the wolf type that once occupied the northern Rocky Mountains of the United States was more widely distributed than was previously believed.

The gray wolf occurred historically in the northern Rocky Mountains, including mountainous portions of Wyoming, Montana, and Idaho. The drastic reduction in the distribution and abundance of this species in North America was directly related to human activities, such as the elimination of native ungulates, conversion of wildland into agricultural lands, and extensive predator control efforts by private, State, and Federal agencies. The natural history of wolves and their ecological role was poorly understood during the period of their eradication in the conterminous United States. As with other large predators, wolves were considered a nuisance and threat to humans. Today, the gray wolf's role as an important and necessary part of natural ecosystems is better understood and appreciated.

For 50 years prior to 1986, no detection of wolf reproduction was found in the Rocky Mountain portion of the United States. However in 1986, a wolf den was discovered near the Canadian border in Glacier National Park. This find was presumably due to the southern expansion of the Canadian wolf population. The Glacier National Park wolf population has steadily grown to about 65 wolves and now exists throughout northwestern Montana.

Reproducing wolf populations are not known to occur in Idaho or southwestern Montana. Wolves have occasionally been sighted in these States, but do not constitute a population as defined by scientific experts (Service 1994). Historical reports suggest that wolves may have produced young in these States; however, based on extensive surveys and interagency monitoring efforts

(Service 1994), no wolf population presently persists in these States.

3. *Wolf Recovery Efforts:* In the 1970's, the State of Montana led an interagency recovery team, established by the Service, that developed a recovery plan for the Northern Rocky Mountain gray wolf. The 1980 recovery plan recommended a combination of natural recovery and reintroduction be used to recover wolves in the area around Yellowstone National Park (the Park) north to the Canadian border, including central Idaho.

A revised recovery plan was approved by the Service in 1987 (Service 1987). It identified a recovered wolf population as being at least 10 breeding pairs of wolves, for 3 consecutive years, in each of 3 recovery areas (northwestern Montana, central Idaho, and Yellowstone). A population of this size would be comprised of about 300 wolves. The plan recommended natural recovery in Montana and Idaho. However, if two wolf packs did not become established in central Idaho within 5 years, the plan recommended that conservation measures other than natural recovery be considered. The plan recommended use of the Act's section 10(j) authority to reintroduce wolves into the Park and central Idaho. By establishing a nonessential experimental population, more liberal management practices may be implemented to address potential negative impacts or concerns regarding the reintroduction.

In 1990, Congress directed appointment of a Wolf Management Committee, composed of three Federal, three State, and four interest group representatives, to develop a plan for wolf restoration in the Park and central Idaho (Pub. L. 101–512). That committee provided a majority, but not unanimous, recommendation to Congress in May 1991. Among the measures recommended was a declaration by Congress directing reintroduction of wolves in the Park, and possibly central Idaho, as special nonessential experimental populations with flexible management practices by agencies and the public to resolve potential conflicts. Wolves and ungulates would be intensively managed by the States with Federal funding; thus, implementation was expected to be costly. Congress took no action on the committee's recommendation which would have required an amendment to the Act.

In November 1991 (Pub. L. 102–154), Congress directed the Service, in consultation with the National Park Service and Forest Service, to prepare an Environmental Impact Statement (EIS) to consider a broad range of alternatives on wolf reintroduction in Yellowstone National Park and central Idaho. In 1992 (Pub. L. 102–381), Congress directed the Service to complete the EIS by January 1994 and indicated the preferred alternative should be consistent with existing law.

The Service formed and funded an interagency team to prepare the EIS. The team participants were the National Park Service; Forest Service; States of Wyoming, Idaho, and Montana; USDA Animal Damage Control; and Wind River and Nez Perce Tribes. The Gray Wolf EIS program emphasized public participation. In the spring of 1992, the news media and nearly 2,500 groups/individuals interested in wolves were contacted to publicize the EIS process.

In April 1992, a series of 27 "issue scoping" open houses were held in Montana, Wyoming, and Idaho, as well as 7 other locations throughout the United States. The meetings were attended by nearly 1,800 people, and thousands of brochures were distributed. In total, nearly 4,000 people gave comments on EIS issues. In July 1992, a report narrating the public comments was mailed to 16,000 people.

In August 1992, 27 additional "alternative scoping" open houses and 3 additional hearings were held in Wyoming, Montana, and Idaho. Hearings were also held in Seattle, Washington; Salt Lake City, Utah; and Washington, DC. Two major newspapers with circulation in Montana, Wyoming, and Idaho (total circulation about 250,000) distributed a copy of the alternative scoping brochure in the Sunday edition. Nearly 2,000 people attended the meetings, and nearly 5,000 comments were received on methods for managing reintroduced wolves. Public comments typified the strong polarization of concerns regarding wolf management. A report on the public's ideas and suggestions was mailed to about 30,000 people in November 1992. In April 1993, a Gray Wolf EIS planning update report was published. It discussed the status of the EIS, provided factual information on wolves, and requested the public to report wolf observations in the northern Rocky Mountains. It was mailed to nearly 40,000 interested individuals residing in all 50 States and over 40 foreign countries.

The public comment period on the draft EIS (DEIS) began on July 1, 1993, and the notice of availability was published on July 16. The DEIS documents were mailed to potentially affected agencies, public libraries, interested groups, and anyone who requested a copy. Additionally, a flyer containing the DEIS summary, a schedule of the 16 public hearings, and a request to report wolf sightings was inserted into the Sunday edition of 6 newspapers (combined circulation of about 280,000) in Wyoming, Montana, and Idaho. In mid-June 1993, the Service mailed a letter to over 300 groups, primarily in Wyoming, Montana, and Idaho, offering a presentation on the DEIS. This resulted in 31 presentations to about 1,000 people during the comment period.

During the DEIS public review period (July 1 to November 26, 1993) over 160,200 individuals, organizations, and government agencies commented. The magnitude of the response shows the strong interest people have in wolf management. In early March 1994, a summary of the public comments was mailed to about 42,000 people on the EIS mailing list.

The final EIS was filed with the Environmental Protection Agency on May 4, 1994, and the notice of availability was published on May 9, 1994. The EIS considered five alternatives (1) Reintroduction of Experimental Wolves (2) Natural Recovery (No action), (3) No Wolves, (4) Wolf Management Committee Recommendations, and (5) Reintroduction of Nonexperimental Wolves. After careful review, the Service's proposed action was to reintroduce gray wolves designated as nonessential experimental into the Park and central Idaho.

The Secretary signed the EIS Record of Decision on June 15, 1994. A letter of concurrence was signed by the Secretary of Agriculture on July 13, 1994. The decision directed the Service to implement its proposed action plan as soon as practical.

Two nonessential experimental population proposed rules, one for the Park and one for central Idaho, were published in the **Federal Register** on August 16, 1994 (59 FR 42108 and 59 FR 42118, respectively). On September 6, 1994, a brochure containing the Record of Decision, proposed rules, and schedule of public hearings was mailed to about 50,000 people. From September 14–22, 1994, a legal notice announcing the proposed rules, hearings, and inviting public comment was published in the Seattle Post-Intelligencer, Olympia Olympian, New Paper Agency (Salt Lake City Papers), Washington Times, Lewiston Morning Tribune, The Idaho Statesman, Wyoming Tribune, Casper Star Tribune, Bozeman Daily Chronicle, and Billings Gazette.

The Service held six public hearings on the proposed rules. Notice of the availability of the Record of Decision,

public hearings, and proposed rules was published in the **Federal Register** on September 14, 1994 (59 FR 47112). Copies of the proposed rules were distributed to all interested parties. Public hearings were held on September 27, 1994, in Boise, Idaho; Cheyenne, Wyoming; and Helena, Montana, and on September 29, 1994, in Salt Lake City, Utah; Washington, DC; and Seattle, Washington. About 90 people testified at these hearings and about 330 people submitted written comments. Comments on the proposed rules were accepted until October 17, 1994.

In Montana, the Service has an active wolf management program due to the presence of breeding pairs of wolves. The Service's program monitors wolves to determine their status, encourages research, provides the public with accurate information, and controls wolves that attack domestic livestock. Wolves that depredate on livestock are translocated or removed. Such action is required to reduce livestock losses, to foster local tolerance, and promote and enhance conservation of wolves. The relocation of wolves under the control program is not intended to accelerate the natural expansion of wolves into unoccupied historic habitat. Although 19 wolves have been removed under the control program, the number of wolves has continued to expand in Montana at about 22 percent per year for the past 9 years.

4. *Reintroduction Site:* The Service decided to reintroduce wolves into central Idaho on or near Federal lands managed by the USDA Forest Service. The Idaho location was selected as a site for experimental wolves because of the following factors. The central Idaho site is a vast area of about 53,000 km² (20,000 mi²) of contiguous National forests, including the Bitteroot, Boise, Challis, Clearwater, Nez Perce, Payette, Sawtooth, Salmon, and Panhandle National Forests. The central area is comprised of three wilderness areas: the Frank Church River-of-no-Return, Selway Bitteroot, and Gospel-Hump. These wilderness areas have about 16,000 km² (6,000 mi²) of quality wolf habitat and several good potential release sites. The area is also far from the natural southern expansion of wolf packs from Montana. Thus, any wolves documented inside the central Idaho experimental area would probably be from reintroduction efforts rather than naturally dispersing extant wolf populations from Canada or northwestern Montana. The Service will also reintroduce wolves into Yellowstone National Park as a nonessential experimental population published under a separate rule in the **Federal Register**.

The Service determined that reintroduction of wolves into central Idaho had the highest probability to succeed due to ecological and political considerations (Service 1994). The reintroduction effort will enhance wolf viability by increasing genetic diversity through genetic interchange between segments of the population. The reintroduction plan should help in achieving wolf recovery goals 20 years sooner than under current natural recovery policy.

Because reintroduced gray wolves will be classified as a nonessential experimental population, the Service's management practices can reduce local concerns about excessive government regulation on private lands, uncontrolled livestock depredations, excessive big game predation, and the lack of State government involvement in the program.

Establishment of gray wolves in central Idaho will initiate wolf recovery in one of the three recovery areas described as necessary for the species' recovery in the northern Rocky Mountains. No existing or anticipated Federal or State actions identified for this release site are expected to have major effects on the experimental population. Yellowstone National Park is identified as the only other alternative site; it will also receive wolves for reintroduction, which will facilitate recovery in that experimental area.

5. *Reintroduction Protocol:* The wolf reintroduction project is undertaken by the Service in cooperation with the National Park Service, Forest Service, other Federal agencies, potentially affected tribes, the States of Idaho and Montana, and entities of the Canadian government. To obtain wolves, the Service will enter into formal agreements with the Canadian and Provincial governments and/or resource management agencies.

The central Idaho reintroduction plan requires transferring 45 to 75 wolves from southwestern Canada, representing various sex and age classes, over a 3- to 5-year period. Under the plan, about 15 wild wolves from several different packs using standard capture techniques will be captured annually over a period of 3 to 5 years. Captured wolves will be transported to central Idaho. The wolves will receive any necessary veterinary care, including examinations and vaccinations. They will be fitted with radio collars so that they can be monitored by radiotelemetry. The wolves will be immediately released into the wild. This method is known as "quick release," (i.e., the wolves will be released upon or shortly after transport and arrival at the release site). "Quick release" wolves will not be held for acclimation nor will food or care be provided after release. It is anticipated that released wolves will move widely but eventually will find mates and form packs.

In general, attempts to locate and/or move lone wolves dispersing throughout central Idaho will not be done. However, wolves may be moved on a case-by-case basis, if necessary to enhance wolf recovery in the experimental area. Reintroduced wolves will remain in the wild, as long as they are capable of sustaining themselves on carrion or wild prey. Conflicts between wolves and humans may result in the recapture and/or removal of a wolf in accordance with procedures successfully used with other problem wolves.

An overall assessment of the success of the reintroduction will be made after the first year and for every year thereafter. Procedures for subsequent releases could be modified, if information from the previous reintroduction warrants such changes. The physical reintroduction phase should be completed within 3–5 years. Once the reintroduced wolves form two packs with each pack raising two pups, for 2 consecutive years, management practices would allow the wolves to grow naturally toward recovery levels. Wolves would only be monitored, and no further reintroduction would take place unless fewer than two litters were produced in a single year. This reintroduction effort is consistent with the recovery goals identified in the 1987 recovery plan for the northern Rocky Mountain Wolf.

It is estimated that the central Idaho reintroduction effort, together with a similar effort in the Park and the natural recovery occurring in northwestern Montana, could result in a viable recovered wolf population (10 breeding pairs in each of 3 recovery areas for 3 consecutive years) by the year 2002.

The Service will continue to ask private landowners and agency personnel in or around central Idaho to immediately report any wolf observations to the Service or other authorized agencies. An extensive information and education program will discourage the taking of gray wolves by the public. Initially, all wolves will be monitored by radio telemetry and, therefore, easy to locate if necessary. Public cooperation with the Service will be encouraged to ensure close monitoring of the wolves and quick resolution of any conflicts that might arise.

Specific information on wolf reintroduction procedures can be found in Appendix 4, "Scientific techniques for the reintroduction of wild wolves," in the EIS, "The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho" (Service 1994).

**Status of Reintroduced Populations**

In accordance with section 10(j) of the Act, wolves reintroduced into central Idaho are designated as a nonessential experimental. Such designation allows the wolves to be treated as a threatened species or species proposed for listing for the purposes of sections 4(d), 7, and 9 of the Act. This allows the Service to establish a less restrictive special rule rather than using the mandatory prohibitions covering endangered species. The biological status of the wolf and the need for management flexibility resulted in the Service designating the gray wolves reintroduced into central Idaho as "nonessential." The Service determined that the "nonessential" designation, together with other protective measures, will conserve and recover the gray wolf in central Idaho and southwestern Montana.

It is anticipated that released wolves will come into contact with humans and domestic animals inside and outside the central Idaho experimental population area. Public opinion surveys, public comments on wolf management planning, and the positions taken by elected local, State, and Federal government officials indicate that wolves should not be reintroduced without assurances that current uses of public and private lands will not be disrupted by wolf recovery activities. The following provisions respond to these concerns. There would be no violation of the Act for unintentional, nonnegligent, and accidental taking of wolves by the public, provided the take was incidental to otherwise lawful activities, did not result from negligent conduct lacking reasonable due care or was in defense of human life. Such wolf takings would need to be reported to the Service or other authorized agency within 24 hours. The Service may designate certain Federal, State, and/or tribal employees to take wolves that required special care or pose a threat to livestock or property. Private land owners or their designates would be permitted to harass wolves in an opportunistic noninjurious manner on their leases or private property, provided such harassment was reported within 7 days to the Service or other authorized agency.

Under the "nonessential" designation, private landowners or their designates would be permitted to take (injure or kill) a wolf in the act of wounding or killing livestock on private land. However, physical evidence (wounded or dead livestock) of such an attack would be required to document that the attack occurred simultaneously with the taking. A report of such a take would need to be immediately (within 24 hours) reported to the Service or other authorized agency for investigation. Once six or more breeding pairs are established in the experimental population area, livestock owners or their designates could receive a permit from a Service-designated agency to take (injure or kill) gray wolves that are attacking livestock on permitted public livestock grazing allotments. Such a take would be permitted only after due notification to Service designated agencies and unsuccessful capture efforts.

Wolves that repeatedly (two times in a calendar year) attacked domestic animals other than livestock (fowl, swine, goats, etc.) or pets (dogs or cats) on private land would be designated as problem wolves and relocated from the area by the Service or a designated agency. After one relocation, wolves that continued to depredate on domestic animals would be considered chronic problem wolves and would be removed from the wild.

It is unlikely that wolf predation on big game populations would be a primary cause for failure of the States or tribes to meet their specific big game management objectives outside of the national parks and national wildlife refuges. The Service could, however, determine that wolves responsible for excessive depredation should be translocated to other sites in the experimental area. Such actions are expected to be rare and unlikely to impact the overall recovery rate. States and tribes would need to define such situations in their Service-approved wolf management plans before such actions could be taken. Under the nonessential designation, wolves could not be deliberately killed solely to resolve predation conflicts with big game.

The States of Montana and Idaho and potentially affected tribes will be encouraged to enter into cooperative agreements for management of the gray wolf outside of national parks and national wildlife refuges. These cooperative agreements would be reviewed annually by the Service to ensure that the States and tribes have adequate regulatory authority to conserve listed species, including the gray wolf. The National Park Service will be the primary agency implementing the experimental population rule inside the boundaries of national parks, while the States and tribes will be the primary agencies implementing this experimental population rule outside national parks and national wildlife refuges after their wolf management plans are approved by the Service. The Service will provide oversight, coordinate wolf recovery activities, and provide technical assistance. If the States and tribes do not assume wolf management responsibilities or adhere to provisions of their wolf management plans, the Service would assume management authority. If for unforeseen reasons the wolf population failed to sustain positive growth toward recovery levels for 2 consecutive years, the influencing factors would be identified. The Service and affected States and tribes would be responsible for determining if any management strategies need modification. The Service in coordination with the States and tribes would implement those strategies to ensure wolf population recovery.

The Service finds that protective measures and management practices under this rulemaking are necessary and advisable for the conservation and recovery of the gray wolf and that no additional Federal regulations are required. The Service also finds that the nonessential experimental status is appropriate for gray wolves taken from wild populations and released into central Idaho. The nonessential status for such wolves allows for additional management flexibility. Nonessential experimental populations located outside of a national park or national wildlife refuge are treated for purposes of section 7 of the Act as if they were only proposed for listing, and not listed. Only section 7(a)(1) and section 7(a)(4) apply to Federal actions outside national parks and national wildlife refuges. Presently, there are no conflicts envisioned with any current or anticipated management actions of the Forest Service or other Federal agencies in the area. The national forests are beneficial to the reintroduction effort in that they form a natural buffer to private properties and are typically managed to produce wild animals that wolves could prey upon. The Service finds that the less restrictive section 7 requirements associated with the nonessential designation do not pose a threat to the recovery effort and continued existence of the gray wolf.

The full provisions of section 7 apply to nonessential experimental populations in a national park or national wildlife refuge. Consequently, the Service, National Park Service, Forest Service, or any other Federal

agency is prohibited from authorizing, funding, or carrying out an action within a national park or national wildlife refuge that is likely to jeopardize the continued existence of the gray wolf. Pursuant to 50 CFR 17.83(b), section 7 determinations must consider all experimental and nonexperimental wolves as a listed species for analysis purposes in national parks and wildlife refuges. The Service has reviewed all ongoing and proposed uses of the parks and refuges and determined that none are likely to jeopardize the continued existence of the gray wolf, nor will they adversely affect the success of the reintroduction program.

Most of the reintroduction area is remote and sparsely inhabited wild lands. However, there are some risks to wolf recovery associated with take of wolves in regard to other land uses and various recreational activities. Potential threats are hunting, trapping, animal damage control activities, and high speed vehicular traffic. Hunting, trapping, and USDA Animal Damage Control programs are prohibited or strictly regulated in national parks, as well as closely regulated by State and Federal law and policy. There are very few paved or unpaved roads in the proposed reintroduction area or immediately outside of it. The unpaved roads typically have low vehicle traffic, are constructed for low speeds and used only seasonally. Thus, wolves should encounter vehicles infrequently. In accordance with existing labeling, the use of toxicants lethal to wolves in areas occupied by wolves is prohibited. Overall, the possible risks and threats that could impact the success of the reintroduction effort are thought to be minimal.

### Location of Experimental Population

The release site for reintroducing wolves into central Idaho will be on or near National Forest lands. The experimental population area includes that portion of Idaho west of Interstate 15 and south of Interstate 90, and that part of Montana south of Interstate 90, Highway 93 and 12 near Missoula, Montana, and west of Interstate 15.

### Management

The experimental population area currently does not support any reproducing pairs of wolves. It is also unlikely that wolves from the natural southern expansion from northwestern Montana have arrived in central Idaho. Except for the gray wolves in northwestern Montana, only an occasional, isolated wolf has been reported, killed, or otherwise documented in Idaho, Wyoming, Montana, or other Western States. Single packs have been reported throughout the northern Rocky Mountains. However, these reported wolves or groups of wolves, if factual, apparently disappeared for unknown reasons and did not establish recoverable "populations" as defined by wolf experts. A wolf population is defined as at least two breeding pairs of gray wolves that each successfully raise at least two young to December 31 of their birth year for 2 consecutive years (Service 1994). Thus, the Service has determined that the central Idaho reintroduction is consistent with provisions of section 10(j) of the Act; specifically, that experimental wolves must be geographically separate from other nonexperimental populations. It is possible that prior to 2002, other wolves may appear in the wild and be attracted to the experimental population area by the reintroduced wolves or by other factors. Any "new" arrivals would be classified as part of the experimental population. Such wolves could assist in the recovery and expansion of the experimental population to the point where wolves could disperse into other parts of Idaho and Montana.

Wolves dispersing into areas in Idaho or Montana outside of the experimental area, would receive all the protections of an endangered species under the Act, as did the wolves that recolonized an area near Glacier National Park in 1982. It is possible, but not probable, that during the next 3 years wolves could move between recovery areas and enhance the genetic diversity between natural recovery areas and reintroduction sites. However, it is not anticipated that such exchange will significantly alter the recovery rate in the experimental population area.

Although the Service determined that there is no existing wolf population in the recovery area that would preclude reintroduction and establishment of an experimental population in Idaho, the Service will continue to monitor for the presence of any wild wolves. Prior to any reintroduction, the Service would evaluate the status of any wolves found in the experimental population area. If a wolf population is discovered in the proposed experimental area, no reintroduction of wolves would occur. Instead, the success of the naturally occurring wolf population would be monitored to determine if recovery was continuing. If a natural wolf population is located in the experimental area prior to the effective date of the final rule, then the final rule would not be implemented and there would be no reintroduction program. Wolves naturally occurring would be classified as endangered and managed with full protection under the Act. If the natural wolf population failed to maintain positive growth for 2 consecutive years, then the reintroduction effort could proceed or other recovery measures could be taken. After reintroduction is completed, according to the Reintroduction Protocol (section 5 above), management of the experimental population will begin.

Once the rule is in effect and wolves have been released into the recovery area, the rule would remain in effect until wolf recovery occurs or a scientific review indicates that modifications in the experimental rule are necessary to achieve wolf recovery.

If a wolf population is discovered in the central Idaho experimental population area after the effective date of the experimental population rule but before release, reintroduction under the rule would not occur in that area and any such wolves would be managed as a natural recovering population. Boundaries of the proposed experimental population area would be changed, as needed, to encourage recovery of the naturally occurring, breeding wolf population. No experimental population area would contain a portion of the home range of any active breeding pairs of wolves that have successfully raised young, prior to the establishment of the experimental population areas.

Management of the nonessential experimental population would allow reintroduced wolves to be killed or moved by Service-authorized Federal, State, and tribal agencies for domestic animal depredations and excessive predation on big game populations. Under special conditions, the public could harass or kill wolves attacking livestock (cattle, sheep, horses, and mules). There would be no Federal compensation program, but compensation from existing private funding sources would be encouraged. When six or more wolf packs are documented in the experimental population area outside of the national parks and national wildlife refuges, there would be no land-use restrictions, including areas around den sites or other critical areas.

Wolves have a relatively high reproductive rate. Projected recruitment would off-set the anticipated 10 percent mortality resulting from management control actions. An additional 10 percent loss could occur from other mortality sources. Once reintroduced wolves reach the goal of six wolf packs, the reproductive output of the packs would provide a population increase at

or near 22 percent per year. Closely regulated public control (taking of depredating wolves) would effectively focus on only individual problem wolves. Agency control actions would more likely target groups of wolves containing problem individuals.

The Service, and States or tribes as authorized, could move wolves that are negatively impacting ungulate populations. Such wolves would be moved to other places within the experimental population area. Two examples when this would occur are: (1) when wolf predation is dramatically affecting prey availability because of unusual habitat or weather conditions (e.g., bighorn sheep in areas with marginal escape habitat); and (2) when wolves cause prey to move onto private property and mix with livestock, increasing potential conflicts. The States and tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or tribal management plans which are to be approved by the Service through cooperative agreement before such control actions are conducted. Wolves will not be deliberately killed solely to address ungulate-wolf conflicts. Control actions by the States or tribes likely to be significant or beyond the provisions of the experimental rule as determined by the Service would have to be specifically incorporated into an amendment of this experimental rule and subject to national public comment and review.

Management of wolves in the experimental population would not cause major changes to existing private or public land-use restrictions (except at containment facilities during reintroduction) after six breeding pairs of wolves are established in this experimental population area. When five or fewer breeding pairs are in the experimental population area, land-use restrictions could be used as needed, and at the discretion of land management and natural resources agencies to control intrusive human disturbance on public lands. Their implementation would be at the discretion of land management and natural resource agencies. Before five or fewer breeding wolf pairs are established, temporary restrictions on human access near active wolf den sites may be required between April 1 and June 30. Any restrictions on private land would only occur with complete landowner cooperation and concurrence.

The Service and Federal, State, or tribal agencies authorized by the Service, could promptly remove any wolf from the experimental population once the Service, or its authorized agencies, has determined it was presenting a threat to human life or safety. Although not a management option *per se*, it is noted that a person could legally kill or injure wolves in response to an immediate threat to human life. The incidental, unavoidable, unintentional, and accidental take in the course of otherwise lawful activity, or in defense of human life, would be permitted by the Service and its authorized agencies, provided that such taking was not resulting from negligent conduct lacking reasonable due care, due care was exercised to avoid taking a wolf, and the taking was immediately (within 24 hours) reported to the appropriate authorities. Shooters have the responsibility to identify their target before shooting. The act of taking a wolf that is wrongly identified as another species, for purposes of this rule, will be considered as intentional, negligent, and not accidental. Such a take may be referred to the appropriate authorities for prosecution.

The Service, and other Federal, State, or tribal agencies after they have been designated by the Service, may control wolves that attack livestock (cattle, sheep, horses, and mules) by aversive conditioning, nonlethal control, and/or moving wolves when five or fewer breeding pairs are established, or by other previously described measures. Killing wolves or placing them in captivity may only be considered when there are six or more breeding pairs established in the experimental population area. When depredation occurs on public land and prior to the establishment of six breeding pairs, depredating females and their pups would be captured and released at or near the site of capture, one time prior to October 1. If depredations continue, or if six packs are present, females and their pups would be removed. Wolves on private land under these same circumstances would be moved. Wolves that attack other domestic animals or pets on private land; twice in a calendar year would be moved, and chronic problem wolves would be removed from the wild.

The Service, other Federal agencies, and State or tribal wildlife personnel would be authorized and trained to take wolves under special circumstances. Wolves could be live-captured and translocated to resolve conflicts with State or tribal big-game management objectives, when they are located outside of the experimental areas, or to enhance wolf recovery. If the captured animal is clearly unfit to remain in the wild, it could be placed in a captive facility. Killing of any wolves would be a last resort and only authorized when live capture attempts fail or there is some clear danger to human life.

The Service and authorized agencies of the Service would use the following conditions and criteria to determine the status of problem wolves within the nonessential experimental population area:

(1) Wounded livestock or the partial remains of a livestock carcass must be presented with clear evidence (Roy and Dorrance 1976; Fritts 1982) that the livestock injury or death was directly caused by a wolf or wolves. Such evidence is essential for justifying any control action because wolves may feed on carrion they did not kill. Additionally, there must be an indication that additional livestock losses may occur if the problem wolf or wolves are not controlled.

(2) No evidence of artificial or intentional feeding of wolves can be present. Improperly disposed livestock carcasses located in the area of depredation will be considered attractants. On Federal lands, removal or a decision on the use of such attractants must accompany any control action. If livestock carrion or carcasses are not being used as bait for an authorized control action on Federal lands, it must be removed or otherwise disposed of so that they do not attract wolves.

(3) On Federal lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

Federal responsibility for protecting gray wolves under the experimental population provisions of the Act would continue until formal delisting rulemaking procedures are completed. In accordance with the Act, delisting may occur when analysis of the best available scientific and commercial information shows that gray wolves are no longer threatened with extinction due to: (1) loss of habitat, (2) overutilization, (3) disease or predation, (4) inadequacy of existing regulatory mechanisms, and (5) other natural or manmade factors. In addition to the above, the following criteria must be met: (1) for 3 consecutive years, a minimum of 10 breeding pairs are documented in each of the 3 recovery areas described in the revised wolf recovery plan (Service 1987); (2) protective legal mechanisms are in place; and (3) the EIS evaluation has been completed (Service 1994). After delisting, the Act specifies a species population must be monitored for a 5-

year period. After delisting, if in any 1 of the 3 recovery areas the wolf population fell below the minimum of 10 breeding pairs for 2 consecutive years, then wolves in that recovery area would be considered for protective status under the Act.

All reintroduced wolves designated as nonessential experimental will be removed from the wild and the experimental population status and regulations revoked when (1) legal actions or lawsuits change the wolves status to endangered under the Act or (2) within 90 days of the initial release date, naturally occurring wolves, consisting of two breeding pairs that for 2 consecutive years have each successfully raised two offspring, are discovered in the experimental population area. The naturally occurring wolves would be managed and protected as endangered species under the Act.

**Summary of Comments and Recommendations**

Two proposed nonessential experimental population rules for the areas of Yellowstone National Park and central Idaho were published in the **Federal Register** on August 16, 1994 (59 FR 42108 and 59 FR 42118, respectively) (Service 1994a). The Record of Decision, notification of the proposed rules, and tentative schedule for public hearings were mailed to nearly 50,000 people on September 6, 1994. All interested parties were requested to submit factual reports or information that might contribute to the development of the final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A legal notice announcing the proposed rules, hearings, and inviting public comment were published in the Seattle Post-Intelligencer, Olympia Olympian, New Paper Agency (Salt Lake City Papers), Washington Times, Lewiston Morning Tribune, The Idaho Statesman, Wyoming Tribune, Casper Star Tribune, Bozeman Daily Chronicle, and Billings Gazette beginning on September 14, 1994.

The Service held six public hearings on the proposed rules. A notification of the hearings and availability of the Record of Decision and proposed rules was published in the **Federal Register** on September 14, 1994 (59 FR 47112). Copies of the proposed rules were distributed to all interested parties. Public hearings were held on September 27, 1994, in Boise, Idaho; Cheyenne, Wyoming; and Helena, Montana; and on September 29, 1994, in Salt Lake City, Utah; Washington, DC; and Seattle, Washington. About 90 people testified at these hearings and about 330 people submitted written comments. Comment on the proposed rules was accepted until October 17, 1994.

A total of 426 written and oral responses, representing 621 signatures, were received during the proposed rule 34-day comment period. Several letters, including letters from the Governor of the State of Wyoming and the Colorado Wool Growers Association, were received after comment period closed. However, these letters were reviewed and considered. From October 17 to 24, 1994, a specialized interagency team analyzed the public comments. After October 31, 1994, the team's report was distributed to agency cooperators and to anyone requesting it (Service 1994c). In addition to the public comments, three Notices of Intent to Sue were received. The Service has completed its review and consideration of all written and oral comments. All of the issues raised by the public on the proposed rules were previously identified and addressed in the final EIS: The Reintroduction of Gray wolves to Yellowstone National Park and central Idaho. Analysis of the comments revealed 25 issues which are identified and are discussed below.

*Changes in final rule as a result of public comment:* The following minor changes and clarifications were made to the final rule or to discussions of the final rule based on public comments on the proposed rule. These individual or cumulative changes do not alter the predicted impact or effect of the final rule.

1. Several conditions on when wolves may be harassed or taken were removed from the final rule. The following conditions are not part of the final rule—(1) distinction between adult wolves and pups and (2) harassment may only occur for 15 minutes.

2. In the discussion of the final rule, it was clarified that after a private individual takes a depredating wolf, no additional agency actions will be conducted to control problem wolves in an area, unless more livestock depredations occur. This assumes that the problem wolf was killed, and therefore, no other control actions are required.

3. Several terms in the final rule were clarified and defined, including "opportunistic noninjurious harassment," "unintentional take," "disposal of livestock carrion," issuance criteria for a wolf take permit to a grazing lessee on public lands, and criteria for resolving wolf/ungulate conflicts.

4. A termination clause was added to the final rule. The clause clarifies the Service's role and responsibilities regarding the establishment of an experimental population.

5. Three years following the initial reintroduction of wolves, a thorough review will be conducted. The review will determine if further reintroductions are required and if, to date, the management program has been successful. A provision to the rule was added that if the reintroduction and management practices under the experimental population rule did not result in wolf recovery, the Service would take appropriate actions. Such actions would be caused by the failure of the wolf population to maintain positive growth for 2 consecutive years. All corrective actions would be coordinated with affected States, tribes, and other Federal agencies.

6. Language regarding scientific or technical decisions in discussion of the rule was changed. Design study and reintroduction techniques may be changed or modified when expert and skilled biologists determine such changes are necessary and prudent.

A list of relevant issues based on public comments and the Service's response to those issues follows.

*Issue 1:* The subspecies of wolf that occupied the Yellowstone area was *Canis lupus irremotus*. The reintroduction program will use wolves from Canada which were once classified as a different subspecies; therefore, this violates the experimental population provision of the Act.

*Service Response:* In recent times, there have been several revisions to the taxonomic classification of wolves in North America. Several scientific investigations have dealt with this issue (Brewster and Fritts 1994, Nowak 1994, Wayne et al. 1994). These investigations concluded (1) there were fewer wolf subspecies than previously believed, (2) *irremotus* was not a distinct subspecies, and (3) that wolves might be better classified as types or representative groups of geographic or climatic conditions rather than distinct subspecies. The northern Rocky Mountains are within the historic range of *Canis lupus*. Investigators concluded that reintroduction of wolves from Canada to the Park or central Idaho would accelerate the ongoing natural southern expansion of the species. Additionally, it was determined that current taxonomic discussions of wolf subspecies should not affect wolf recovery efforts in the northern Rocky Mountains of the United States.

*Issue 2:* The amendment to section 10(j) of the Act states that experimental

populations may only be designated when there is geographical separation between the experimental population and other existing populations of the species. The occasional occurrence of lone wolves in the areas of central Idaho and the Park would prohibit the use of the experimental population designation since there would be no geographic separation between natural occurring and experimental wolves. Comments also stated that the boundaries of the experimental areas should be adjusted or the reintroduction program should be delayed, particularly, in central Idaho due to the presence of naturally occurring wolves.

*Service Response:* For many years, the Service and other agencies have tried to document wolf activity in Montana, Idaho, and Wyoming (Service 1994a, Appendix 12). Since the 1970's, wolf observations particularly from Montana, Wyoming, and Idaho, have been reported. However, to date the only documented breeding groups of wolves are in northwestern Montana. Based on scientific inquiry, the Service defines a wolf population as at least two breeding pairs of wild wolves each successfully raising at least two young each year, for 2 consecutive years, and that a population is composed of breeding groups of wolves (Service 1994a, Appendix 9). Presently, there are no known breeding pairs of wolves within the experimental population area. Nor does the experimental area contain any portions of home ranges of any breeding pairs of wolves. The Service finds that there is no geographic overlap between any Montana wolf population home range and the experimental area. The northern boundary of the Idaho experimental population area was moved further south because, in 1990 and 1992, there were a few instances when an active breeding group of wolves from Montana were located south of the experimental boundary recommended in the proposed rule. The rulemaking language now allows revocation of the experimental population rule and removal of all reintroduced wolves, if within 90 days after the initial reintroduction a naturally occurring wolf population is discovered in the experimental area. Any naturally occurring wolves will be managed as endangered species under the Act and afforded the same terms and conditions as wolves in Montana. The Service has had a wolf monitoring program in place in Idaho, Montana and Wyoming for over two years. This system is designed to accept reports from anyone, and when a report focuses on a particular area a wolf biologist investigates to verify the presence or absence of wolves. Through this method the Service has identified newly formed packs in northwest Montana. Within the experimental area, there has been no confirmation of wolves from any provided reports.

*Issue 3:* The experimental population rules did not utilize the best scientific and commercial data available to reach decisions, as required by the Act.

*Service Response:* The Service contends that this rule and the Secretary's decision to reintroduce wolves used the best scientific data available and underwent peer review and scientific analysis. The EIS on the impacts of this rule includes several appendices and a list of persons who contributed their expert opinions or relevant data to the decisionmaking process (Service 1994a). Professional wildlife biologists and scientific organizations complimented the Service on the depth and detail of its scientific investigation in regards to the reintroduction of wolves.

*Issue 4:* The reintroduction plan does not enhance the conservation and recovery of wolves, as required by the Act. Reintroduction, particularly in central Idaho, should not be conducted or should be delayed for several years while a search for existing wolves is conducted.

*Service Response:* For the past 20 years and presently, the Service and others have searched for wolves in the northern Rocky Mountains. Reviews of correspondence from the past 25 years show the longstanding and widespread view that wolves already occupied Idaho and the discovery of their presence imminent. Very extensive monitoring within the experimental population area has not confirmed the presence of wolves. This particular species is not habitat limited and if allowed to get into the experimental area would reproduce and survive. The translocation of wild wolves from Canada to central Idaho will provide the opportunity to start a wolf population. This translocation effort will greatly facilitate recovery of the gray wolf. The 1987 Rocky Mountain wolf recovery plan recommended an additional 5 years of monitoring for natural wolf recovery in Idaho. However, the recovery plan provided other options if two breeding pairs of wolves had not become established in Idaho during the 5 years. Because no breeding pairs have been located, the draft and final EIS and Record of Decision allow the simultaneous reintroduction of wolves into central Idaho and the Park in an effort to ensure the viability and conservation of wolves in the Rocky Mountains (Service 1994a, Appendix 16).

*Issue 5:* The Service proposed a very liberal experimental rule to accommodate concerns of local residents and the affected States. However, it did not make allowances for unforeseen circumstances that may impede or prevent wolf population growth and recovery. Options such as increased management or greater numbers of reintroductions should be allowed if required.

*Service Response:* The Service believes that, as proposed, reintroduction and management techniques will result in wolf population recovery and delisting by about 2002. Rulemaking language was added clarifying that take activities must lead to eventual recovery of the wolf. Additionally, if there is no progress in achieving wolf population recovery (i.e., if wolves in a recovery area do not exhibit positive growth for 2 consecutive years), then factors impacting population growth will be investigated. Information from the investigation will be made available to the public and appropriate Federal, State, and tribal agencies. Within a year, the agencies may recommend and implement new management actions or modifications to their wolf management plans to correct factors negatively impacting wolf recovery. Only as a last resort would changes or modifications to sections of the experimental rule be made.

*Issue 6:* The proposed rules' requirements that "only adult wolves (greater than 50 pounds) can be harassed" and then "only for 15 minutes" and "only adult wolves that are witnessed attacking livestock on private land can be killed by private parties" are overly restrictive. The provision that wolves can only be killed under a special permit when (1) seen attacking livestock for the third time on Federal lands, (2) six or more wolf packs are present in the experimental population, and (3) all agency control efforts have failed does not address the issues in a timely or efficient manner. The implication that land-use restrictions may be employed on private lands when five or fewer wolf packs are present in the experimental area also needs clarification.

*Service Response:* The Service agrees and has eliminated (1) the distinction between adult wolves and pups for both noninjurious harassment and take and (2) the length of time wolves may be harassed (as long as physical injury is not incurred). Permittees with grazing rights on public land can readily obtain a written take permit for wolves seen

attacking livestock. However, issuance criteria still require that prior to issuing the 45-day take permit (1) six or more wolf packs must be present in the experimental population area, (2) authorized agencies must confirm that a wolf caused the livestock injury or death, and (3) other agency control actions have failed to resolve the problem. The final rule also clarifies that no land-use restrictions will be exercised by Federal agencies on private land at any time.

*Issue 7:* Certain parts of the rule need to be more specific, so that potential management situations are individually described and addressed in the final rule. Commenters provided a variety of scenarios as examples.

*Service Response:* The Service added or clarified definitions and/or language in the final rule. However, the wolf reintroduction program is complex and has many unforeseen variables. It is impossible to imagine or describe in detail every situation that might arise during its implementation. Some situations can only be accurately addressed on a case-by-case basis and judged by their particular circumstances. It is the intent of the Service to use the experimental rule to aid the conservation, recovery, and eventual delisting of wolf populations in the northern Rocky Mountains of the United States. The Service in cooperation with other Federal, State and tribal agencies will use the flexibility of the experimental rule to address local concerns and unforeseen situations. The professional expertise and experience of wildlife managers will facilitate the implementation and any modifications needed to improve the wolf reintroduction program. Additional language was added to the rule, clarifying that management flexibility is required as the program is implemented and refined.

*Issue 8:* The Service should make a clear commitment to fund all aspects of wolf reintroduction and management, including compensation to the States and tribes for their efforts. The Service should closely monitor the compliance of other agencies to the experimental population rules.

*Service Response:* To date, the Federal government has funded the participation of affected States and tribes in regard to the wolf restoration program. The Service plans to continue its funding commitment within Congressional appropriations until wolves are delisted. The public stated its concern over the use of taxpayer dollars and the need for government to wisely spend tax dollars. The Service, therefore, must keep expenses for wolf reintroduction as low as possible while maintaining an effective program. The Service will encourage the States and tribes to submit reasonable budgets for wolf management programs, as well as search for ways to pool and coordinate resources so that overall costs are reduced. It is the legal responsibility of the Service to monitor the progress and adherence of State and tribal agencies to their management plans. The Service will ensure and work cooperatively with others to meet the stated recovery goals.

*Issue 9:* The wolf reintroduction effort needs to have a federally funded livestock damage compensation program. Wolf reintroduction will result in the "taking" of constitutionally protected private property rights.

*Service Response:* In Montana, the Defenders of Wildlife implemented a private livestock compensation program. Because the Defenders Program has been successful, it was expanded to include Idaho and Wyoming. The Service will not directly fund a livestock compensation program. The Service will encourage livestock producers to utilize private compensation programs when depredation occurs. The Service and USDA Animal Damage Control will aid livestock producers by maintaining an effective control program that minimizes livestock losses due to wolves. The rule addresses the concerns of private property owners by (1) providing an effective control program, (2) allowing landowners to take wolves on their private land when justified, and (3) invoking no land-use restrictions on private land. The Service has reviewed the constitutionality of this rule in regard to protected private property rights. The review concludes the Service's actions do not violate the private property rights of individuals (Service 1994a, Appendix 6).

*Issue 10:* The Act requires the Service to consult with appropriate Federal, State, tribal, and local entities or private landowners, to the maximum extent practicable, prior to promulgating regulations. The Service has failed to meet such requirements.

*Service Response:* It is well documented that the Service made an extraordinary effort to involve the public and other government entities in developing management practices and the experimental population rules regarding the wolf reintroduction program. During the past 3 years, the Service held over 100 meetings, open houses, and hearings. The Service distributed over 750,000 documents and reviewed and considered nearly 170,000 public comments during development of the rule. Federal agencies and affected States and tribes were active participants during the process. This final rule represents the participatory work and consensus of affected agencies and others interested or impacted by the rulemaking.

*Issue 11:* Further discussion and detail are needed on how State and tribal agencies will manage wolf predation and ungulate population levels. The public needs to know exactly what will be done in regard to this issue.

*Service Response:* The Service is confident in the States' and tribes' ability to evaluate the impact wolf predation may have on ungulate populations and, when appropriate, implement corrective management actions. An evaluation of possible impacts and/or actions in regard to a specific ungulate species, and location is best accomplished by biologists most familiar with the situation. The Service, States, and tribes will coordinate wolf management plans to ensure that State and tribal interests in native ungulate management are met while meeting the Service's mandate for wolf recovery. Rulemaking language was added to the section on how States and tribes will manage ungulate/wolf conflicts. States and tribes are required to prepare acceptable management plans for approval by the Service. It is expected that since these management plans may affect State wildlife management programs, the States will go through a public review process as part of their development. Such plans will indicate the point at which wolf/ungulate conflicts become so critical that corrective action must be taken. A decision to translocate wolves to reduce such conflicts must serve to enhance, or at a minimum not inhibit, wolf recovery.

*Issue 12:* The timeframe for submitting a report on the harassing and/or taking of wolves by the public should be changed (both shortened or lengthened were mentioned).

*Service Response:* The timeframes for a person to report the harassing (7 days) and/or the unintentional taking (24 hours) of wolves were not changed. The harassing or taking of a wolf is a critical and potentially serious event. A person who harasses a wolf is best served by reporting the incident as soon as possible so agency management actions can be implemented, if necessary. Submission of a report on wolf harassment provides a record which can document the continuation of suspected or actual livestock depredations or rationale for taking a wolf. The immediate reporting of livestock depredation by a wolf also allows the

immediate investigation of the incident and gathering of fresh evidence. In Montana, agency professionals who investigate livestock depredations are readily accessible during the night, weekends, and holidays. During the past 9 years in Montana, the reporting, documenting, and resolution of livestock depredations have not been significant issues. Therefore, they are not anticipated to be a problem for wolf reintroductions into the experimental population areas. The United States legal system often takes into account unusual mitigating circumstances, such as the remoteness of a livestock allotment interfering with an individual being able to report an incident as required by regulation. The Service could determine that an incident would not be referred for prosecution when a person failed to meet the reporting requirements and could justify their actions.

*Issue 13:* The delisting criteria should be clearly identified. The delisting of one recovery area should be independent of the status of other recovery areas.

*Service Response:* In accordance with the Act, delisting may occur when analysis of the best available scientific and commercial information shows that gray wolves are no longer threatened with extinction due to: (1) Loss of habitat, (2) overutilization, (3) disease or predation, (4) inadequacy of existing regulatory mechanisms, and (5) other natural or manmade factors. In addition to the above, the final EIS, states that the following criteria must be met: (1) For 3 consecutive years, a minimum of 10 breeding pairs are documented in each of the 3 recovery areas described in the revised wolf recovery plan (Service 1987); (2) protective legal mechanisms are in place; and (3) the EIS evaluation has been completed (Service 1994). After delisting, the Act specifies a species population must be monitored for a 5-year period. After delisting, if in any 1 of the 3 recovery areas the wolf population fell below the minimum of 10 breeding pairs for 2 consecutive years, then wolves in that recovery area would be considered for protective status under the Act. Delisting procedures have been discussed (Service 1994a, Appendix 11). Endangered wolves in northwestern Montana can be downlisted to threatened once 10 breeding pairs are documented for 3 consecutive years. Experimental populations of wolves cannot be downlisted because their protective status is based on the experimental population rule. Experimental population rules can be withdrawn when wolf numbers have reached recovery levels, no further protection under the Act is required, and the wolf is delisted.

*Issue 14:* The reintroduction of wolves will negatively affect the recovery of other species listed under the Act. This issue was not addressed in the rule.

*Service Response:* The Service prepared and published an intra-Service evaluation of its proposed action in the draft and final EIS (Service 1994a, Appendix 7). The evaluation concluded that wolf reintroduction and implementation of the experimental rules would not adversely impact other endangered or threatened species. In November 1994, Service field offices in Idaho, Montana, and Wyoming reviewed the proposed rules and came to the same conclusion. The Service finds that the impact of the final rules, like the predicated impact reviewed of the proposed rules, will not adversely affect other protected species.

*Issue 15:* The proposed rules did not discuss how potential wolf/dog hybrids or wolf/coyote hybrids will be addressed.

*Service Response:* The hybridization of wolves with other canids may occur; however, it is not a significant problem anywhere in North America where ranges of wolves, domestic dogs, coyotes, and foxes overlap (Chapter 1). Thus, it is not anticipated to be a problem in the northern Rocky Mountains. The rules state the Service or other authorized agencies may remove reintroduced wolves that breed with domestic dogs, coyotes, or foxes, or their hybrid-offspring. Individual animals that agency biologists suspect to be domesticated wolves or wild wolf/other canid species hybrids would be removed from the wild after examination of the canid's physical or behavioral characteristics.

*Issue 16:* The experimental population rule improperly removes full endangered species protection and bestows experimental status on any naturally occurring wolves found inside the experimental population boundaries.

*Service Response:* It is documented that individual wolves may disperse over 500 miles. However, for the past 10 years, there has been no evidence of naturally occurring wolves dispersing to and producing a viable wolf population in the central Idaho or Yellowstone areas. After the effective date of the experimental population rules, any such wolves and their offspring would be treated as experimental population animals. From a practical wildlife management perspective, the Service cannot be expected to determine if an individual wolf had naturally dispersed into the area or been reintroduced. The initial reintroduced animals will be radio collared and thus, can be differentiated. Once they have reproduced it would be impossible to determine if the wolf was a wild dispersing animal or progeny of the experimental animals. The rule was written to help avoid that possible conflict. Such a distinction, therefore, cannot be treated separately by regulation. Undoubtedly, the establishment of a viable wolf population and recovery of the species will be enhanced by the reintroduction of 30 wolves annually for the next 3 to 5 years. The presence of reintroduced wolves may increase the probability of naturally dispersing wolves from northwestern Montana or Canada to move, stay, and reproduce in an experimental area. While this event would contribute to population recovery, it would not greatly impact the overall population growth rate since the majority of breeding wolves would be reintroduced animals.

*Issue 17:* Denning and rendezvous sites must be protected, even after 6 packs are established. There needs to be more types of land use restrictions (road closures) to protect wolves.

*Service Response:* Wolves are adaptable to a wide variety of human activities, except for deliberate killing. Experiences in North America indicate that human disturbance, even around active den sites, is not a significant factor affecting wolf survival or population growth (Service 1994a, Appendix 13). The rule protects active wolf dens during the earliest stages of wolf recovery, if necessary. Killing wolves is illegal except for a very few limited exceptions. The rule allows flexibility to reconsider land use restrictions if wolf populations do not grow toward recovery levels. Wolves in Montana have not needed land-use restrictions and, at this time, land-use restrictions do not appear necessary for wolf populations to recover in Idaho or Wyoming.

*Issue 18:* Private individuals should not be able to kill wolves, even by permit.

*Service Response:* The opportunity for private individuals to kill wolves in the experimental population areas is limited to when wolves are actually in the act of killing livestock. The Service has determined that wolves that exhibit this behavior do not further the conservation of the species and for that reason are currently controlled (Service 1988). The selective removal of this type of individual animal by the public is warranted in certain limited circumstances and their removal

contributes to overall conservation of the species. Agency control would be initiated anyway and, under tight regulation, public control can be more likely to remove the specific problem individual than agency control actions because the action is taken immediately. If a wolf is taken in the act of depredating, further agency control would not be conducted unless additional depredations occur. This limited taking of wolves by the private sector could reduce the total number of wolves that might be taken in response to livestock depredations and reduces the opportunity for other wolves to feed on or learn to depredate on livestock.

*Issue 19:* The Secretary has not made the determination that use of an experimental rule and reintroduction of wolves would further the conservation of the species as required by 50 CFR 17.81.

*Service Response:* As stated in the Service's EIS, in the proposed rule, and in the final rule, removal of wolves from Canadian populations would not significantly impact those populations (59 FR 42110); the likelihood that wolf populations would become permanently established and grow to recovery level in the experimental areas is extremely high (59 FR 42111); reintroduction would greatly accelerate wolf population recovery, enhance wolf population viability, and lead to subsequent delisting (59 FR 42110); and the reintroduced wolves and subsequent population that developed would not be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (59 FR 42112); therefore, release of the experimental population would further the conservation of the species (Service 1994a, Service 1994b).

*Issue 20:* Wolf management should remain with the Service until delisting. The States or federal agencies like Animal Damage Control should not be involved in wolf recovery.

*Service Response:* The rule clarifies that while the States and tribes are encouraged to lead implementation of the experimental rule, the Service will monitor and is ultimately responsible for the recovery of the species. Should progress toward wolf recovery not be evident (two years of no growth would trigger other conservation measures), the Service will cooperate with the states and tribes to assure steps are taken to resume progress toward recovery. The states and tribes already have highly trained professional wildlife management programs in place and their expertise, authorities, knowledge, and organizations can greatly enhance recovery of the species. Animal Damage Control is a professional federal wildlife management agency that has the responsibility, like all federal agencies, to use their authorities to enhance the recovery of listed species. Animal Damage Control has been a valuable and necessary component of wolf recovery activities in Montana and Minnesota.

*Issue 21:* There should be a mortality limit that triggers more restrictive management or reintroduced wolves that are killed should be quickly replaced.

*Service Response:* The measure of success in the wolf recovery program is not the level of wolf population mortality but growth of the wolf population. Wolf populations can withstand varying levels of mortality and individual wolf mortality is very difficult to measure accurately. Language was added to the final rule that clarifies the need to modify the State and tribal plans, which must be in compliance with the rule, if wolf population growth is not evident. Wolf population growth is easier to accurately monitor and is the criteria that is used to implement other provisions in the rule (e.g. when lethal control may be used, when a population is established, when reintroductions stop, and when wolf populations are recovered). A "put and take" strategy does not address the problem of a wolf population failing to maintain growth and is an expensive process to conduct. It is more productive to identify the factors preventing wolf population growth and correct them before simply continually adding more wolves that may die from the same causes. A population that required constant reintroductions to compensate for excessive mortality rates could not be delisted.

*Issue 22:* The experimental population boundaries are not scientifically based and should be modified.

*Service Response:* The Service determined the boundaries of the experimental populations based upon the distribution of the wolf population in Montana. The experimental population boundaries do not include any portion of any known area used by breeding wolves in Montana. It was also determined that any wolf population inside the experimental boundaries would most likely be the result of reintroduced wolves and any breeding groups of wolves outside the experimental boundaries would likely be the result of natural dispersal of wolves from northwestern Montana or Canadian populations. The definition of a wolf population underwent scientific peer review (Service 1994a, Appendix 8). The rationale and location of the experimental population boundaries were also reviewed, and no better consensus of a way to define the geographic range of a wolf population was brought to the Service's attention.

*Issue 23:* Wolves should be reintroduced for more than 3 years.

*Service Response:* Once a wolf population is established in an experimental area there is no need to conduct further reintroductions and to do so would not be cost effective. The soonest the "wolf population" criteria could be met is in three years. At that time about 45 wolves would have been reintroduced to each area. The recovery process and assurance of substantial genetic diversity, pack formation, and birth of about 10–20 pups should have occurred following the reintroduction of 45 animals. This would eliminate the need for additional reintroductions and would allow manpower and funds to be used on monitoring population growth and dispersal.

*Issue 24:* What does legally present livestock mean? Who is responsible for determining livestock husbandry practices?

*Service Response:* The provisions on legally present livestock are part of the rule so that control of problem wolves will occur only when livestock are present on public land in a manner already allowed by conditions in their federal, state, or tribal grazing permit. No new conditions are expected because of wolf reintroduction. Control of wolves that attack livestock should not be expected when livestock are illegally present on federal lands. Proper livestock husbandry practices means the current standards and practices used by livestock producers as already determined by the land management agency issuing the permit. No changes from the standard livestock grazing practices already being used on federal grazing leases are envisioned. Wolf management in Montana has not affected livestock management practices on public lands and would likely not affect those practices in other areas. Issues like proper disposal of livestock carrion are already being addressed in the Yellowstone area because of other concerns such as grizzly bear recovery. Language in the final rule reflects that carrion must be managed in such a way as not to present a continuing attractant to wolves if problems occur, but leaves the livestock producer and land management agency to determine how best to address potential problems.

*Issue 25:* Nearly every one of the 39 issues addressed in the public scoping process and review of the draft EIS were

again discussed, questioned, or disagreed with during public comment about the proposed rule.

*Service Response:* The Service has reviewed public concern about the accuracy of its early responses to issues raised in the draft and final EIS, which were also raised by persons commenting on the proposed rule. At this time, the information provided during the public comment period on the proposed rule does not provide sufficient data or cause for the Service to significantly change any of its earlier findings which were published in the final EIS regarding the issues of: amending the Endangered Species Act, wolves as a missing component of the ecosystem, humane treatment of wolves, enjoying wolves, regulated public take, cost of the program, state, tribal, and federal authority, viable population, travel corridors, range requirements, control strategies, illegal killing, compensation, delisting, need for public education, spiritual and cultural significance, social and cultural environment, recovery areas, ungulate populations, hunter harvest, domestic livestock, land use, visitor use, economics, wolves not native to Yellowstone, wolf rights, federal subsides, human health and safety, predators and scavengers, other endangered species, other plants, invertebrates, fish, reptiles, amphibians, birds, and mammals, diseases and parasites, private property rights, wolf recovery in other areas, existing wolves in Idaho and Yellowstone, existing wolves in northwestern Montana, wolf subspecies, wolf/dog/coyote hybridization, and the need for research (Service 1994a).

The Service adjusted the experimental population boundaries to exclude any portion of known wolf pack territories in an effort to reduce the likelihood that any naturally dispersing breeding groups of wolves would fall under the proposed experimental rule regulations.

Based on the above, and using the best scientific and commercial data available, and in accordance with 50 CFR 17.81, the Service finds that releasing wolves into central Idaho constitutes reintroduction into a high-priority site and will further advance conservation and recovery of this species.

## National Environmental Policy Act

A Final Environmental Impact Statement under the National Environmental Policy Act is available to the public (see **ADDRESSES**). This rule is an implementation of the proposed action and does not require revision of the EIS on the reintroduction of gray wolves to Yellowstone National Park and central Idaho.

## Required Determinations

This rule was reviewed under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the experimental population area, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action and the rule contains no recordkeeping requirements, as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule does not require federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

Due to biological requirements, the wolf reintroduction program needs to be conducted in November through February, as recommended by wolf scientists during the EIS process. The nonessential experimental population rule has been extensively debated and thoroughly investigated during development of the EIS and draft rules. Because of the extensive public review of the EIS, Record of Decision, and proposed rules, all being similar to this final rule, implementation of the wolf reintroduction program should start as of the date of publication, without a 30-day waiting period. Therefore, for good cause and in accordance with 5 U.S.C. 553(d)(3), the Service has determined that the rule should become effective immediately upon filing for public inspection.

## References Cited


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## Author

The principal author of this rule is Edward E. Bangs (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

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

## Regulation Promulgation

Accordingly, the Service hereby amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, 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. In § 17.11(h), the table entry for "Wolf, gray" under "MAMMALS" [as revised in the previous document in this part VIII of this issue of the **Federal Register**] is further revised to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | | * |
| Wolf, gray | *Canis lupus* | Holarctic | U.S.A. (48 conterminous States, except MN and where listed as an experimental population). | E | 1, 6, 13, 15, 35, 561, 562 | 17.95(a) | NA |
| Do | do | do | U.S.A. (MN) | T | 35 | 17.95(a) | 17.40(d) |
| Do | do | do | U.S.A. (WY and portions of ID and MT—see § 17.84.(i)). | XN | 561, 562 | NA | 17.84(i) |
| * | * | * | * | * | * | | * |

3. Paragraph (i) of § 17.84 [as added in the previous document in this part VIII of this issue of the Federal Register] is revised to read as follows:

**§ 17.84 Special rules—Vertebrates.**

* * * * *

(i) Gray wolf (*Canis lupus*).

(1) The gray wolves (wolf) identified in paragraph (i)(7) of this section are nonessential experimental. These wolves will be managed in accordance with the respective provisions of this section.

(2) The Service finds that reintroduction of nonessential experimental gray wolves, as defined in (i)(7) of this section, will further the conservation of the species.

(3) No person may take this species in the wild in an experimental population area except as provided in paragraphs (i)(3), (7), and (8) of this section.

(i) Landowners on their private land and livestock producers (i.e., producers of cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service) that are legally using public land (Federal land and any other public lands designated in State and tribal wolf management plans as approved by the Service) may harass any wolf in an opportunistic (the wolf cannot be purposely attracted, tracked, waited for, or searched out, then harassed) and noninjurious (no temporary or permanent physical damage may result) manner at any time, *Provided* that such harassment is non-lethal or is not physically injurious to the gray wolf and is reported within 7 days to the Service project leader for wolf reintroduction or agency representative designated by the Service.

(ii) Any livestock producers on their private land may take (including to kill or injure) a wolf in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), *Provided* that such incidents are to be immediately reported within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service, and livestock freshly (less than 24 hours) wounded (torn flesh and bleeding) or killed by wolves must be evident. Service or other Service authorized agencies will confirm if livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iii) Any livestock producer or permittee with livestock grazing allotments on public land may receive a written permit, valid for up to 45 days, from the Service or other agencies designated by the Service, to take (including to kill or injure) a wolf that is in the act of killing, wounding, or biting livestock (cattle, sheep, horses, and mules or as defined in State and tribal wolf management plans as approved by the Service), *Provided* that six or more breeding pairs of wolves have been documented in the experimental population area and the Service or other agencies authorized by the Service has confirmed that the livestock losses were caused by wolves and have completed agency efforts to resolve the problem. Such take must be reported immediately within 24 hours to the Service project leader for wolf reintroduction or agency representative designated by the Service. There must be evidence of freshly wounded or killed livestock by wolves. Service or other Service authorized agencies will investigate and determine if the livestock were wounded or killed by wolves. The taking of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(iv) Potentially affected States and tribes may capture and translocate wolves to other areas within an experimental population area as described in paragraph (i)(7), *Provided* the level of wolf predation is negatively impacting localized ungulate populations at an unacceptable level. Such translocations cannot inhibit wolf population recovery. The States and tribes will define such unacceptable impacts, how they would be measured, and identify other possible mitigation in their State or tribal wolf management plans. These plans must be approved by the Service before such movement of wolves may be conducted.

(v) The Service, or agencies authorized by the Service, may promptly remove (place in captivity or kill) any wolf the Service or agency authorized by the Service determines to present a threat to human life or safety.

(vi) Any person may harass or take (kill or injure) a wolf in self defense or in defense of others, *Provided* that such take is reported immediately (within 24 hours) to the Service reintroduction project leader or Service designated agent. The taking of a wolf without an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) The Service or agencies designated by the Service may take wolves that are determined to be "problem" wolves. Problem wolves are defined as wolves that in a calendar year attack livestock (cattle, sheep, horses, and mules) or as defined by State and tribal wolf management plans approved by the Service or wolves that twice in a calendar year attack domestic animals (all domestic animals other than livestock). Authorized take includes, but is not limited to non-lethal

measures such as: aversive conditioning, nonlethal control, and/or translocating wolves. Such taking may be done when five or fewer breeding pairs are established in a experimental population area. If the take results in a wolf mortality, then evidence that the mortality was nondeliberate, accidental, nonnegligent, and unavoidable must be provided. When six or more breeding pairs are established in the experimental population area, lethal control of problem wolves or permanent placement in captivity will be authorized but only after other methods to resolve livestock depredations have been exhausted. Depredations occurring on Federal lands or other public lands identified in State or tribal wolf management plans and prior to six breeding pairs becoming established in an experimental population area may result in capture and release of the female wolf with pups, and her pups at or near the site of capture prior to October 1. All wolves on private land, including female wolves with pups, may be relocated or moved to other areas within the experimental population area if continued depredation occurs. Wolves attacking domestic animals other than livestock, including pets on private land, two or more times in a calendar year will be relocated. All chronic problem wolves (wolves that depredate on domestic animals after being moved once for previous domestic animal depredations) will be removed from the wild (killed or placed in captivity). The following three criteria will be used in determining the status of problem wolves within the nonessential experimental population area:

(A) There must be evidence of wounded livestock or partial remains of a livestock carcass that clearly shows that the injury or death was caused by wolves. Such evidence is essential since wolves may feed on carrion which they found and did not kill. There must be reason to believe that additional livestock losses would occur if no control action is taken.

(B) There must be no evidence of artificial or intentional feeding of wolves. Improperly disposed of livestock carcasses in the area of depredation will be considered attractants. Livestock carrion or carcasses on public land, not being used as bait under an agency authorized control action, must be removed or otherwise disposed so that it will not attract wolves.

(C) On public lands, animal husbandry practices previously identified in existing approved allotment plans and annual operating plans for allotments must have been followed.

(viii) Any person may take a gray wolf found in an area defined in paragraph (i)(7), *Provided* that the take is incidental to an otherwise lawful activity, accidental, unavoidable, unintentional, not resulting from negligent conduct lacking reasonable due care, and due care was exercised to avoid taking a gray wolf. Such taking is to be reported within 24 hours to a Service or Service-designated authority. Take that does not conform with such provisions may be referred to the appropriate authorities for prosecution.

(ix) Service or other Federal, State, or tribal personnel may receive written authorization from the Service to take animals under special circumstances. Wolves may be live captured and translocated to resolve demonstrated conflicts with ungulate populations or with other species listed under the Act, or when they are found outside of the designated experimental population area. Take procedures in such instances would involve live capture and release to a remote area or placement in a captive facility, if the animal is clearly unfit to remain in the wild. Killing of wolves will be a last resort and is only authorized when live capture attempts have failed or there is clear endangerment to human life.

(x) Any person with a valid permit issued by the Service under § 17.32 may take wolves in the wild in the experimental population area, pursuant to terms of the permit.

(xi) Any employee or agent of the Service or appropriate Federal, State, or tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild within the experimental population area, if such action is for:

(A) Scientific purposes;

(B) To relocate wolves to avoid conflict with human activities;

(C) To relocate wolves within the experimental population areas to improve wolf survival and recovery prospects;

(D) To relocate wolves that have moved outside the experimental population area back into the experimental population area;

(E) To aid or euthanize sick, injured, or orphaned wolves;

(F) To salvage a dead specimen which may be used for scientific study; or

(G) To aid in law enforcement investigations involving wolves.

(xii) Any taking pursuant to this section must be reported immediately (within 24 hours) to the appropriate Service or Service-designated agency, which will determine the disposition of any live or dead specimens.

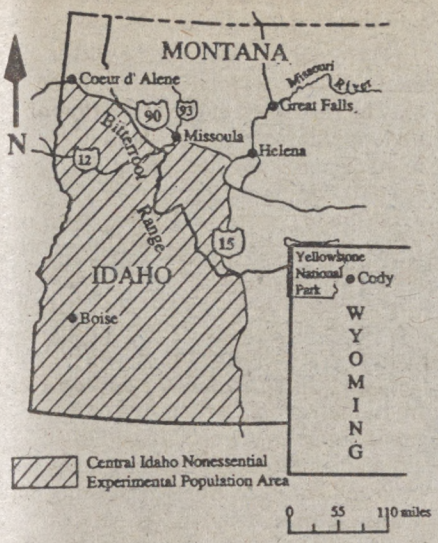
(4) Human access to areas with facilities where wolves are confined may be restricted at the discretion of Federal, State, and tribal land management agencies. When five or fewer breeding pairs are in an experimental population area, land-use restrictions may also be employed on an as-needed basis, at the discretion of Federal land management and natural resources agencies to control intrusive human disturbance around active wolf den sites. Such temporary restrictions on human access, when five or fewer breeding pairs are established in an experimental population area, may be required between April 1 and June 30, within 1 mile of active wolf den or rendezvous sites and would only apply to public lands or other such lands designated in State and tribal wolf management plans. When six or more breeding pairs are established in an experimental population area, no land-use restrictions may be employed outside of national parks or national wildlife refuges, unless wolf populations fail to maintain positive growth rates toward population recovery levels for 2 consecutive years. If such a situation arose, State and tribal agencies would identify, recommend, and implement corrective management actions within 1 year, possibly including appropriate land-use restrictions to promote growth of the wolf population.

(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (i) of this section or in violation of applicable State or tribal fish and wildlife laws or regulations or the Endangered Species Act.

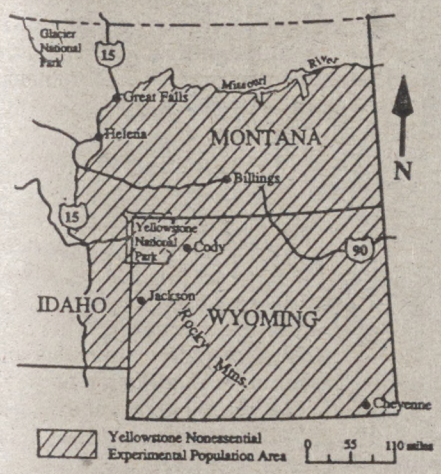
(6) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this section.

(7) The site for reintroduction is within the historic range of the species:

(i) The central Idaho area is shown on the following map. The boundaries of the nonessential experimental population area will be those portions of Idaho that are south of Interstate Highway 90 and west of Interstate 15, and those portions of Montana south of Interstate 90, Highway 93 and 12 from Missoula, Montana west of Interstate 15.




(ii) The Yellowstone Management Area is shown on the following map. The boundaries of the nonessential experimental population area will be that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.




(iii) All wolves found in the wild within the boundaries of this paragraph (i)(7) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it will be returned to captivity or killed.

(8) The reintroduced wolves will be monitored during the life of the project, including by the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases and parasites prevalent in canids, as appropriate, prior to release and during subsequent handling. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or Service-designated agencies and given appropriate care. Such an animal will be released back into its respective reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(9) The status of the experimental population will be reevaluated within the first 3 years, after the first year of releases of wolves, to determine future management needs and if further reintroductions are required. This review will take into account the reproductive success and movement patterns of the individuals released in the area, as well as the overall health and fate of the experimental wolves. Once recovery goals are met for downlisting or delisting the species, a rule will be proposed to address downlisting or delisting.

(10) The Service does not intend to reevaluate the "nonessential experimental" designation. The Service does not foresee any likely situation which would result in changing the nonessential experimental status until the gray wolf is recovered and delisted in the northern Rocky Mountains according to provisions outlined in the Act. However, if the wolf population does not demonstrate positive growth toward recovery goals for 2 consecutive years, the affected States and tribes, in cooperation with the Service, would, within 1 year, identify and initiate wolf management strategies, including appropriate public review and comment, to ensure continued wolf population growth toward recovery levels. All reintroduced wolves designated as nonessential experimental will be removed from the wild and the experimental population status and regulations revoked when (i) legal actions or lawsuits change the wolves status to endangered under the Act or (ii) within 90 days of the initial release date, naturally occurring wolves, consisting of two breeding pairs that for 2 consecutive years have each successfully raised two offspring, are discovered in the experimental population area. The naturally occurring wolves would be managed and protected as endangered species under the Act.

Dated: November 15, 1994.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 94–28747 Filed 11–18–94; 8:45 am]

BILLING CODE 4310–55–M

federal register

Tuesday
November 22, 1994

# Part IX

# Department of Justice

## Bureau of Prisons

28 CFR Part 551
Pretrial Inmates; Final Rule

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 551**

**[BOP–1001–F]**

**RIN 1120–AA00**

## Pretrial Inmates

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is amending its rule on Pretrial Inmates. Changes made in this amendment include the addition of provisions for the review of the pretrial inmate's status, the replacement of references to waiver of separation, and a revision of the definition of "pretrial inmate" to clarify that the definition does not include an inmate who is awaiting sentence once the Bureau has received notification of the conviction. This document also makes several other procedural, editorial, and nomenclature changes. This amendment is intended to update Bureau of Prisons policy regarding pretrial inmates.

**EFFECTIVE DATE:** November 22, 1994.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its rule on Pretrial Inmates. A final rule on this subject was published in the **Federal Register** November 13, 1980 (45 FR 75133). For the convenience of the reader, the entire text of the rule is being published. A summary of the changes follows.

The subpart has been revised to remove gender-specific references. In addition, various editorial and conforming amendments (such as revising "pre-trial" to read "pretrial") have been made as necessary. These editorial and conforming amendments make no change in the intent of the regulations.

Section 551.100 is revised for the sake of clarity and to include a statement that pretrial inmates will be separated, to the extent practicable, from convicted inmates. The practicability of separation is contingent upon the design, structure, and operation of the individual institution. Where it is not practicable to keep all pretrial inmates separate, after intake screening and assessment, Bureau staff may, based upon sound correctional judgment, permit inmates who do not present a risk to the security or orderly running of the institution to have regular contact with convicted inmates. As part of its mandate to provide for the care, custody, control, treatment, and instruction of inmates, the Bureau provides a range of programming opportunities to convicted inmates. These programming opportunities may be made available to pretrial inmates if staff determine that such would be consistent with institution security and good order. Pretrial inmates will have the opportunity to discuss separation needs with staff during intake screening and reviews. Previously, the Bureau provided for inmates to request a waiver of separation. Under this former procedure, Bureau staff were still responsible for making the determination to maintain or not to maintain separation for pretrial inmates. This revision, therefore, does not lessen the Bureau's commitment to provide for the safety of pretrial inmates.

Section 551.101 is revised and reorganized for the sake of clarity. New paragraph (a) introductory text is revised to clarify that "pretrial inmate" means a person who is legally detained but for whom the Bureau has not received notification of conviction. A person who has pleaded or been found guilty and who is awaiting sentence is not considered to be a pretrial inmate once the Bureau has received notification of conviction. This change is consistent with the provisions of 18 U.S.C. 3142(i)(2) which states that pretrial inmates are to be kept separate, to the extent practicable, from persons awaiting or serving sentences. New paragraph (a)(1) substitutes the phrase "deportable alien" for "detained alien" to better clarify the intent of this paragraph. New paragraph (a)(2) specifies which types of mental health commitments under 18 U.S.C. Chapter 313 should be considered as pretrial inmates. Inmates who have been committed to the Bureau for long-term custody and who are not awaiting further court proceedings are not considered to be pretrial inmates. Former paragraph (a)(2) is reworded and redesignated as new paragraph (a)(3). Paragraph (b) is revised to remove administrative references to the Judgment and Commitment form. The sentencing court uses that form to provide notice of conviction to the Bureau, ordinarily following imposition of sentence. Procedures for receiving notice of conviction are included in implementing instructions to staff.

Section 551.103 is amended by adjusting the codification designations (former paragraph (a) becomes introductory text, and subordinate paragraphs (a)(1), (2), etc. become (a), (b), etc.) for the sake of editorial consistency. The nomenclature used in the introductory paragraph has been revised (the phrase "institutions with detention-unit operations" has been replaced by the phrase "administrative institutions or institutions with administrative components housing U.S. Marshals' prisoners"). Newly designated paragraph (e) is revised to remove redundant information contained in the Bureau's rule on Intake Screening (see 28 CFR 522, subpart C) and to include reference to separation advisory. Newly designated paragraph (f) is revised to specify that institution guidelines governing telephone calls, including procedures for making unmonitored calls to an attorney, are provided to pretrial inmates rather than advice on these guidelines. This revision ensures that pretrial inmates will have complete guidance on the use of telephones at their disposal. A new paragraph (i) is added to specify that pretrial inmates shall have the opportunity to waive the right not to work, and former paragraph (a)(9) is redesignated as new paragraph (j).

Section 551.104 is revised to state that, to the extent practicable, pretrial inmates will be housed separately from convicted inmates.

Section 551.105(a) is revised to clarify that staff ordinarily will supervise a pretrial inmate as if classified "In" custody. There is no change in the intent of this section.

Section 551.106 has been revised for the sake of clarity. There is no change in the intent of this section.

Changes in statutory authority have removed provision of good time for inmates whose offenses were committed after November 1, 1987. Consequently § 551.107 is removed, and a new § 551.107 is added containing provisions for review of pretrial inmate status. These reviews afford pretrial inmates the opportunity to discuss with staff factors relating to the inmate's detention.

The statute referenced in § 551.109 is changed to reflect the current provision. The intent of this section is unchanged.

Section 551.110 has been revised to remove references to waiver of separation. As revised, paragraph (b) specifies that pretrial inmates who do not participate in religious programs with convicted inmates have access to other religious programs.

Section 551.111 is revised to indicate that the U.S. Marshals Service is also to be contacted for comment on a pretrial inmate's marriage request.

In § 551.112, paragraph (b) is amended to remove reference to waiver of separation. As revised, this paragraph specifies that pretrial inmates may be allowed the opportunity to have access to the institution's educational program when consistent with institution security and good order. Previously, this paragraph stated that such inmate may have full access. Some Bureau programs, for reasons of institution security and good order, may be inappropriate for pretrial inmates.

In § 551.113, paragraph (a) has been revised to remove reference to waiver of separation and to specify that pretrial inmates may be allowed the opportunity to receive counseling services with convicted inmates when consistent with institution and good order. Paragraph (b) has been revised to specify that staff shall ensure that pretrial inmates who do not receive counseling services with convicted inmates have access to other counseling services.

In § 551.115, paragraph (a) has been revised to remove reference to waiver of separation and to specify that pretrial inmates may be allowed the opportunity to participate with convicted inmates in recreational activities when consistent with institution security and good order or have access to other recreational activities. Paragraph (b) has been amended to clarify the intended meaning of a pretrial inmate in regular population. As revised, paragraph (b) now includes a cross reference to conditions for pretrial inmates in Administrative Detention or Disciplinary Segregation. Paragraphs (d), and (e) have been reordered for organizational reasons. There is no change in the intent of this section.

In § 551.116, the word "continuing" is replaced by the word "serious".

Because these changes impose no further restrictions on inmates, deal with agency procedures designed to help ensure the continued protection of inmates, or conform to statutory provisions, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866; this rule was reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

**List of Subjects in 28 CFR Part 551**

Prisoners.

**Kathleen M. Hawk,**

*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), subchapter C of 28 CFR chapter V is amended as set forth below.

**Subchapter C—Institutional Management**

## PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR 551 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99; Attorney General's August 6, 1991 Guidelines for Victim and Witness Assistance.

2. In 28 CFR 551, subpart J, consisting of §§ 551.100 through 551.120, is revised to read as follows:

**Subpart J—Pretrial Inmates**

Sec.
551.100 Purpose and scope.
551.101 Definitions.
551.102 Commitment prior to arraignment.
551.103 Procedure for admission.
551.104 Housing.
551.105 Custody.
551.106 Institutional employment.
551.107 Pretrial inmate reviews.
551.108 Performance pay.
551.109 Community activities.
551.110 Religious programs.
551.111 Marriage.
551.112 Education.
551.113 Counseling.
551.114 Medical, psychiatric and psychological.
551.115 Recreation.
551.116 Discipline.
551.117 Access to legal resources.
551.118 Property.
551.119 Release of funds and property of pretrial inmates.
551.120 Visiting.

## Subpart J—Pretrial Inmates

### § 551.100 Purpose and scope.

In addition to convicted inmates, the Bureau of Prisons houses persons who have not been convicted. Procedures and practices required for the care, custody, and control of such inmates may differ from those established for convicted inmates. Pretrial inmates will be separated, to the extent practicable, from convicted inmates. Except as specified by this rule, policies and standards applicable to persons committed to the custody of the Attorney General or the Bureau of Prisons apply also to pretrial inmates as defined in § 551.101.

### § 551.101 Definitions.

(a) *Pretrial inmate.* For purpose of this rule, "pretrial inmate" means a person who is legally detained but for whom the Bureau of Prisons has not received notification of conviction. Thus, "pretrial inmate" ordinarily includes a person awaiting trial, being tried, or awaiting a verdict.

(1) *Civil contempt, deportable aliens, or material witnesses.* For purpose of this rule, an inmate committed for civil contempt, or as a deportable alien, or as a material witness is considered a pretrial inmate.

(2) *Mental evaluation or treatment.* An inmate committed under Title 18 U.S.C. Sections 4241 (b) and (d), 4242(a), or 4243(b) is considered to be a pretrial inmate, whereas commitments under Sections 4243(e), 4244, 4245 or 4246 are treated as convicted inmates.

(3) *Concurrent federal and state sentences.* For purpose of this rule, an inmate in a status described in paragraph (a) introductory text, (a)(1), or (a)(2) of this section and who is at the same time serving a state or federal sentence is not considered a pretrial inmate.

(b) *Convicted inmate.* For purposes of this rule, an individual a court has found guilty of an offense punishable by law.

### § 551.102 Commitment prior to arraignment.

On receipt of a U.S. Marshal remand, the Bureau of Prisons shall accept an individual who has not been arraigned for commitment as a pretrial inmate, provided that the institution has appropriate detention facilities available for that individual.

### § 551.103 Procedure for admission.

Staff in administrative institutions or institutions with administrative components housing U.S. Marshals' prisoners shall establish procedures for admitting a pretrial inmate which include, but are not limited to:

(a) Verification of commitment papers;

(b) Search of the inmate;

(c) Photographing and fingerprinting,

(d) Disposition of clothing and personal possessions;

(e) Intake screening (including Notice of Separation);

(f) Providing institution guidelines governing telephone calls (including procedures for making unmonitored calls to an attorney);

(g) Provisions for personal hygiene, to include:

(1) Issue of personal hygiene items;

(2) Issue of clean clothing; and

(3) Opportunity for shower and hair care;

(h) Orientation;

(i) Opportunity for waiver of right not to work;

(j) Assignment to an appropriate housing unit.

**§ 551.104 Housing.**

To the extent practicable, pretrial inmates will be housed separately from convicted inmates.

**§ 551.105 Custody.**

(a) Staff ordinarily will supervise a pretrial inmate as if classified "In" custody.

(b) Where circumstances warrant, staff may supervise a pretrial inmate according to procedures for other custody levels.

**§ 551.106 Institutional employment.**

Unless a pretrial inmate signs a waiver of his or her right not to work, the Warden may not require the inmate to work in any assignment other than housekeeping tasks in the inmate's own cell and in the community living area.

**§ 551.107 Pretrial inmate reviews.**

Staff shall conduct regular reviews of a pretrial inmate's status.

(a) Each pretrial inmate shall be scheduled for an initial review by the unit team within 21 calendar days of the inmate's first arrival at the institution, and subsequent reviews shall be conducted at least every 90 days.

(b) The inmate shall be notified at least 48 hours prior to the inmate's scheduled review.

(c) A pretrial inmate is expected to attend these reviews. If the inmate refuses to appear, staff shall document in the record of the meeting the inmate's refusal and, if known, the reason for refusal.

(d) Inmate reviews are to be documented on the Pretrial Inmate Review Report.

**§ 551.108 Performance pay.**

The Warden may approve a pretrial inmate for performance pay and special awards.

**§ 551.109 Community activities.**

(a) The Warden may not grant a furlough to a pretrial inmate (18 U.S.C. § 3622).

(b) In an emergency, staff shall facilitate contact with the pretrial inmate's attorney of record, who may seek from the court a decision concerning release from custody or an escorted trip.

(c) Except by order of the court, a pretrial inmate may not be considered for participation in community programs.

**§ 551.110 Religious programs.**

(a) When consistent with institution security and good order, pretrial inmates may be allowed the opportunity to participate in religious programs with convicted inmates.

(b) Staff shall ensure that pretrial inmates who do not participate in religious programs with convicted inmates have access to other religious programs.

**§ 551.111 Marriage.**

A pretrial inmate may request permission to marry in accordance with current Bureau of Prisons policy for convicted inmates. Staff shall contact the court, U.S. Attorney, U.S. Marshals Service, and in the case of an alien, the Immigration and Naturalization Service, to advise of the marriage request of the pretrial inmate and to request their comments.

**§ 551.112 Education.**

(a) A pretrial inmate may participate in correspondence and self-study educational courses. Institutional staff may also arrange for educational assistance to the pretrial inmate through the use of contract personnel or community volunteers.

(b) When consistent with institution security and good order, pretrial inmates may be allowed the opportunity to have access to the institution's educational program.

**§ 551.113 Counseling.**

(a) When consistent with institution security and good order, pretrial inmates may be allowed the opportunity to receive counseling services with convicted inmates.

(b) Staff shall ensure that pretrial inmates who do not receive counseling services with convicted inmates have access to other counseling services.

**§ 551.114 Medical, psychiatric and psychological.**

(a) Staff shall provide the pretrial inmate with the same level of basic medical (including dental), psychiatric, and psychological care provided to convicted inmates.

(b) Staff shall advise the court, through the U.S. Marshal, of medication the pretrial inmate receives which may alter the inmate's courtroom behavior.

(c) In event of serious illness or death of a pretrial inmate, staff shall notify the committing court, U.S. Marshal, U.S. Attorney's Office, the inmate's attorney of record, and the designated family member or next of kin.

**§ 551.115 Recreation.**

(a) When consistent with institution security and good order, pretrial inmates may be allowed the opportunity to participate with convicted inmates in recreational activities. Staff shall ensure that inmates who do not participate in recreational activities with convicted inmates have access to other recreational activities.

(b) At a minimum, and except as noted in paragraph (d) of this section, staff shall provide the pretrial inmate with the following recreational opportunities:

(1) One hour daily of outside recreation, weather permitting; or

(2) Two hours daily of indoor recreation.

(c) Staff shall make recreation equipment available to the pretrial inmate including, but not limited to, physical exercise equipment, books, table games, and television.

(d) Staff shall provide the pretrial inmate housed in Administrative Detention or Disciplinary Segregation with exercise as provided by the Bureau of Prisons rules on Inmate Discipline. (See 28 CFR part 541, subpart B.)

(e) Provisions of paragraphs (b) and (c) of this section must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons.

**§ 551.116 Discipline.**

(a) Staff shall require the pretrial inmate to abide by Bureau of Prisons rules on Inmate Discipline (see 28 CFR part 541, subpart B), subject to the limitations of § 551.106 of this part.

(b) Staff shall advise the court, through the U.S. Marshal, of repeated or serious disruptive behavior by a pretrial inmate.

**§ 551.117 Access to legal resources.**

(a) The Warden shall provide the opportunity for pretrial inmate-attorney visits on a seven-days-a-week basis.

(b) Staff shall provide pretrial inmates with access to legal materials in the institution.

(c) Staff shall allow the pretrial inmate, upon the inmate's request, to

telephone the inmate's attorney as often as resources of the institution allow.

**§ 551.118 Property.**

(a) A pretrial inmate may retain personal property as authorized for convicted inmates housed in administrative detention units. (See 28 CFR part 541, subpart B.)

(b) Staff may store the pretrial inmate's unauthorized personal property until the individual is released, transferred to another facility, or sentenced and committed to a federal institution.

(c) Staff may supply the pretrial inmate with clothing for court appearances, or the inmate may supply his or her own.

**§ 551.119 Release of funds and property of pretrial inmates.**

(a) Staff shall establish procedures which allow for the release of funds and personal property to pretrial inmates released during other than normal business hours.

(b) Staff shall ensure that pretrial inmates are informed of existing policy relative to the commissary account and the deposit/release of funds.

**§ 551.120 Visiting.**

Staff shall allow pretrial inmates to receive visits in accordance with the Bureau's rule and local institution guidelines on visiting. Staff may allow a pretrial inmate special visits to protect the inmate's business interests or to help prepare for trial.

[FR Doc. 94–28829 Filed 11–21–94; 8:45 am]

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federal register

Tuesday
November 22, 1994

Part X

# Office of Management and Budget

## Notice of Public Meeting; National Information Infrastructure

## OFFICE OF MANAGEMENT AND BUDGET

### Notice of Public Meeting; National Information Infrastructure

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of public meeting and request for public comments.

**SUMMARY:** The Clinton Administration has announced two public meetings to continue a dialogue between government and the private and public interest sectors on issues related to the security of information on the National Information Infrastructure (NII). Interested parties—especially those representing subjects, users, or creators of health, education, financial, or insurance information networks—are invited to submit a 1–2 page position statement and request to testify.

The meetings are sponsored by the NII Security Issues Forum of the Information Infrastructure Task Force and Mega-Project III of the U.S. Advisory Council on the NII.

**DATES:** The public meeting, "Security for Financial and Insurance Information in the NII," will be held Wednesday, December 7, 1994, from 9:00 a.m. to 12:30 p.m. The public meeting, "Security for Education and Health Information in the NII," will be held Thursday, December 8, 1994, from 9:00 a.m. to 12:30 p.m.

Those wishing to testify should submit a 1–2 page position statement and request to participate by Wednesday, November 30, 1994. Written comments preferably should be submitted in ASCII format and will be accepted until January 20, 1995. Individuals wishing to offer general comments or present questions may request to do so during the meeting.

**ADDRESSES:** The December 7 meeting will be held at the Commerce Department Auditorium at 14th and Constitution Avenue N.W., Washington, D.C. The December 8 meeting will be held at 1849 C Street N.W., Department of Interior Room 5160, Washington, D.C.

Position statements and requests to appear for the meeting, "Security for Financial and Insurance Information in the NII," should be sent to the Federal Deposit Insurance Corporation, marked to the attention of Ms. Carmen Sullivan, at 3501 Fairfax Drive, Arlington, VA 22226–3500. Position statements may also be submitted via fax to (703) 516–5441 or through electronic mail to "csullivan@fdic.gov". Electronic mail should be submitted as unencoded, unformatted, ASCII text.

Position statements and requests to appear for the meeting, "Security for Health and Education Information in the NII," should be sent to the Department of Health and Human Services, marked to the attention of Sam Shekar, M.D., at Room 310G, HHH Building, 200 Independence Avenue S.W., Washington, D.C. 20201. Position statements may also be submitted to Dr. Shekar vai fax to (202) 690–6262. They may also be submitted through electronic mail to "Alex—Poliakoff@ED.GOV". Electronic mail should be submitted as unencoded, unformatted, ASCII text.

Parties offering testimony are asked to provide them on paper, and where possible, in machine-readable format. Machine-readable submissions may be provided through electronic mail messages sent over the Internet, or on a 3.5" floppy disk formatted for use in an MS–DOS based computer. Machine-readable submissions should be provided as unencoded, unformatted ASCII text.

Written comments should include the following information:

- Name and organizational affiliation, if any, of the individual responding;
- An indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and
- If applicable, information on the respondent's organization, including the type of organization (e.g., trade association, private corporation, non-profit organization) and general areas of interest.

**FOR FURTHER INFORMATION CONTACT:** For further information relating to finance information issues, contact Ms. Carmen Sullivan, Director of Information Resources Management at the Federal Deposit Insurance Corporation, by telephone at (703) 516–5414. For further information relating to insurance information issues, contact Mr. Ken Tucker of the Federal Housing Administration by telephone at (202) 708–4758.

For further information relating to health information issues, contact Sam Shekar, M.D., at the Department of Health and Human Services, by telephone at (202) 690–5727. For further information relating to education information issues, contact by Mr. Alex Poliakoff at the Department of Education by telephone at (202) 708–5210.

**SUPPLEMENTARY INFORMATION:**

### I. Issues for Public Comment

#### *A. Background*

The public meetings are part of an ongoing dialogue with the Administration to assess the security needs and concerns of users of the National Information Infrastructure (NII). The NII is a system of high-speed telecommunications networks, databases, and advanced computer systems that will make electronic information—such as insurance and financial products, health and educational records, and communication of both a commercial and non-commercial nature—more widely available and accessible than ever before. This increased availability and accessibility will dramatically affect the way in which information and information services are created, used, and delivered throughout the world.

Consequently, broad public and commercial use of the NII hinges upon implementing technologies, policies, and practices that not only ensure that users of information systems have access to information when and where they need it, but that subjects of information records are able to protect themselves from unauthorized or inappropriate use of information.

"Americans will not use the NII to its full potential unless they trust that information will go where and when they want it and nowhere else," declared Sally Katzen, Administrator of the Office of Information Regulatory Affairs at OMB and chair of the Forum. "The Federal government is a primary user of the NII and thus a catalyst for change. Yet the NII will be designed, built, owned, operated, and used primarily by the private sector, making it essential that security on the NII be considered in partnership with the public."

To address these critical issues, the Vice President formed the Information Infrastructure Task Force (IITF). The IITF is chaired by Secretary of Commerce Ron Brown and is comprised of senior Administration officials having expertise in technical, legal, and policy areas pertinent to the NII. The mission of the IITF is to articulate and implement the Administration's vision for the NII.

The NII Security Issues Forum was established within the IITF to address the cross-cutting issue of security in the NII. The Forum is chaired by Sally Katzen, Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget.

In addition to the IITF, the President has established the U.S. Advisory

Council on the National Information Infrastructure. The Advisory Council represents industry, labor, and public interest groups, and advises the Secretary of Commerce on issues relating to the NII. Mega-Project III, one of three work groups of the Advisory Council, is responsible for addressing security, intellectual property, and privacy issues as they relate to the NII.

*B. Structure and Content of Public Meeting*

Security is linked inextricably to broad public use of the NII. The technologies, policies, and procedures used to ensure the confidentiality, availability, and integrity of digitally produced and transmitted information, information products, and services on the NII will determine whether, how, and to what extent digitally linked information services will be broadly used in such critical sectors as health, education, finance, and insurance.

Development of policies and procedures that will ensure the security of commercial and non-commercial information and communications on the NII requires study from different perspectives, whether that of the subject of the information, the user of the information, or the creator of the information. The Forum and Mega-Project III seek input from parties who represent these views in the areas of health, education, finance, and insurance.

Solutions to these concerns will come vita technical solutions, as well as legal and policy mechanisms. The Forum and Mega-Project III seek input in this area as well. Specifically, what legal measures, policy mechanisms, and technological solutions, or combinations thereof, can be used to effectively protect the security of health, education, financial, and insurance information delivered or made accessible on the NII?

A panel of witnesses drawn from the public will be assembled to discuss the following topics with a panel of senior Administration officials, members of the Security Issues Forum, and members of the Advisory Council, and to field questions and comments from other members of the public.

Position statements for the meeting, "Security for Financial and Insurance Information in the NII," should address four principal questions:

1. How do you envision the NII being used by the finance and insurance industries to provide enhanced products and services to customers or to improve operations?

Specifically, what types of products and services are you contemplating delivering or making available, or would you like to see delivered or made available on the NII?

2. What threats do you foresee in making products and services available via the NII? Such threats might include fraud, unauthorized access, breach of confidentiality or privacy, breach of integrity, and lack of reliability.

3. What legal, policy, and ethical issues do you foresee affecting usage of the NII? Such issues may include liability, information/property rights, equal access, document/records management, legal admissibility/evidentiary requirements, and auditability.

4. What kinds of administrative or technical solutions are you aware of, or would you like to see developed, to address security, legal, and ethical concerns? Such solutions may include international agreements, criminal laws, public key encryption, and digital signatures.

Position statements for the meeting, "Security for Health and Education Information in the NII," should address five principal questions:

1. What enhancements in electronic data transmission, storage, and retrieval are needed to protect the confidentiality of personal health and education information?

2. What enhancements in electronic data transmission, storage, and retrieval are needed to improve data users' access to individual health and education information?

3. How can the NII be constructed to address and satisfy both of these needs simultaneously?

4. What safeguards need to be developed to limit children's access to inappropriate material through the NII?

5. What technical solutions are available, or can be developed, in order to address these data security concerns?

**II. Guidelines for Participation in the Public Hearing**

Individuals who would like to participate on a panel must request an opportunity to do so no later than November 30, 1994 by submitting a brief, 1–2 page summary position statement. If approved, each participant will be allowed to present brief opening remarks. Primary participating, however, shall be during the general discussion to follow, according to the format described above.

Participants in the public meeting will testify before and participate in discussions with a panel consisting of members of the Advisory Council, members of the Security Issues Forum, and other Administration officials.

Individuals not selected as panel participants may offer comments or ask questions of the witnesses by requesting an opportunity to do so and being recognized during the meeting by the chairs of the meetings. Oral remarks offered in this fashion may not exceed three minutes. No advance approval is required to attend the public meetings, offer comments, or present questions.

The public meeting on "Security of Financial and Insurance Information in the NII" will be co-chaired by Ms. Carmen Sullivan, Director of Information Resources Management of the Federal Deposit Insurance Corporation, Ms. Marta Angueira, Controller of the Federal Housing Administration, and Mr. Stephen Malphrus, Director of Information Resources Management at the Board of Governors of the Federal Reserve Board.

The public meeting on "Security of Health and Education Information in the NII" will be co-chaired by Dr. Helen Smits, Deputy Administrator of the Health Care Financing Administration, and Ms. Linda Roberts, Special Advisor to the Secretary of Education for Technology.

More information about the Clinton Administration's National Information Infrastructure initiative can be obtained from the IITF Secretariat. Inquiries may be directed to Yvette Barrett at (202) 482–1835, by e-mail to ybarrett@ntia.doc.gov, or by mail to U.S. Department of Commerce, IITF Secretariat, NTIA, Room 4892, Washington, D.C., 20230.

For inquiries over the Internet to the IITF Gopher Server, gopher, telnet (login=gopher), or anonymous ftp to iitf.doc.gov. Access is also available over the World-Wide-Web. Questions may be addressed to nii@ntia.doc.gov.

For access by modem, dial (202) 501–1920 and set modem communication parameters at no parity, 8 data bits, and one stop (N,8,1). Modem speeds of up to 14,400 baud are supported.

**Sally Katzen,**

*Administrator, Office of Information and Regulatory Affairs.*

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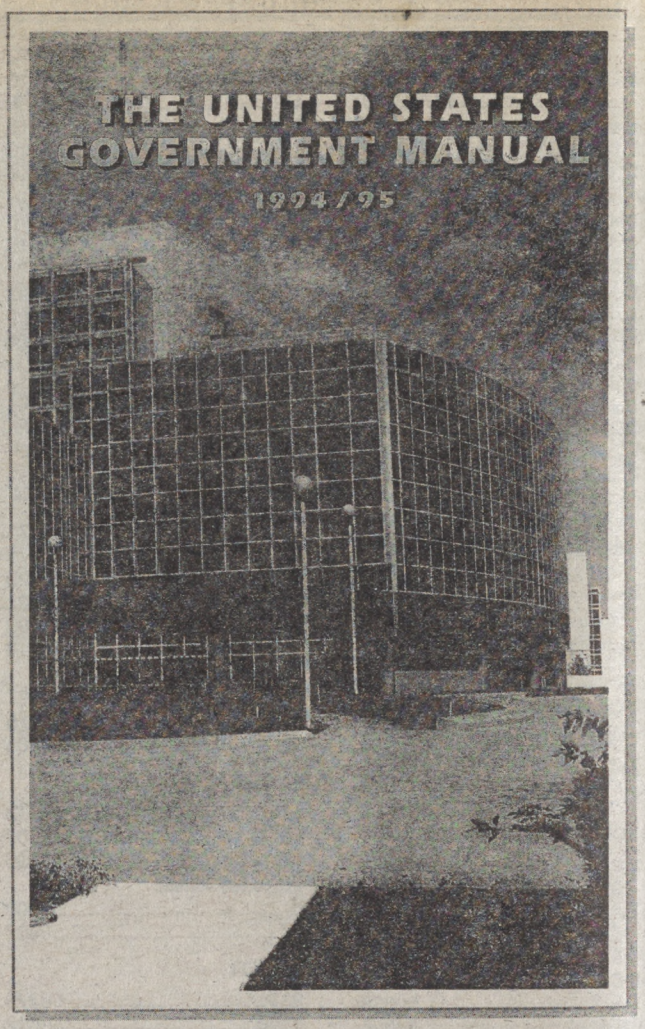


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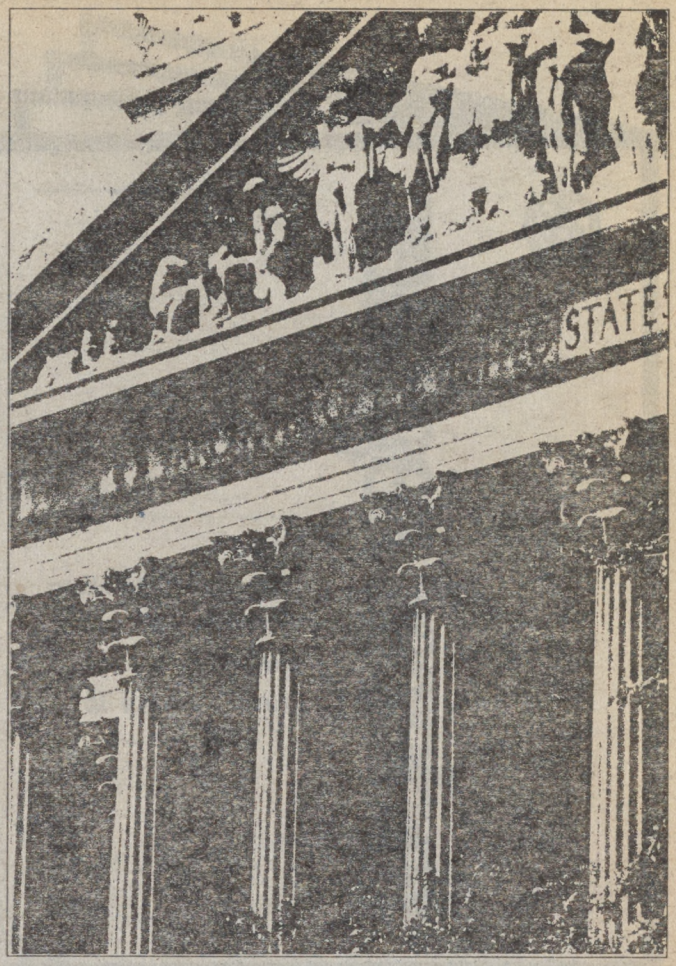


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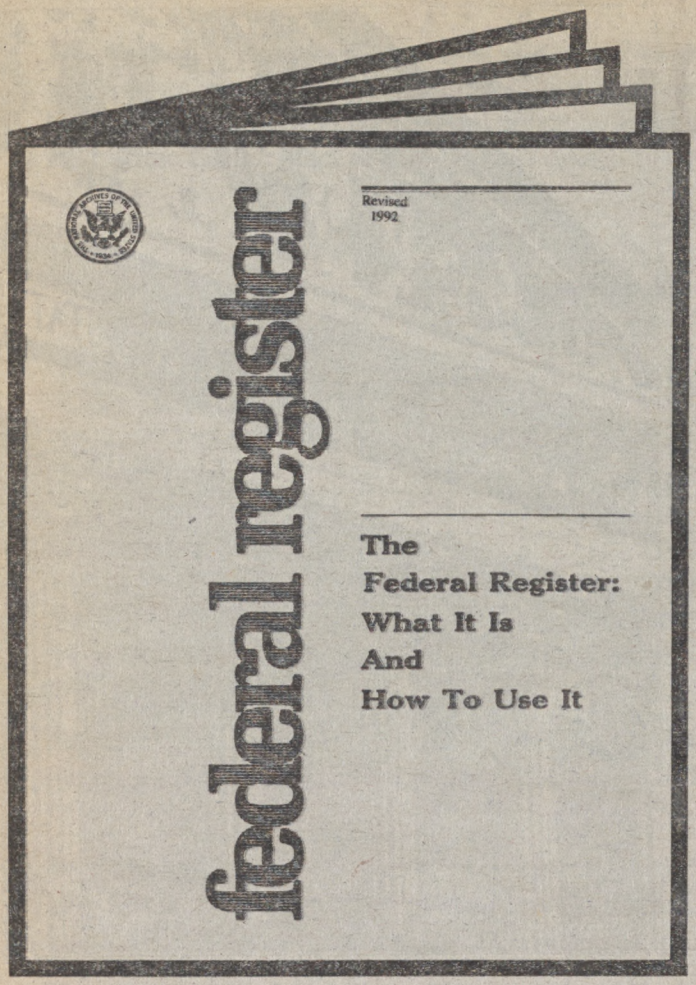


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