10-29-92
Vol. 57 No. 210
Pages 48929-49130

# federal register

Thursday
October 29, 1992

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

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

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

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

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

**How To Cite This Publication:** Use the volume number and the page number. Example: 57 FR 12345.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202-783-3238** |
| Magnetic tapes | **512-1530** |
| Problems with public subscriptions | **512-2303** |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **783-3238** |
| Magnetic tapes | **512-1530** |
| Problems with public single copies | **512-2457** |

### FEDERAL AGENCIES

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **523-5243** |
| Magnetic tapes | **512-1530** |
| Problems with Federal agency subscriptions | **523-5243** |

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

# Contents

Federal Register
Vol. 57, No. 210
Thursday, October 29, 1992

**Agricultural Marketing Service**
RULES
Avocados grown in Florida, 48930
Dates (domestic) produced or packed in California, 48934
Fruits, vegetables, and other products, fresh; inspection, certification, and standards; fee schedules, 48929
Marketing orders; expenses and rates of assessment, 48931
Milk marketing orders:
Southwest Plains, 48938
Peanuts, domestically produced, 48936
PROPOSED RULES
Lemons grown in California and Arizona, 49023
Milk marketing orders:
Central Arkansas, 49025

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Forest Service
NOTICES
Agency information collection activities under OMB review, 49062

**Air Force Department**
NOTICES
Meetings:
Scientific Advisory Board, 49075

**Civil Rights Commission**
NOTICES
Meetings; State advisory committees:
Florida, 49063
Georgia, 49063
Hawaii, 49064
Tennessee, 49064

**Commerce Department**
*See* Export Administration Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
RULES
Freedom of Information Act; implementation:
Initial denial officials, 48969

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 49072
India, 49072
Macau, 49073

**Commodity Futures Trading Commission**
NOTICES
Meetings:
Regulatory Coordination Advisory Committee, 49075

**Conservation and Renewable Energy Office**
NOTICES
Meetings:
State Energy Advisory Board, 49081

**Customs Service**
RULES
Custom brokers:
Permits; user fees, 48978
PROPOSED RULES
Cargo transportation within port limits; bonded carriers not requiring cartman's license, 49049
NOTICES
Petroleum products; approved public gauger:
Seatran, Inc., 49112

**Defense Contract Audit Agency**
RULES
Privacy Act; implementation, 48992

**Defense Department**
*See* Air Force Department
*See* Defense Contract Audit Agency
*See* Navy Department

**Employment Standards Administration**
*See* Wage and Hour Division

**Energy Department**
*See* Conservation and Renewable Energy Office
*See* Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Guided Wave, Inc., 49077
Meetings:
National Coal Council, 49081

**Environmental Protection Agency**
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Small non-road engines emissions control; meeting, 49054

**Executive Office of the President**
*See* Trade Representative, Office of United States

**Export Administration Bureau**
NOTICES
Timber, unprocessed, from Washington State; export prohibition increase, 49064

**Federal Aviation Administration**
RULES
Airworthiness directives:
Airbus Industrie, 48957
Boeing, 48959
British Aerospace, 48961
Fokker, 48962
McDonnell Douglas, 48963
SAAB-Scania, 48966
PROPOSED RULES
Airworthiness directives:
Dassault Aviation, 49036
Fokker, 49038
Airworthiness standards:
Special conditions—
Turbomeca model Makila 1A2 turboshaft engine, 49034
NOTICES
Exemption petitions; summary and disposition, 49107
Passenger facility charges; applications, etc.:
Port Control Department, Cleveland, OH, et al., 49108

**Federal Communications Commission**
RULES
Frequency allocations table amendments; new emerging technologies spectrum, 49020
PROPOSED RULES
Radio services, special:
Private land mobile services—
Specialized mobile radio (SMR) category applications; extended implementation periods, 49058
Radio stations; table of assignments:
Florida, 49058
Georgia et al., 49057
Maryland, 49057
North Carolina et al., 49055
Oklahoma, 49056
Vermont, 49056
NOTICES
Agency information collection activities under OMB review, 49082
Public safety radio communications plans:
Oklahoma, 49083
Toll fraud record, 49083

**Federal Deposit Insurance Corporation**
PROPOSED RULES
Deposit insurance coverage; rights and capacities review, 49026

**Federal Election Commission**
NOTICES
Meetings; Sunshine Act, 49116

**Federal Emergency Management Agency**
NOTICES
Disaster and emergency areas:
Florida, 49083

**Federal Energy Regulatory Commission**
NOTICES
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Louisiana Conservation Office, 49077
*Applications, hearings, determinations, etc.:*
Boston Edison Co., 49078
CNG Transmission Corp., 49078
Columbia Gas Transmission Corp., 49079
Commonwealth Edison Co., 49079
El Paso Natural Gas Co., 49079
Kamine/Besicorp South Glens Falls L.P. et al., 49079
Midwestern Gas Transmission Co., 49080
Northern Border Pipeline Co., 49080
Northwest Pipeline Corp., 49080
Pacific Gas & Electric Co., 49081
Tennessee Gas Pipeline Co., 49081

**Federal Highway Administration**
NOTICES
Environmental statements; notice of intent:
Washington, DC, 49111

**Federal Housing Finance Board**
NOTICES
Meetings; Sunshine Act, 49116

**Federal Maritime Commission**
RULES
Maritime carriers in foreign commerce:
Service contracts
Correction, 49019
NOTICES
Complaints filed:
Worldlink Logistics, Inc., 49083
Freight forwarder licenses:
Sunship International Corp. et al., 49084

**Federal Reserve System**
RULES
Securities credit transactions; OTC margin stocks list (Regulations G, T, U, and X), 48939
NOTICES
*Applications, hearings, determinations, etc.:*
FBOP Corp., 49084
Harder, Rollin R., 49084
Key Corp. et al., 49084

**Federal Trade Commission**
NOTICES
Prohibited trade practices:
Clorox Co., 49085
Medical Marketing Services, Inc., et al., 49087

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

**Fiscal Service**
NOTICES
Surety companies acceptable on Federal bonds:
Trumbull Insurance Co., 49112

**Fish and Wildlife Service**
NOTICES
Endangered and threatened species permit applications, 49096

**Food and Drug Administration**
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
2,2'-Methylenebis(4-methyl-6-tert-butylphenol)monoacrylate, 48978
NOTICES
Color additive petitions:
Biogeneral, Fiber Technology Group, 49090
Food additive petitions:
Kraft General Foods, 49090

**Forest Service**
NOTICES
Appeal exemptions; timber sales:
Fremont National Forest, OR, 49062

**General Services Administration**
NOTICES
Environmental statements; availability, etc.:
Rich's department store site, Washington DC; construction site for Federal offices, 49089
U.S. Courthouse, Springfield, IL; construction, 49089

**Health and Human Services Department**
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* Public Health Service

**Health Resources and Services Administration**
*See* Public Health Service

NOTICES
Health education assistance loan (HEAL) program:
Quarterly interest rates, 49090

**Housing and Urban Development Department**
PROPOSED RULES
Low income housing:
Housing assistance payments (Section 8)—
Contract rent annual adjustment factors, 49120
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Housing-Federal Housing Commissioner et al., 49091
Regional Administrators et al., 49092

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* Minerals Management Service
*See* Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
RULES
Income taxes:
Accelerated cost recovery system; applicable conventions, 48980
Branch profits tax
Correction, 49117

**International Trade Administration**
NOTICES
Antidumping:
Dynamic random access memory semiconductors of one megabit and above from Korea, 49066
Portable electric typewriters from—
Singapore, 49071

**International Trade Commission**
NOTICES
Import investigations:
Commercial food portioners, components, including software, and process, 49096
Helical spring lockwashers from China and Taiwan, 49097
Pads for woodwind instrument keys from Italy, 49097
United States-Canada Free Trade Agreement; accelerated tariff elimination; economic effect on U.S. industries and consumers, 49098

**Interstate Commerce Commission**
NOTICES
Environmental statements; availability, etc.:
Consolidated Rail Corp. et al., 49098
Railroad operation, acquisition, construction, etc.:
Southern Pacific Transportation Co. et al., 49099
South Kansas & Oklahoma Railroad, Inc., 49098
SPCSL Corp., 49099
Railroad services abandonment:
Union Pacific Railroad Co., 49099

**Justice Department**
NOTICES
Pollution control; consent judgments:
Georgia-Pacific Corp., 49100
Gerald T. Fenton, Inc., et al., 49100

**Labor Department**
*See* Wage and Hour Division

**Land Management Bureau**
NOTICES
Meetings:
Battle Mountain District Grazing Advisory Board, 49093
Craig District Grazing Advisory Board, 49093
Safford District Advisory Council, 49093
Organization, functions, and authority delegations:
Roswell District Office, NM; mailing address change, 49092
Realty actions; sales, leases, etc.:
Montana, 49093
Resource management plans, etc.:
Redding Resource Area, CA, 49094
Survey plat filings:
Arizona, 49095
Idaho, 49095
Oregon, 49095

**Minerals Management Service**
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 49096

**National Oceanic and Atmospheric Administration**
PROPOSED RULES
Fishery conservation and management:
Pacific Coast groundfish, 49060
NOTICES
Permits:
Marine mammals, 49071

**National Science Foundation**
NOTICES
Meetings:
Geography and Regional Science Advisory Panel, 49100
Physics Special Emphasis Panel, 49101
Political Science Advisory Panel, 49101
Sociology Advisory Panel, 49101

**Navy Department**
NOTICES
Meetings:
Chief of Naval Operations Executive Panel, 49075
Privacy Act:
Systems of records, 49075

**Nuclear Regulatory Commission**
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 49101
Uranium mill tailings sites, reclamation plans; license amendment requests:
Quivira Mining Co., 49103
*Applications, hearings, determinations, etc.:*
Consumers Power Co., 49103
Northern States Power Co., 49103

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Public Health Service**
*See* Food and Drug Administration
*See* Health Resources and Services Administration
PROPOSED RULES
Vaccine injury compensation:
Vaccine injury table revision
Hearing, 49055
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 49091

**Research and Special Programs Administration**
NOTICES
Crosby Valve & Gage Co.; chlorine tanks safety relief valves; safety advisory, 49111

**Resolution Trust Corporation**
RULES
Freedom of Information Act; implementation, 48949

**Securities and Exchange Commission**
RULES
Photocopying services; price increase, 48970
Securities:
Primary securities offerings, registration procedures; simplification, 48970
PROPOSED RULES
Securities:
Passive market making, 49039
NOTICES
*Applications, hearings, determinations, etc.:*
Finland Fund, Inc., 49104
Liberty Mutual Capital Corp., 49105
Prudential Strategic Income Fund, 49106

**Sentencing Commission, United States**
*See* United States Sentencing Commission

**Surface Mining Reclamation and Enforcement Office**
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Wyoming, 48984
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kansas, 49051
West Virginia, 49052

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Thrift Supervision Office**
RULES
Savings associations:
Operating subsidiaries and service corporations, 48942

**Trade Representative, Office of United States**
NOTICES
Generalized System of Preferences:
Annual review (1992); withdrawal of petitions, 49104

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Atlas Air, Inc.; correction, 49117

**Treasury Department**
*See* Customs Service
*See* Fiscal Service
*See* Internal Revenue Service
*See* Thrift Supervision Office

**United States Information Agency**
NOTICES
Grants and cooperative agreements; availability, etc.:
U.S. Russia-Ukraine Summer Language Teacher Exchange Program, 49112
Meetings:
Cuba Broadcasting Advisory Board, 49112

**United States Sentencing Commission**
NOTICES
Sentencing guidelines for United States courts, 49115

**Veterans Affairs Department**
NOTICES
Meetings:
Special Medical Advisory Group, 49115

**Wage and Hour Division**
RULES
Fair Labor Standards Act:
Minimum wage and overtime violations civil money penalties, 49128

---

**Separate Parts In This Issue**

**Part II**
Department of Housing and Urban Development, 49120

**Part III**
Department of Labor, Wage and Hour Division, 49128

---

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

---

**Electronic Bulletin Board**
Free **Electronic Bulletin Board** service for Public Law Numbers and the Federal Register Table of Contents is available on 202–275–1538 or 275–0920.

## CFR PARTS AFFECTED IN THIS ISSUE

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


**7 CFR**
51 ..... 48929
915 ..... 48930
945 ..... 48931
967 ..... 48931
981 ..... 48931
987 ..... 48934
993 ..... 48931
998 ..... 48936
1106 ..... 48938
**Proposed Rules:**
910 ..... 49023
1108 ..... 49023

**12 CFR**
207 ..... 48939
220 ..... 48939
221 ..... 48939
224 ..... 48939
506 ..... 48942
545 ..... 48942
1615 ..... 48949
**Proposed Rules:**
330 ..... 49026

**14 CFR**
39 (7 documents) ..... 488957, 48959, 48961–48963, 48966, 48967
**Proposed Rules:**
33 ..... 49034
39 (2 documents) ..... 49036, 49038

**15 CFR**
4 ..... 48969

**17 CFR**
200 ..... 48970
230 ..... 48970
239 ..... 48970
240 ..... 48970
249 ..... 48970
**Proposed Rules:**
240 ..... 49039

**19 CFR**
111 ..... 48978
**Proposed Rules:**
112 ..... 49049
125 ..... 49049
146 ..... 49049

**21 CFR**
178 ..... 48978

**24 CFR**
**Proposed Rules:**
880 ..... 49120
881 ..... 49120
882 ..... 49120
883 ..... 49120
884 ..... 49120
886 ..... 49120
888 ..... 49120

**26 CFR**
1 (2 documents) ..... 48980, 49117
602 (2 documents) ..... 48980, 49117

**29 CFR**
578 ..... 48128

**30 CFR**
950 ..... 48984
**Proposed Rules:**
916 ..... 49051
948 ..... 49052

**32 CFR**
317 ..... 48992

**40 CFR**
**Proposed Rules:**
Ch. I ..... 49054

**42 CFR**
**Proposed Rules:**
100 ..... 49055

**46 CFR**
514 ..... 49019
581 ..... 49019

**47 CFR**
2 ..... 49020
21 ..... 49020
22 ..... 49020
94 ..... 49020
**Proposed Rules:**
73 (6 documents) ..... 49055–49058
90 ..... 49058

**50 CFR**
**Proposed Rules:**
663 ..... 49060

# Rules and Regulations

Federal Register
Vol. 57, No. 210
Thursday, October 29 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

**[Docket No. FV-92-302]**

### Fresh Fruits, Vegetables and Other Products [1] (Inspection, Certification, and Standards)

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations governing inspection, certification and standards for fresh fruits, vegetables and other products by increasing the fees charged for the inspection of these products at destination markets. The revision will adjust fees to recover the costs of performing this inspection service as authorized by the Agricultural Marketing Act (AMA) of 1946.

**EFFECTIVE DATE:** November 12, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas C. Bailey, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056, South Building, Washington, DC 20090-6456, telephone (202) 720-5870.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has certified that this action will not have a significant economic impact on a substantial number of small entities. This final rule for the revision of the regulations governing inspection, certification and standards for fresh fruits, vegetables and other products will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

The regulations were last revised in October 1991. This final rule reflects fee increases needed to recover the costs of service rendered in accordance with the AMA of 1946.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of fresh fruits, vegetables, and other products such as raw nuts, Christmas trees, and flowers. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This final rule will amend the schedule for fees and charges for services rendered to the fresh fruit and vegetables industry at destination markets to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change on October 30, 1991 (56 FR 55799), program operating costs have increased. The major increase is the result of hiring 20 additional graders, which has increased annual personnel costs by approximately $521,000. These graders were hired due to the industry's repeated emphasis that the program provide faster response to unscheduled requests for inspection services. Because of this increase in personnel costs, the program expects to incur a $490,000 loss in fiscal year 1992. The fiscal year 1992 reserve balance of the program's trust fund is projected to equal less than one month of operating reserve, well below the four-month level considered necessary to ensure the program's financial viability.

A notice of proposed rulemaking was published in the **Federal Register** (57 FR 29449-29450) on July 2, 1992 with a thirty-day comment period. The comment period closed on August 3, 1992. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. Two letters of comment were received: One from a State commissioner of agriculture and one from an official of a wholesale receiving company. The first commenter states that the State-operated Federal-State grading service, which provides market inspection services in that State using State employees under Federal supervision, does not need a fee increase. The fiscal stability of this one Federal-State program, with its differing rates of pay, benefit entitlements, and overhead expenses, does not mitigate the need for the proposed fee increase for the AMS-administered Federal market inspection program. This commenter also questions if shippers in his State will benefit. However, the fee increase supports more prompt inspection at terminal markets where their produce is received. The second commenter objects to the proposed increase and argues that the cost of responding to unscheduled requests for inspection service should be borne only by that portion of the industry requesting such service. This commenter states that 98 percent of the industry is not affected by unscheduled inspections. However, approximately 95 percent of the AMS Federal market inspection work is in response to unscheduled requests for inspection service, and nearly all users request services on an unscheduled, as-soon-as-possible basis.

In the absence of compelling arguments against the proposed increase, and in light of the continuing need to maintain this AMS grading program on a financially sound basis, the Agency has decided to proceed with the fee increase as set forth in the proposal.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**

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

because the fiscal year 1992 reserve balance of the program's trust fund is projected to be less than one month's operating reserve which is well below the four-month level necessary to ensure the program's fiscal viability.

**List of Subjects in 7 CFR Part 51**

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

For the reasons set forth in the preamble, 7 CFR part 51 is amended to read as follows:

## PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR part 51 continues to read as follows:

**Authority:** Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

**§ 51.38 [Amended]**

2. In § 51.38, paragraph (a)(1)(i) is amended by revising "$220" to read "$242", paragraph (a)(1)(ii) is amended by revising "$10" to read "$11", and paragraph (a)(1)(iii) is amended by revising "$10" to read "$11".

3. In § 51.38, paragraph (a)(2)(i) is amended by revising "$62" to read "$68", paragraph (a)(2)(ii) is amended by revising "$52" to read "$57", and paragraph (a)(2)(iii) is amended by revising "$10" to read "$11".

4. In § 51.38, paragraph (a)(3)(i) is amended by revising "$52" to read "$57", paragraph (a)(3)(ii) is amended by revising "$47" to read "$52", and paragraph (a)(3)(iii) is amended by revising "$10" to read "$11".

5. In § 51.38, paragraph (b)(1) is amended by revising "$62" to read "$68", paragraph (c) is amended by revising "$31.00" to read "$34.00", and paragraph (d) is amended by revising "$15.50" to read "$17.00".

Dated: October 26, 1992.

**Daniel Haley,**

*Administrator.*

[FR Doc. 92-26273 Filed 10-28-92; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 915**

**[Docket No. FV-92-062FR]**

## Avocados Grown in South Florida; Relaxation of Grade Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This final rule relaxes grade requirements for avocados grown in Florida by permitting handlers to ship fresh avocados seriously damaged, but not very seriously damaged, by Cercospora Spot in certain containers to destinations within the production area, during the period November 2, 1992, through March 31, 1993. This action is expected to result in the shipment of small quantities of avocados damaged by Cercospora Spot during the latter part of the growing season to secondary markets within the production area.

**EFFECTIVE DATE:** November 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2423-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. 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.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing in 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 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 action 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 about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) met April 8, 1992, and recommended this action. The committee met again on September 14, 1992, to assess hurricane damage to the 1992-93 season Florida avocado crop, and reaffirmed its earlier recommendation that this relaxation be implemented. The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

A proposed rule concerning this action was issued on August 19, 1992, and published in the **Federal Register** on August 25, 1992 (57 FR 38445). That rule provided a 30-day comment period which ended September 24, 1992. No

comments were received. However, on September 14, 1992, the committee reaffirmed its earlier recommendation concerning the relaxation.

This final rule amends § 915.306 (7 CFR 915.306) to permit handlers to ship fresh avocados seriously damaged, but not very seriously damaged, by Cercospora Spot to destinations within the production area in containers other than those authorized under § 915.305 (7 CFR 915.305), during the period November 2, 1992, through March 31, 1993. Cercospora Spot is a surface blemish which affects the rind tissue but not the edible portion of the fruit, and is classified as a defect under the United States Standards for Grades of Florida Avocados. Serious damage caused by Cercospora Spot, but not very serious damage, is permitted in shipments of U.S. No. 3 grade avocados, but not in shipments of U.S. No. 2 grade fruit. Under the U.S. No. 2 grade, avocados may be damaged by Cercospora Spot, but not seriously damaged. Currently, all fresh avocados grown in Florida shipped to destinations within the production area must grade at least U.S. No. 2, except that avocados may be placed in containers with avocados of dissimilar varietal characteristics.

This final rule is expected to result in the shipment of small quantities of avocados damaged by Cercospora Spot during the latter part of the growing season to secondary markets within the production area. This should provide avocado growers and handlers with an opportunity to sell in the fresh market certain avocados which would otherwise be culled out during the packing process under the current grade requirements. In Florida, Cercospora Spot becomes more prevalent in the latter part of the growing season, particularly in the late fall and winter.

The committee recommended that this relaxation be made effective for the 1992–93 season only. The committee plans to evaluate this relaxation at the end of the 1992–93 season to see if a viable market exists for this lower quality fruit.

Currently, avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28). Since this action does not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there is no need to change the avocado import regulation. Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in § 915.332 (7 CFR 915.332). These requirements, based on minimum weights and diameters, are not effected by this final rule.

This action reflects the committee's and the Department's appraisal of the need to relax the grade requirements for certain Florida grown avocados shipped to destinations within the production area.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes minimum grade requirements currently in effect for certain avocados grown in Florida; (2) this action should be made effective by November 2, 1992, to be of maximum benefit to the Florida avocado industry; (3) Florida avocado handlers are aware of this action which was recommended by the committee at a public meeting and they need no additional time in which to prepare to meet the relaxed requirements; and (4) the proposed rule provided a 30-day comment period, and no comments were received.

**List of Subjects in 7 CFR Part 915**

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

2. In § 915.306, paragraph (a) introductory text is republished and paragraph (a)(1) is revised to read as follows:

**§ 915.306 Florida avocado grade, pack, and container marking regulation.**

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Such avocados grade at least U.S No. 2, except that avocados handled to destinations within the production area may be placed in containers with avocados of dissimilar varietal characteristics: *Provided*, That during the period November 2, 1992, through March 31, 1993, avocados may be handled to destinations within the production area in containers other than those authorized under § 915.305 affected by serious damage, but not very serious damage, caused by Cercospora Spot.

* * * * *

Dated: October 26, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–26271 Filed 10–28–92; 8:45 am]

BILLING CODE 3410–02–M

---

## 7 CFR Parts 945, 967, 981, and 993

**[Docket No. FV92–945–1FIR]**

## Expenses and Assessment Rates for Specified Marketing Orders

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

**ACTION:** Final rule.

**SUMMARY:** The Department is adopting as final rules the provisions of four interim final rules (without change) authorizing expenditures and establishing assessment rates under Marketing Orders 945, 967, 981, and 993 for the 1992–93 fiscal period. Authorization of these budgets enables the Idaho-Eastern Oregon Potato Committee, the Florida Celery Committee, the Almond Board of California, and the Prune Marketing Committee (Committees and Board) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

**EFFECTIVE DATES:** July 1, 1992, through June 30, 1993 (§ 981.339); and August 1, 1992, through July 31, 1993 (§§ 945.245, 967.227, and 993.343).

**FOR FURTHER INFORMATION CONTACT:** Dennis L. West (M.O. 945), Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 SW Third Avenue, Portland, OR 97204, telephone 503–326–2725; William Pimental (M.O. 967), Southeast

Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4886; Martin Engler (M.O. 981) or Richard P. Van Diest (M.O. 993), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209–487–5901, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

**SUPPLEMENTARY INFORMATION:** This rule is effective under Marketing Agreement No. 98 and Order No. 945 (7 CFR part 945), both as amended, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon; Marketing Agreement No. 149 and Order No. 967 (7 CFR part 967), both as amended, regulating the handling of celery grown in Florida; Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, regulating the handling of almonds grown in California; and Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Idaho-Eastern Oregon potatoes, Florida celery, California almonds, and California prunes are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable California almonds handled during the 1992–93 crop year, which began July 1, 1992, through June 30, 1993, and all assessable Idaho-Eastern Oregon potatoes, Florida celery, and California prunes handled during the 1992–93 fiscal period, which began August 1, 1992, through July 31, 1993. 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 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 30 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 the 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 2,200 producers of Idaho-Eastern Oregon potatoes under Marketing Order No. 945, and approximately 66 handlers. There are approximately 13 producers of Florida celery under Marketing Order No. 967, and approximately 7 handlers. There are approximately 7,000 producers of California almonds under Marketing Order No. 981, and approximately 115 handlers. Also, there are approximately 1,400 producers of California prunes under Marketing Order No. 993, and approximately 17 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1992–93 fiscal period were prepared by the Idaho-Eastern Oregon Potato Committee, the Florida Celery Committee, the Almond Board of California, and the Prune Marketing Committee, the agencies responsible for local administration of the orders, and submitted to the Department for approval. The members of these Committees and Board are handlers and producers of Idaho-Eastern Oregon potatoes, Florida celery, California almonds, and California prunes. They are familiar with the Committees' and Board's needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the Committees and Board were derived by dividing anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes, Florida celery, California almonds, and dried California prunes. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the Committees' and Board's expenses.

The Idaho-Eastern Oregon Potato Committee met June 9, 1992, and unanimously recommended a 1992–93 budget of $88,535, $16,203 less than the previous year. An increase of $2,485 in salaries will be more than offset by a decrease of $19,088 in the contingency category.

The Committee also unanimously recommended an assessment rate of $0.0026 per hundredweight, the same as each year for the past decade. This rate, when applied to anticipated shipments of 28,000,000 hundredweight, will yield $72,800 in assessment income. This, along with $15,735 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period, estimated at about $47,000, were within the maximum permitted by the order of one fiscal period's expenses.

The Florida Celery Committee met June 10, 1992, and unanimously recommended a 1992–93 budget of $150,000, $15,000 less than the previous year. The addition of a $2,000 contingency reserve category will be offset by decreases of $10,000 for promotion, merchandising & PR, and $6,000 for research, for which no funding was recommended.

The Committee also unanimously recommended an assessment rate of $0.03 per crate, the same as last season. This rate, when applied to anticipated shipments of 5,000,000 crates, will yield $150,000 in assessment income. Funds in

the committee's authorized reserve as of July 31, 1991, estimated at $20,142, were within the maximum permitted by the order of one marketing year's expenses.

The Almond Board of California met June 4, 1992, and unanimously recommended a 1992–93 budget of $12,395,049, which is $854,954 more than the previous year. This amount includes administrative and other expenses of $5,620,049, which is $1,904,454 more than the previous year, and $6,775,000 for creditable advertising expenditures. Increases include $200,000 for salaries, $7,000 for employee benefits, $20,500 for retirement, $2,000 for payroll taxes, $16,000 for office rent, $2,000 for storage rent, $2,000 for insurance, $3,500 for audit (contract), $33,000 for vehicles, $1,400 for security, $2,000 for telephone, $4,000 for postage & UPS, $15,000 for office equipment, $2,500 for equipment maintenance, $82,654 for production research, $1,626,000 for public relations, $3,500 for crop estimate, and the addition of a $10,000 relocation expenses category. These will be partially offset by decreases of $4,000 for research conference, $3,000 for field representative travel, $10,000 for investigation/consultant, $9,000 for newsletter, $3,000 for printing, and $100,000 for a management consultant for which no funding was recommended.

The Board also unanimously recommended an assessment rate of 2.25 cents per kernel pound, the same as last year. It was also unanimously recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 1.25 cents of this 2.25 cents assessment rate, 0.50 cents less than last year. The 1.00 cent per kernel pound noncreditable assessment rate is .50 cents more than last year. Revenues are expected to be $5,420,000 from administrative assessments (542,000,000 pounds @ 1.00 cent per pound), $960,000 from advertising assessments, $30,000 from interest, and $100,000 from the sale of generic packages for a total of $6,510,000. A cash carryin from 1991–92 of $301,578 also is expected.

The remaining $6,775,000 of recommended 1992–93 expenses is the estimated amount which handlers are expected to spend on their own marketing promotion activities based on a projected 1992–93 marketable California production of 542,000,000 kernel pounds. This figure also assumes that all handlers will receive full credit against their 1.25 cents per pound creditable assessment obligation. Unexpended funds from 1992–93 may be carried over to cover expenses during the first four months of the 1993–94 crop year.

The Prune Marketing Committee met June 23, 1992, and unanimously recommended a 1992–93 budget of $285,000, $5,224 less than the previous year. Increases of $8,750 for salaries and wages, $1,000 for office supply and expense, $1,000 for postage and messenger, and $4,500 for fieldman and committee travel will be offset by decreases of $1,500 for insurance, $2,000 for repairs and maintenance, $1,000 for telephone, $1,500 for office travel, $5,000 for purchase of equipment, $2,000 for research and development, and $4,624 in the reserve for contingencies.

The Committee also unanimously recommended an assessment rate of $1.50 per salable ton, $0.26 less than the previous year. This rate, when applied to anticipated shipments of 190,000 salable tons, will yield $285,000 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

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 will be offset by the benefits derived from the operation of the marketing orders. 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.

Proposed rules were published in the **Federal Register** on August 25, 1992, for 7 CFR part 945 (57 FR 38403); 7 CFR part 967 (57 FR 38405); 7 CFR part 981 (57 FR 38408); and 7 CFR part 993 (57 FR 38412). Those documents contained interim final rules adding § 945.245, § 967.227, § 981.339, and § 993.343, authorizing expenses and establishing assessment rates for the Committees and Board. Those rules provided that interested persons could file comments through September 24, 1992. One comment was received from Brian C. Leighton on behalf of Cal-Almond, Inc. (Cal-Almond) on interim § 981.339. Mr. Leighton objected to the imposition of a creditable advertising assessment rate of 1.25 cents per pound for the following reasons:

Mr. Leighton contends that said advertising assessment forces Cal-Almond to speak in a method and manner dictated by the Department, contrary to First Amendment rights. It is the Department's position that all provisions of the order are authorized under the Act and that the order in no way infringes upon the First Amendment rights of Cal-Almond.

Mr. Leighton contends that the advertising regulations and rules in § 981.441(c) of the almond order are contrary to § 608c(10) of the Act which precludes marketing orders from regulating and restricting advertising. It is the position of the Department that § 981.441 does not impose regulations or restrictions on what almond handlers may advertise, but only governs what handlers may receive advertising credit for under the order.

Mr Leighton contends that the advertising regulations governing the expenditure of creditable advertising assessments are not designed to sell the almonds marketed by over 95 percent of the industry handlers. The Department disagrees with this statement. Handlers are expected to spend these funds on their own marketing promotion activities and receive credit against their creditable assessment obligation, or pay the assessments to the Board to be used in the Board's generic advertising program, designed to benefit all handlers.

Mr. Leighton contends that there is no substantial basis and purpose in the interim rule showing that the expenditure of said amounts of money on advertising will increase the sale or sale price of almonds. The Department disagrees with this statement. The Board's advertising and promotion program, designed to increase the demand for almonds and food products containing almonds, was reviewed by the Department and found to be in conformance with the order and the Act, and found to meet the objectives of the projects.

Mr. Leighton contends that the issuance of the interim rule retroactive to the beginning of the crop year violates the pronouncement by the United States Supreme Court in Bowen v. Georgetown University Hospital, in that the interim rule cannot be made retroactive to product already received by handlers. The Department disagrees with this statement. Section 981.81 Assessment, (a) Requirement for payment of the almond marketing order requires that the rate of assessment for the crop year apply to all assessable almonds handled during the crop year.

Mr. Leighton also stated that the interim final rule violated the procedural requirements of the Administrative Procedure Act because no proposed rule providing a comment period was issued.

The Department believes an interim final rule was justified because: (1) The Board needed to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year started on July 1, 1992, and the order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers were aware of this action which was unanimously recommended at a public meeting; and (4) 30 days were allowed in which to file comments which would be considered before the action was finalized.

Finally, Mr. Leighton stated the rule did not address why the Board needed the expenditures for administrative expenses, the generic advertising program, and production research. He claimed that the rule was therefore arbitrary and capricious and not based upon substantial evidence. The Department disagrees. The Department reviewed all information submitted by the Board, including lists of recommended expenses, and determined that all recommended expenses were necessary for the maintenance and functioning of the Board. These expenses are necessary so that the Board can conduct activities, such as generic advertising and production research, which are authorized under the order. Findings to this effect were included in the interim final rule.

For the reasons stated above, Mr. Leighton's objections on behalf of Cal-Almond are denied.

It is found that the specified expenses for the marketing orders covered in this rulemaking 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 and Board need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1992–93 fiscal periods for the programs began on July 1, 1992, for California almonds, and on August 1, 1992, for Idaho-Eastern Oregon potatoes, Florida celery, and California prunes, and the marketing orders require that the rates of assessment for the fiscal periods apply to all assessable almonds, potatoes, celery, and prunes handled during the fiscal periods. In addition, handlers are aware of these actions which were recommended by the Committees and Board at public meetings and published in the **Federal Register** as interim final rules.

**List of Subjects**

*7 CFR Part 945*

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

*7 CFR Part 967*

Celery, Marketing agreements, Reporting and recordkeeping requirements.

*7 CFR Part 981*

Almonds, marketing agreements, Nuts, Reporting and recordkeeping requirements.

*7 CFR Part 993*

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 945, 967, 981, and 993 are hereby amended as follows:

1. The authority citation for 7 CFR parts 945, 967, 981, and 993 continues to read as follows:

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

## PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

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

For the reasons set forth in the preamble, the interim final rule adding § 945.245 which was published at 57 FR 38403 on August 25, 1992, is adopted as a final rule without change.

## PART 967—CELERY GROWN IN FLORIDA

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

For the reasons set forth in the preamble, the interim final rule adding § 967.227 which was published at 57 FR 38405 on August 25, 1992, is adopted as a final rule without change.

## PART 981—ALMONDS GROWN IN CALIFORNIA

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

For the reasons set forth in the preamble, the interim final rule adding § 981.339 which was published at 57 FR 38408 on August 25, 1992, is adopted as a final rule without change.

## PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

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

For the reasons set forth in the preamble, the interim final rule adding § 993.343 which was published at 57 FR 38412 on August 25, 1992, is adopted as a final rule without change.

Dated: October 26, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–26272 Filed 10–28–92; 8:45 am]

BILLING CODE 3410–02–M

---

**7 CFR Part 987**

**[FV–92–069FR]**

## Addition of California Certified Farmers' Markets as an Exempted Outlet for Domestic Dates Produced or Packed in Riverside County, California

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

**ACTION:** Final rule.

**SUMMARY:** This action finalizes an interim final rule which added California certified farmers' markets to the list of outlets to which date producers may sell dates of their own production exempt from certain requirements under the marketing order. Date producers who qualify under this rule are exempt from inspection, volume control, container, and assessment requirements issued under the marketing order. This action facilitates the marketing of dates by producers and was unanimously recommended by the California Date Administrative Committee (Committee), which is responsible for local administration of the order.

**EFFECTIVE DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Kellee Hopper, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 2202 Monterey Street, suite 102 B, Fresno, CA 93721; telephone (209) 487–5901 or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2170.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced

or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 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 exempt 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 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 25 handlers of California dates subject to regulation under the order each season and approximately 135 date producers in the regulated area. The majority of the date handlers and producers may be classified as small entities. This action does not impose a significant impact on the small entities involved.

This final rule adopts, without modification, an interim final rule which revised § 987.152 of the administrative rules of the order. This action was unanimously recommended by the Committee at its April 23, 1992, meeting.

Section 987.152(a) provides that producers who sell their own product through direct mail services, at date shops, or directly to consumers at roadside stands within a 25-mile radius of Indio, California, may be exempt from inspection, volume control, container, and assessment regulations under the marketing order. The Committee grants producers permission to sell dates through these outlets only if the producer files with the Committee a form wherein the producer describes how the dates are to be sold, sells only dates meeting modified U.S. Grade B or better standards, and reports such sales to the Committee.

Prior to the interim final rule, producers who sold dates of their own production at farmers' market outlets were not provided the same exemptions. Generally, only very small date producers sell their own production at farmers' markets. Therefore, the Committee recommended exempting dates sold by producers at California certified farmers' markets from inspection, volume control, container and assessment requirements. The change reduces marketing costs for producers by providing those producers with the same exemption given to producers utilizing other direct-to-consumer outlets. The Committee estimates that less than one percent of California dates produced in the production area are marketed through certified farmers' markets. Thus, this additional exemption is not expected to have a negative effect on program objectives.

Under this action, California date producers who intend to market their own production, or a portion thereof, at farmers' markets, are required to file CDAC Form No. 9 before such exemption would be granted. CDAC Form No. 9 specifies that dates sold at exempted outlets set forth in § 987.152(a) be at least modified U.S. Grade B. This helps to ensure that producers are not using exempted outlets to market substandard fruit. In addition, producers who produce dates for which an exemption is being sought would be required to be certified, by the State of California or the local county government organization, that the producer adheres to applicable state certification standards. A copy of the certification document is to be submitted, with CDAC Form No. 9, to the Committee.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection requirements that are being added by this action have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581–0077.

The interim final rule was published in the **Federal Register** on August 28, 1992 (57 FR 39110). The comment period ended on September 28, 1992. No comments were received.

On the basis of the foregoing, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues an action already in effect and no additional time is needed for the producers to prepare for the exemption; (2) the interim final rule provided a 30-day comment period and no comments were received; and (3) no useful purpose will be served by delaying the effective date of this finalization until 30 days after publication.

**List of Subjects in 7 CFR Part 987**

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended to read as follows:

## PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

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

**§ 987.152 [Amended]**

2. Accordingly, the interim final rule amending the provisions of § 987.152, published in the **Federal Register** (57 FR 39110) on August 28, 1992, is adopted as a final rule without change.

Dated: October 26, 1992.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92-26275 Filed 10-28-92; 8:45 am]

BILLING CODE 3410-02-M

---

**7 CFR Part 998**

**[Docket No. FV-92-032FR]**

## Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts; Final Rule Changing Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1992 Crop Peanuts

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

**ACTION:** Final rule.

**SUMMARY:** This action finalizes an interim final rule (IFR) which established the outgoing quality regulation and the terms and conditions of indemnification for 1992 crop peanuts regulated under Marketing Agreement No. 146. The IFR changed the outgoing regulations to allow commingling of peanut lots of different grade categories at the request of the buyer after the lots pass quality and aflatoxin inspection and are positive lot identified and to increase options for handling peanut lots which fail to meet quality and aflatoxin requirements by allowing second handlers to move such lots to approved blanchers for blanching. The terms and conditions of indemnification are changed to make the payment system consistent with the current financial condition of the indemnification program. These actions will continue to improve the movement of peanuts to market, increase the volume of peanuts placed in marketing channels, and facilitate the payment of indemnification claims to handlers.

**EFFECTIVE DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** John Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (813) 299-4770, or Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone: (202) 720-6862.

**SUPPLEMENTARY INFORMATION:** This rule is issued pursuant to Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act).

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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

There are about 70 handlers of peanuts subject to regulation under the agreement, and there are about 47,000 peanut growers in the 16 states covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States covered under the agreement: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. The Virginia-Carolina area (Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida, and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1991 totalled 4.94 billion pounds, a 37 percent increase from 1990. The 1991 crop value is $1.4 billion, up 12 percent from 1990.

Aflatoxin was found in peanuts in the mid-1960's. Since that time, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 90 percent of U.S. shellers (handlers) have voluntarily signed the agreement. They handle an estimated 95 percent of the crop.

Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee). The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department. A sheller who has complied with these requirements is eligible for indemnification of losses incurred if the sheller's peanuts are deemed unsuitable for human consumption because of aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The incoming quality regulation specifies the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulation requires shellers to mill peanuts to meet certain quality specifications and to have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. If the chemical assay shows that the lot is positive as to aflatoxin, the lot is not allowed to be shipped to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

On March 4 and 5, 1992, the Committee unanimously recommended changes in paragraphs (d) and (h)(3) of § 998.200 *Outgoing quality regulation* and § 998.300 *Terms and conditions of indemnification.* An interim final rule was published in the **Federal Register** on August 3, 1992, [57 FR 34061] authorizing these changes. Comments were invited until September 2, 1992. No comments were received.

The first change amended paragraph (d) of § 998.200 to allow commingling of

peanut lots of different grade categories at the request of the buyer or receiver, after the lots pass quality and aflatoxin inspection and are positive lot identified (PLI). Some buyers do not have commingling equipment at their facilities. This rule continues to allow handlers to satisfy the occasional request received from buyers that multiple lots be mixed prior to shipment to the buyer. Because each commingled lot loses its original identity, the entire commingled load is no longer considered to be PLI and the peanuts compromising the load are no longer eligible for indemnification or appeal inspection. Loss of the handler's right to indemnification claims and appeal inspections on such lots should not represent a significant concern to handlers as lots that pass quality inspection and aflatoxin testing are not eligible for indemnification and normally do not require an appeal inspection.

A transfer certificate is issued by the inspection service on the commingled load certifying that, prior to commingling, the individual lots were PLI and met all program requirements.

This change is beneficial to the industry because it facilitates movement of peanuts and helps handlers meet their customers' needs. The change is affected by adding the following at the end of paragraph (d): "* * * except that lots which are commingled at the request of the receiver will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified, and, therefore, no longer eligible for indemnification or for appeal inspection."

This action also increases second-handler options for disposing of PLI shelled peanut lots which fail to meet outgoing quality and aflatoxin requirements. Paragraph (h)(1) of § 998.200, Outgoing quality regulation, provides disposition requirements for second handlers of such peanuts, by referring the second handlers to disposition options specified in paragraph (h)(3). Prior to the issuance of the IFR, paragraph (h)(3) provided five options for disposing of such failed lots (to domestic crushing, for export, to Committee-approved non-handler crushers, to other signer-handlers for crushing or fragmentation and exportation, and to domestic animal feed use). It did not list blanching, which is one of the most commonly used methods of making peanuts which fail quality requirements suitable for human consumption. The Committee believed that the option of blanching had simply not been addressed as an issue in the past and that there was never an intent to exclude blanching from disposition options available to second handlers. Therefore, a sentence was added in paragraph (h)(3) providing that handlers may also blanch, or cause to have blanched, failed lots pursuant to paragraph (h)(2) of § 998.200. Provisions of paragraph (h)(2) include that: (1) Movement of blanched peanuts be accompanied by a valid grade inspection certificate; (2) handlers report such movement to the Committee and maintain records of such movement; (3) prior to certification for human consumption, the lot of peanuts meets quality requirements listed in paragraph (a) of § 998.200 for unshelled peanuts, damaged kernels, minor defects, moisture, foreign material content; (4) the lot be certified negative as to aflatoxin; and (5) residuals from such blanching must either be bagged, tagged, and further disposed of according to provisions in paragraph (g)(3), or be disposed of to domestic crushing or exported.

Both of these actions facilitate the movement of peanuts to market, and thus, increase the volume of peanuts placed in marketing channels.

The IFR also made changes in § 998.300, the terms and conditions of indemnification, to make the payment system consistent with the current financial condition of the indemnification program.

Each year, assessments on peanuts handled are placed into a fund from which are paid indemnification claims and costs incurred by the Committee in disposing of contaminated lots. During seasons when the aflatoxin contamination is low or moderate, the fund is sufficient to meet Committee's disposition expenses and claims. During seasons when aflatoxin contamination is high (most recently, the 1990 crop), the disposition expenses and claims may exceed the collected indemnification funds and supplementary insurance policy. When this happens, disposition expenses are paid as invoices are received. After all disposition expenses have been paid, indemnification claims are paid, on an adjusted basis, from the remainder of the fund. Disposition expenses, which totalled just under $200,000 in 1991, include preparation, delivery, chemical assay, and supervision of the crushing of contaminated lots.

Because the 1991 crop had only moderate aflatoxin contamination, indemnification claims did not exceed the funds collected and a surplus was accrued. The Committee recommended that disposition expenses incurred during the 1992 crop year be paid from surplus 1991 indemnification funds. The surplus is more than sufficient to meet projected disposition expenses. If the 1992 crop is high in aflatoxin contamination, more funds will be available for 1992 indemnification claims and delays in making claim payments will be reduced. Because the disposition expenses for the 1992 season can be paid with surplus 1991 indemnification funds, the IFR revised paragraph (z) and removed (z)(1).

The Committee also recommended removal of paragraph (z)(5) which requires that indemnification payments on the 1991 crop be delayed until complete repayment of the commercial loan which had been obtained to fund 1990 crop indemnification. That loan was repaid earlier this year. Therefore, paragraph (z)(5) was no longer applicable to the regulation, and was removed by the IFR.

The IFR redesignated and made conforming changes to the other paragraphs under paragraph (z) to incorporate the removal of paragraphs (z)(1) and (z)(5).

The changes in the terms and conditions of indemnification for 1992 crop peanuts in this final rule are intended to allow prompt payment of claims in the event of a crop year with a high incidence of aflatoxin contamination.

At its March 4 and 5, 1992, meeting, the Committee recommended that the indemnification cap for 1991 crop peanuts of $9,000,000, including $5,000,000 of insurance coverage, be maintained for the 1992 crop peanuts.

The incoming quality regulation applicable to 1991 crop peanuts continues to be effective for 1992 crop peanuts. Changes were made to the section headings of § 998.100 *Incoming quality regulation*, § 998.200 *Outgoing quality regulation* and § 998.300 *Terms and conditions of indemnification* to make those regulations applicable to the 1992 crop year.

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

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0067.

After consideration of the Committee's recommendation and all relevant information presented, it is

found that continuation of the changes in the outgoing quality regulation and terms and conditions of indemnification, as set forth in the interim final rule, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The IFR relaxed requirements in effect for peanut handlers who are signatory to the Agreement; (2) the IFR provided a 30-day comment period, and no comments were received; and (3) this action finalizes the IFR without change.

**List of Subjects in 7 CFR Part 998**

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

## PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

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

2. For reasons set forth in the preamble, the interim final rule amending 7 CFR part 998, which was published at 57 FR 34061 on August 3, 1992, is adopted as a final rule without change.

Dated: October 26, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–26277 Filed 10–28–92; 8:45 am]

BILLING CODE 3410–02–M

---

## 7 CFR Part 1106

[DA–92–28]

## Milk in the Southwest Plains Marketing Area; Revision of a Cooperative's Plant Pooling Requirements

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

**ACTION:** Revision of rule.

**SUMMARY:** This action temporarily eases the pooling requirements for a balancing plant operated by a cooperative association for a 24-month period, beginning October 1, 1992. The order currently requires that at least 45 percent of the producer milk marketed by a cooperative association must be delivered to distributing (bottling) plants in order to qualify the cooperative's balancing plant for pooling under the Southwest Plains order. This action reduces the percentage from 45 percent to 35 percent. The revision is necessary to prevent the uneconomic movement of milk by cooperative associations that represent producers regularly associated with the market.

**EFFECTIVE DATE:** October 1, 1992 through September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding: Notice of Proposed Temporary Revision of a Cooperative's Plant Pooling Requirements: Issued September 29, 1992; published October 2, 1992 (57 FR 45583).

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 action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This revision has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action 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 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 date of the entry of the ruling.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1106.7(d) of the Southwest Plains order.

Notice of proposed rulemaking was published in the **Federal Register** (57 FR 45583) concerning the temporary revision of certain provisions of the order regulating the handling of milk in the Southwest Plains marketing area. The revision was proposed to be effective for a 24-month period beginning October 1, 1992. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by October 9, 1992. One comment in support of the proposed notice was received. No opposing comments were received.

**Statement of Consideration**

This action temporarily eases the pooling requirements for a balancing plant operated by a cooperative association for a 24-month period, beginning October 1, 1992. The revision decreases from 45 percent to 35 percent the total minimum quantity of a cooperative association's milk supply that is required to be delivered to distributing plants in order for the balancing plant to maintain pool plant status.

In order for a cooperative association plant that is located in the marketing area or in a county adjacent to the marketing area to be a pool plant, the Southwest Plains order requires that the cooperative must deliver to pool distributing plants a minimum of 45 percent of the total quantity of milk marketed by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month. The order also provides authority for the Director of the Dairy Division to increase or decrease this requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

The temporary revision was requested by Mid-America Dairymen, Inc. (Mid-AM), and Associated Milk Producers, Inc. (AMPI), cooperative associations that represent many of the market's producers.

In eleven of the past nineteen months (January 1991 through July 1992), Mid-

AM and AMPI shipments to pool distributing plants have failed to meet the 45 percent shipping standard. The 12-month rolling average has failed to meet the 45 percent standard in July and August of 1992, although the August shipping percentage exceeded 45 percent. Maintaining pool plant status has been increasingly marginal and difficult.

The marketing conditions in the Southwest Plains order that currently exist are expected to continue through the next two years or longer. Those marketing conditions attributing to the need to reduce the shipping percentage of a cooperative association are increasing producer receipts, which will be exacerbated in the spring, and reduced sales to distributing plants. Reduced sales to distributing plants can be attributed to two factors: (1) Increased non-member sales and, (2) A significant volume of fluid sales being lost by a Southwest Plains handler to a Texas handler.

Current projections indicate that during many months over the next two years member milk deliveries to distributing plants will be significantly below the 45 percent shipping requirement, and subsequently that the 12-month shipping percentage average will fall below 45 percent. By revising the pooling requirements, producer milk will not be required to be delivered to pool distributing plants for the sole purpose of meeting provisions of the Southwest Plains order.

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 revision is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of balancing plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension 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 suspension. One favorable comment was received. No opposing views were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1106**

Milk marketing orders.

It is therefore ordered, that in paragraph (c) of 7 CFR Part 1106.7, the provision "45 percent" is revised to "35 percent" for the period of October 1, 1992 through September 30, 1994.

The authority citation for 7 CFR part 1106 continues to read as follows:

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

Dated: October 26, 1992.

**W.H. Blanchard,**

*Director, Dairy Division.*

[FR Doc. 92–26274 Filed 10–28–92; 8:45 am]

BILLING CODE 3410–02–M

---

## FEDERAL RESERVE SYSTEM

## 12 CFR Parts 207, 220, 221 and 224

**[Regulations G, T, U and X]**

## Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

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

**ACTION:** Final rule; determination of applicability of regulations.

**SUMMARY:** The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the Foreign List. Both Lists were last published on July 27, 1992 and effective on August 10, 1992.

**EFFECTIVE DATE:** November 9, 1992.

**FOR FURTHER INFORMATION CONTACT:** Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:** Listed below are additions to and deletions from the OTC List. This supersedes the last OTC List which was effective August 10, 1992. Additions and deletions to the OTC List were last published on July 27, 1992 (57 FR 33101). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are additions to and deletions from the Board's Foreign List, which was last published July 27, 1992, (57 FR 33101) and effective August 10, 1992. The Foreign List includes those securities that meet the criteria in § 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

**Public Comment and Deferred Effective Date**

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a

request by the public and allowed approximately a two-week delay before the Lists are effective.

**List of Subjects**

*12 CFR Part 207*

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 220*

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 221*

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 224*

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

**Deletions From The List of Marginable OTC Stocks**

*Stocks Removed For Failing Continued Listing Requirements*

B & H Bulk Carriers, Ltd.
$.01 par common
Banyan Mortgage Investors L.P.
Depositary units representing $10.00 par units of limited partnership
Banyan Mortgage Investors L.P. II
Depositary units of limited partnership interest
Bobbie Brooks Incorporated
$.001 par common
Brajdas Corporation
$.10 par common
Calgene, Inc.
$.001 par convertible exchangeable preferred
Cedar Group, Inc.
$.001 par common
Class A, warrants (expire 11-08-94)
Chemical Leaman Corporation
$2.50 par common
Concorde Career Colleges, Inc.
$.10 par common
Consul Restaurant Corporation
$.10 par common
Cytogen Corporation
$2.50 par convertible exchangeable preferred
EIP Microwave, Inc.
No par common
Employers Casualty Company
$.25 par common
First of America Bank Corporation
Series E, convertible preferred
9% convertible preferred, $11.00 par value
Glenex Industries, Inc.
No par common
Griffith Consumers Company
$.01 par common
GV Medical, Inc.
$.05 par common
Health Professionals Inc.
$.02 par common
Howard Savings Bank, The
(New Jersey) $2.00 par common
Jean Philippe Fragrances, Inc.
Warrants (expire 01-15-93)
John Adams Life Corporation
No par common
Long Lake Energy Corporation
$.001 par common
Major Realty Corporation
$.01 par common
Mass Microsystems, Inc.
No par common
Medical Technology Systems, Inc.
Warrants (expire 08-15-92)
Natec Resources, Inc.
No par common
Nu-Med, Inc.
$.01 par common
Nucorp, Inc.
Paired warrants (expire 10-31-92)
Class C, warrants (expire 06-30-93)
Pioneer Standard Electronics, Inc.
9% convertible subordinated debentures
Reserve Industries Corporation
$1.00 par common
Smith International, Inc.
Class A, warrants (expire 02-28-95)
Sonora Gold Corporation
No par common
Tel-Offshore Trust
No par units of beneficial interest
Transtech Industries, Inc.
$.50 par common
Wolverine Exploration Company
$.50 par common
$1.00 par convertible exchangeable preferred
Class A, warrants (expire 12-31-93)

*Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition*

Allied Research Corporation
$.10 par common
Applied Power, Inc.
Class A, $.20 par common
Automated Security Holdings Plc
American Depositary Receipts
Basic American Medical, Inc.
No par common
Consolidated—Tamoka Land Co.
$1.00 par common
Cousins Properties Inc.
$1.00 par common
Durr-Fullauer Medical, Inc.
$.50 par common
7% convertible subordinated debentures
Federated Bank, S.S.B. (Wisconsin)
$.10 par common
First American Bancorp
$1.00 par common
First Federal of Alabama, FSB
$.01 par common
First Federal Savings & Loan Association of Lenawee
$1.00 par common
First National Pennsylvania Corp.
$4.166 par common
First Peoples Financial Corporation
$6.00 par common
First Savings Bancorp
$1.00 par common
First Security Corporation of Kentucky
No par common
Fred Meyer, Inc.
$.01 par common
Goal Systems International, Inc.
No par common
Golden Corral Realty Corporation
$.01 par common
Health Insurance of Vermont, Inc.
$3.00 par common
Henley Group, Inc., The
$.01 par common
HMO America, Inc.
$.01 par common
Intermagnetics General Corporation
$.10 par common
KMC Enterprises, Inc.
$.001 par common
Magna International, Inc.
Class A, no par subordinated voting shares
Metro Bancshares Inc.
$.01 par common
New London Inc.
$.10 par common
Niagara Exchange Corporation
$1.00 par common
Nova Pharmaceutical Corporation
$.01 par common
Class C, warrants (expire 06-30-93)
Class D, warrants (expire 06-30-98)
PHP Healthcare Corporation
$.01 par common
Provident Life & Accident Insurance Company of America
Class A, $1.00 par common
Class B, $1.00 par common
Quantronix Corporation
$.01 par common
Security Financial Group Inc.
$.10 par common
Society Corporation
$1.00 par common
Sunrise Medical Inc.
$1.00 par common
Sunwest Financial Services, Inc.
No par common
Surgical Care Affiliates, Inc.
$.25 par common
T2 Medical Inc.
$.01 par common
Washington Energy Company
$5.00 par common
Wicat Systems Inc.
$.01 par common
Wiland Services, Inc.
$.10 par common

**Additions to the List of Marginable OTC Stocks**

3CI Complete Compliance Corporation

$.01 par common
4th Dimension Software Ltd.
Ordinary Shares, NIS 01 par value
Abiomed, Inc.
$.01 par common
Adelphia Communications Corporation
Class A, $.01 par common
Alden Press Company, The
$.01 par common
Alpine Meadows of Tahoe, Inc
$.25 par common
Amber's Stores, Inc.
$.01 par common
American Insurance Group, Inc
$.10 par common
American Life Holding Company
$.01 par redeemable cumulative preferred
American Residential Holdings Corporation
$.04 par common
American Studios, Inc.
$.001 par common
Amity Bancshares, Inc.
$.01 par common
Ampex Incorporated
Class A, $.01 par common
Anchor Bancorp Wisconsin, Inc.
$.10 par common
Appliance Recycling Centers of America, Inc.
No par common
Arbor National Holdings, Inc.
$.01 par common
Arch Petroleum, Inc.
$.01 par common
B.V.R. Technologies Limited
Ordinary Shares NIS .50 par value
Bank of East Tennessee
$2.00 par common
Banyan Systems Incorporated
$.01 par common
Base Ten Systems, Inc.
Series A, rights (expire 11-09-92)
Bestop, Inc.
$.002 par common
BII Enterprises, Inc.
No par common
Biomedical Waste Systems, Inc.
$.001 par common
Class B, warrants (expire 06-04-96)
Biotime, Inc.
No par common
Bolsa Chica Company, The
Series A, convertible preferred
Branford Savings Bank (Connecticut)
$1.00 par common
California Jamar, Inc.
$.01 par common
Cam-Net Communications
No par common
Capitol Multimedia, Inc
$.10 par common
Caraustar Industries, Inc.
$.10 par common
Cenit Bancorp, Inc. (Virginia)
$.01 par common
Chai-Na-Ta Ginseng Products Limited
No par common
Cheesecake Factory Incorporated, The
$.01 par common
Clinicom Incorporated
$.001 par common
Clinicorp, Inc.
$.01 par common
Columbia Banking Systems, Inc
(Washington)
No par common
Comcentral Corporation
$.02 par common
Compania Cervecerias Unides S.A.
American Depositary Receipts
Control Data Systems, Inc.
$.01 par common
Corrections Corporation of America
Warrants (expire 09-14-96)
Creative Technologies Ltd.
$.25 par ordinary shares
Crownamerica, Inc.
No par common
Cryenco Sciences Inc.
Class A, $.01 par common
Danskin, Inc.
$.01 par common
Data Race, Inc.
No par common
DSP Technology, Inc.
No par common
Dynagen, Inc.
$.01 par common
Eagle Hardware & Garden, Inc.
No par common
Electronics for Imaging, Inc.
No par common
Encore Wire Corporation
$.01 par common
Energy Conversion Devices, Inc.
$.01 par common
Envirogen, Inc.
$.01 par common
Ezcony Interamerica Inc.
No par common
F & M Distributors, Inc.
$.01 par common
Fabri-Centers of America, Inc.
6¼% convertible subordinated debentures
First Banks, Inc.
Class C, 9% increasing rate redeemable cumulative preferred
First Charter Corporation (North Carolina)
$5.00 par common
First Federal Savings Bank of Colorado
$1.00 par common
First Interstate Bank of Southern Louisiana
$2.50 par common
First Pacific Networks, Inc.
$.001 par common
First United Corporation (Maryland)
$5.00 par common
Firstrock Bancorp, Inc.
$.01 par common
Genzyme Corporation
Series N, warrants (expire 12-31-96)
Hi-Tech Pharmacal Company, Inc.
$.01 par common
Interface, Inc.
8% convertible subordinated debentures due 2013
International Petroleum Corporation
No par common
Jones Spacelink, Ltd.
Class A, $.01 par common
Just Toys, Inc.
$.01 par common
Kennedy-Wilson, Inc
$.01 par common
Layne, Inc
$.01 par common
Lifecell Corporation
$.001 par common
Lifequest Medical, Inc.
$.001 par common
Littelfuse, Inc.
$.01 par common
Warrants (expire 12-31-2001)
McAfee Associates, Inc.
$.01 par common
Medco Containment Services, Inc.
6% convertible subordinated debentures
Medic Computer Systems, Inc
$.01 par common
Medical Marketing Group, Inc.
7.5% convertible subordinated debentures
Medrad, Inc.
$.10 par common
Megafoods Stores, Inc.
$.001 par common
Micro Bio-Medics, Inc.
$.03 par common
Microtek Medical, Inc.
$.01 par common
Mobile America Corporation
$.10 par common
Money Store, Inc., The
No par common
MSB Bancorp, Inc. (New York)
$.01 par common
Mutual Savings Bank, F.S.B. (Michigan)
$.01 par common
Netrix Corporation
$.05 par common
Noise Cancellation Technologies, Inc.
$.01 par common
Northstar Computer Forms, Inc.
$.05 par common
Nu-Kote Holding, Inc.
Class A, $.01 par common
On Assignment, Inc.
$.01 par common
Paco Pharmaceutical Services, Inc.
$.01 par common
PDK Labs, Inc.
$.01 par common
Series A, $.01 par cumulative convertible preferred
Class B, warrants (expire 04-14-97)
Class C, warrants (expire 04-14-97)
Peak Technologies Group, Inc., The
$.01 par common
Petroleum Heat and Power Company, Inc.
Class A, $.10 par common
Pyxis Corporation
$.01 par common
Research Frontiers Incorporated
$.125 par common
Scios Nova, Inc.
Class C, warrants (expire 06-30-93)
Class D, warrants (expire 06-30-98)
Softimage, Inc.
No par common
Somanetics Corporation
$.01 par common
Class B, warrants (expire 03-20-96)
Sportmart, Inc.
$.01 par common
Sports & Recreation Inc.
$.01 par common
Sports Heros, Inc.
Warrants (expire 11-20-95)
Stratacom, Inc.
$.01 par common
Swing-N-Slide Corporation
$.01 par common
Synetic, Inc.
7% convertible subordinated debentures

Theragenics Corporation
$.01 par common
Todhunter International, Inc.
$.01 par common
Tops Appliance City, Inc.
No par common
Transamerican Waste Industries, Inc.
$.001 par common
Class A, warrants (expire 11-16-96)
Class B, warrants (expire 11-12-96)
TW Holdings, Inc.
Series A, 9% cumulative convertible exchangeable preferred
U.S. Bancorp (Oregon)
Series A, 8⅛% par cumulative preferred
Union Bank (California)
Series A, 8.375% preferred stock
Uniroyal Technology Corporation
$.01 par common
Universal Standard Medical Laboratories, Inc.
No par common
Value-Added Communications, Inc.
$.01 par common
Zoll Medical Corporation
$.02 par common

**Additions to the List of Foreign Margin Stocks**

Canon Inc.
¥ 50 par common
Cathay Pacific Airways, Ltd.
HK$.20 par common
Citic Pacific Ltd.
HK$.40 par common
Hong Kong & China Gas Co. Ltd.
HK$.25 par common
Hopewell Holdings Ltd.
HK$.50 par common
Nippon Telegraph & Telephone Corporation
Y 50,000 par common
Shimachu Co. Ltd.
Y 50 par common

**Deletions From the List of Foreign Margin Stocks**

Hammerson Property Investment and Development Corporation Plc
Common, par value 25 p
Hawker Siddeley Group Plc
Common, par value 25 p
Maxwell Communication Corporation Plc
Ordinary shares, par value 25 p
Taylor Woodrow Plc
Common, par value 25 p
Trafalgar House Plc
Common, par value 20 p
Ultramar Plc (Lasmo Plc)
Ordinary shares, par value 25 p

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), October 23, 1992.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 92-26226 Filed 10-28-92; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF THE TREASURY

## Office of Thrift Supervision

## 12 CFR Parts 506 and 545

**[No. 92-386]**

**RIN 1550-AA43**

## Federal Savings Associations: Operating Subsidiaries and Service Corporations

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (the OTS) is today adopting regulations to authorize Federal savings associations to establish and acquire "operating subsidiaries." These subsidiaries differ from service corporation subsidiaries because, among other things, they may engage only in activities authorized for all Federal associations to undertake directly. The regulation sets forth the conditions under which a Federal association may establish an operating subsidiary, pursuant to the association's incidental powers and consistent with safe and sound practices.

The OTS is also revising its service corporation regulations. These amendments clarify certain aspects of the service corporation regulations and remove some restrictions involving loans and other transactions by service corporations. The amendments also exclude operating subsidiaries from the scope of the service corporation regulations, require associations ineligible for expedited treatment of their applications to apply for permission to make investments in service corporations, and make other conforming technical amendments.

**EFFECTIVE DATE:** November 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Dean V. Shahinian, Assistant Chief Counsel for Corporate Activities, (202) 906-7289, V. Gerard Comizio, Deputy Chief Counsel for Securities and Corporate Structure, Corporate and Securities Division, (202) 906-6411; Karen O. Solomon, Deputy Chief Counsel, Regulations, Legislation and Opinions Division, (202) 906-7240; Julie L. Williams, Senior Deputy Chief Counsel, (202) 906-6459, Chief Counsel's Office; Clarke Sanders, Project Manager, (202) 906-5654, Michael P. Scott, Program Manager, Affiliates Policy, (202) 906-6273, Policy; Diana L. Garmus, Deputy Assistant Director, Corporate Activities Division, (202) 906-6720, Supervisory Operations; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Background Information

*A. Description of Proposal*

In April 1992, the OTS proposed a regulation, "Federal Savings Associations: Operating Subsidiaries and Service Corporations," 57 FR 12226 (April 9, 1992) (Proposal), that would explicitly recognize the authority of Federal savings associations to establish, acquire and conduct business through operating subsidiaries. The proposed regulation was modeled on the Office of the Comptroller of the Currency's (OCC) operating subsidiary regulation, 12 CFR 5.34.

Under the proposed regulation, a corporation could qualify as an operating subsidiary of a Federal savings association if (i) the parent association owned more than 50 percent of the corporation's outstanding voting stock, and (ii) no other party had effective operating control of the corporation. An operating subsidiary could engage only in activities that the parent Federal savings association was legally authorized to undertake directly. Thus, for example, an operating subsidiary could be another depository institution. The operating subsidiary would generally be subject to the same statutory and regulatory requirements and restrictions as the parent Federal savings association, and the OTS would treat the operating subsidiary as a department or a division of the parent for most regulatory purposes.

The proposed regulation contained no fixed limitation on the amount that the parent association could loan to or invest in its operating subsidiary. The proposal also stated that investments in and loans to an operating subsidiary would not be subject to the 3% of assets limitation applicable to service corporation investments. Under the proposal, the OTS would address any institutional safety and soundness concerns through its examination and supervision of the savings association.

The proposed regulation incorporated the OTS's principle of differential regulation by establishing different requirements for the conduct of activities through an operating subsidiary depending on whether or not the parent Federal savings association was a "problem" association. Federal savings associations that were not "problem" associations would be permitted to establish or acquire operating subsidiaries after providing a notice to the OTS. The required notice

would be virtually identical to that required by the Federal Deposit Insurance Corporation (FDIC) under section 18(m) of the Federal Deposit Insurance Act (FDIA).[1]

This procedure would impose a minimal burden on, and maximize flexibility for, well-capitalized and well-managed Federal associations in establishing operating subsidiaries. Conversely, institutions that were "problem" associations would be permitted to establish operating subsidiaries only with express written approval from the OTS. This application procedure was intended to ensure that weak savings associations would not use operating subsidiaries to increase their own, and ultimately, the Federal deposit insurance fund's, risk of loss.

Finally, the OTS also proposed revising its service corporation regulations to make limited substantive and technical amendments.

The rationale, legal basis and intended application of the proposed regulation are discussed in greater detail in the Proposal.

*B. Legal Authority*

As discussed in greater detail in the Proposal, the OTS has the legal authority to authorize Federal savings associations to establish operating subsidiaries. The OTS and its predecessor, the Federal Home Loan Bank Board (FHLBB), have long recognized that Federal savings associations possess extensive "incidental" powers, *i.e.*, powers that are incident to the express powers of Federal savings associations as set forth in the Home Owners' Loan Act (HOLA). This authority is expressly recognized in the form of charter required by OTS regulations for Federal savings associations. Both the federal mutual charter and federal stock charter provide that the powers of a federal savings association include all of the express, implied and incidental powers conferred by the HOLA.[2]

The ability to establish operating subsidiaries is both "useful" and "convenient" to the exercise of a Federal savings association's express powers. Thus, establishment of an operating subsidiary is within the incidental powers of a Federal savings association under the seminal test of incidental powers expressed in *Arnold Tours* v. *Camp*, 472 F. 2d 427 (1st Cir. 1972).

**II. Summary of Comments and OTS Responses**

The OTS solicited public comment on all aspects of the proposed operating subsidiary regulation, including the following specific topics: (1) The desirability and implications of permitting insured depository institutions to be operating subsidiaries; (2) OTS approval standards under the proposed regulation; (3) the contents of the proposed certification and notification, and the application procedures; (4) the extent of consolidation of the parent and operating subsidiary for purposes of statutory and regulatory requirements and limitations; and (5) potential changes to the current service corporation regulations.

In response to the request for comments, the OTS received ten comment letters. All of the comment letters favored the proposal. Several letters also requested clarification regarding some issues discussed in the preamble or recommended modifications to provisions of the proposed regulation.

*A. Section 545.81(e): Consolidation*

Section 545.81(e) generated the largest number of comments. Eight commenters asked about the extent to which the OTS would require that the parent association consolidate its operating subsidiary for regulatory and financial reporting purposes. Within this broad concern, the comment letters raised the following specific issues:

1. Transactions With Affiliates

Three commenters requested guidance regarding how the OTS will apply transactions with affiliates restrictions to operating subsidiaries. Two recommended that an operating subsidiary be treated as a department of the association for purposes of transactions with affiliates and conflicts of interest regulations. One commenter recommended that the OTS amend the transactions with affiliates regulations to state that an operating subsidiary that is not a bank or savings association would be excluded from the definition of an "affiliate" for purposes of §§ 563.41 and 563.42 of OTS's regulations and sections 23A and 23B of the Federal Reserve Act (FRA).

These points are already addressed in the OTS's current transactions with affiliates rules. A controlled subsidiary, such as an operating subsidiary, generally is treated as part of the savings association and would not be deemed an affiliate for purposes of applying affiliate transactions limits to relationships between the operating subsidiary and the parent savings association.[3]

The existing regulations therefore adequately address the concerns raised by the comments and it is unnecessary to add a specific regulatory provision to the final operating subsidiaries regulation on this matter.

2. Qualified Thrift Lender (QTL) Test

Three comment letters raised questions about the application of the QTL test to operating subsidiaries. They urged the OTS to allow Federal savings associations to have the option of whether or not to consolidate their operating subsidiaries' assets with their own assets for purposes of meeting the QTL test. Two of these commenters asked the OTS to amend the final regulation to clarify that a savings association is not required to consolidate the assets of the subsidiary.

The OTS intends to continue to apply the current QTL regulatory requirements to operating subsidiaries. Thus, in general, savings associations will have the option of whether or not to consolidate operating subsidiaries. The current QTL regulation requires an association to consolidate all of a subsidiary's assets if it includes any of that subsidiary's assets in computing its qualified thrift investments. Alternatively, if the association does not use any of the operating subsidiary's assets to meet the QTL test, then the association does not have to consolidate the operating subsidiary for QTL purposes.

The OTS has determined that the existing QTL regulation adequately addresses the concern raised and, therefore, it is unnecessary and would be redundant to add a specific regulatory provision to the final operating subsidiaries regulation.

3. Financial Reports; Interest Rate Risk

Two commenters raised questions about regulatory and financial reporting to the OTS, including how Thrift Financial Reports (TFRs) would be affected. They recommended that financial figures be reported on a consolidated basis and that an operating

[1] Section 18(m) of the FDIA requires both Federal and state-chartered insured savings associations to provide notice to the FDIC and the OTS whenever an association establishes or acquires a new subsidiary or elects to conduct a new activity through an existing subsidiary. 12 U.S.C. 1828(m). The FDIC has issued regulations implementing this provisions that, among other things, describe the contents of the required notice. Those regulations appear at 12 CFR 303.13. The savings association must provide a copy of the required filings to the OTS.

[2] See 12 CFR 544.1 and 552.3.

[3] Section 563.41(b)(2) excludes from the definition of "affiliate" "[a]ny company, other than a bank or savings association, that is a subsidiary of a savings association," unless a bank regulatory agency makes a specific determination to the contrary.

subsidiary not be subject to separate regulatory filings.

The OTS intends that Federal savings associations consolidate the financial information from their operating subsidiaries with that of the savings association and is preparing appropriate instructions for the preparation of the TFR to accommodate operating subsidiaries. An operating subsidiary that is also a savings association must, however, in addition, file its own TFR.

Another commenter recommended that "for the purposes of statutory and regulatory requirements the operating subsidiary should be fully consolidated with its parent [and] * * * the consolidations should extend to interest rate risk reporting requirements under TB 13. This would enable 'within institution' hedges from subsidiary mortgage banking operations to be included in the estimate for the institution."

The OTS also intends that the interest rate risk reporting requirements for savings associations and their operating subsidiaries be on a consolidated basis.

4. Impact of the Capital Rules on the Treatment of Operating Subsidiary Investment

Two commenters sought clarification on the application of the rules affecting capital calculations under section 5(t)(5) of the HOLA and the regulations thereunder to operating subsidiaries. The commenters were particularly interested in the section requiring that a savings association either consolidate or deduct its investment in subsidiaries. The comments recommended that the OTS always treat an operating subsidiary as an "includable" subsidiary under the capital rules and permit consolidation, even when the operating subsidiary engages in an activity that is impermissible for a national bank.

The OTS notes that operating subsidiaries can only engage in activities that are permissible for a Federal savings association. There are only a small number of activities that are permissible for Federal savings associations but are not permissible for national banks, so we do not envision that this will be a significant concern.

The OTS has carefully analyzed the comments and the statute and concluded that no capital deduction should be required for either: (A) Operating subsidiaries that are savings associations and engage exclusively in activities that are permissible for national banks, except that the amount of any investment by a subsidiary savings association in service corporations that engage in activities that are impermissible for national banks would be deducted, or (B) operating subsidiaries that are not savings associations and engage, directly or through lower-tier operating subsidiaries, in activities that are impermissible for national banks. The OTS believes Congress did not intend to apply the capital deductions to operating subsidiaries, which are viewed as divisions of a parent association, and where the result of the imposition of the capital deduction would be to create incentives to transfer the activity to the parent association. Such an interpretation would exalt form over substance and be contrary to the interests of safety and soundness. However, pursuant to the express language of section 5(t)(5)(C) of the HOLA, a capital deduction will be required for operating subsidiaries that are savings associations and engage directly in activities that are impermissible for national banks unless the savings association subsidiary in question was acquired before May 1, 1989 or falls within another statutory exception.

5. Community Reinvestment Act Compliance

One commenter suggested that lending activities by an operating subsidiary should count towards its parent association's compliance with the Community Reinvestment Act (CRA).

When reviewing the reasonableness of the "community" that a savings association has defined for CRA purposes and the extent of compliance with the CRA, the OTS will consider the activities of operating subsidiaries. The impact of an operating subsidiary on an institution's CRA evaluation will depend on the activities in which the operating subsidiary is engaged and whether they are relevant for CRA purposes. This approach is consistent with the OCC's approach to CRA compliance for operating subsidiaries of national banks.

6. Loans-to-One-Borrower Limits

One commenter recommended that lending limits under § 563.93(a) not apply to loans made by the parent association to its operating subsidiaries.

This point also is already covered by the current OTS loans-to-one-borrower rule, 12 CFR 563.93(a), which states that the section "does not apply to loans made by a savings association to its subsidiary." This would include loans to an operating subsidiary.

*B. Expedited Application Treatment*

Three commenters requested that the OTS publish a definition of the term "problem" association as set forth in proposed § 545.81(c)(2). They also recommended defining a "problem association" as one with a MACRO composite rating of 4 or 5; replacing the term "problem" with the term "association in troubled condition;" and, finally, labeling as a "problem association" only those institutions specifically determined to require more careful scrutiny either specifically for the purposes of the operating subsidiary regulation or based on MACRO ratings without regard to the association's capital condition.

In response to these three comments, the OTS is eliminating the "problem association" definition as proposed and instead including operating subsidiaries within the comprehensive standards for "expedited treatment" articulated in section 516.3, the OTS's new applications restructuring regulation. In the final operating subsidiary regulation, a Federal savings association that is eligible for "expedited treatment" in the processing of its applications under § 516.3 will be able to establish or acquire an operating subsidiary in accordance with paragraph (c)(1), involving submission of a notice.

Section 516.3(a) defines an association eligible for "expedited treatment" as an institution that: (i) Has a composite MACRO rating of 1 or 2; (ii) has a Community Reinvestment Act rating of satisfactory or better; (iii) has a compliance rating of 1 or 2; (iv) meets or exceeds its minimum capital requirements under part 567; and (v) has not been notified that it is a "problem" association or an association in "troubled condition." The adoption of this approach furthers the purposes of differential regulation and is consistent with the OTS' regulatory procedures for Federal savings associations that seek to make other investments or engage in other types of activities that normally require the submission of notices or applications.

In addition, two commenters strongly opposed the OTS presumption of denial with respect to operating subsidiary applications received from Federal savings associations that are "problem associations," as outlined in § 545.81(c)(2)(iii). They suggested that the presumption was unfair and adversely affected savings associations that should be most strongly encouraged to take advantage of the operating subsidiary authority.

The OTS is adopting the regulation, as proposed, in order to ensure that weaker savings associations will not use operating subsidiaries to increase their own, and ultimately the Federal deposit insurance fund's, risk of loss.

*C. Ownership Requirements*

Four comment letters referred specifically to the 50% ownership requirement. Three of the commenters favored the limit and noted that the associations would benefit from outside capital, while the fourth objected to requiring as much as 50% ownership because he felt that it would discourage associations from pooling their resources. The OTS is requiring majority ownership of the operating subsidiary to ensure that the savings association maintains effective operating control over the company, consistent with the concept that an operating subsidiary should be viewed functionally as a division of the institution.

*D. Effective Operating Control*

One commenter asked the OTS to clarify the meaning of "effective operating control" as set forth in § 545.81(b)(3), which states that a parent savings association may treat a subsidiary corporation as an operating subsidiary only if "[n]o person or entity other than the Federal savings association may exercise effective operating control over the corporation." Specifically, the commenter recommended that the ability of outside investors to elect a minority of the board of directors should not be deemed to be "effective control" and that, in a situation where the holders of preferred stock vote on and pass matters such as additional classes of securities, modifying the terms of preferred stock or paying for dividends in arrears, the subsidiary should not lose its operating subsidiary status. The commenter also recommended that the OTS create a new regulation to exempt the exercise of voting rights of non-common shares for situations involving dividends.

Since it would be inappropriate to try to define all possible scenarios of "effective operating control" over an operating subsidiary in the preamble or regulation, the OTS is adopting the regulation as proposed and will analyze specific facts and circumstances on a case-by-case basis. As noted immediately above, central to the concept of an operating subsidiary is that the subsidiary operates as the functional equivalent of a division of the association. This would not be the case if another party had effective control over the operating subsidiary.

*E. Service Corporation Investment Limits*

One commenter requested clarification of the powers of a savings association that is an operating subsidiary. This commenter also recommended that savings associations' operating subsidiaries have all of the powers of the parent savings association and also suggested that the parent association's compliance with the service corporation rules be determined on a consolidated basis.

In response to this comment, the OTS will apply the following policy. With respect to a Federal savings association's investment in service corporations, pursuant to section 5(c)(4)(B) of the HOLA, the parent association may consolidate its assets with those of its operating subsidiaries in calculating its total assets for purposes of determining the 3% of assets limitation on its service corporation investments. Where the operating subsidiary is a Federal savings association, the operating subsidiary itself can invest no more than 3% of its assets in the service corporations that it directly owns.

*F. Contents of Service Corporation Application*

Two commenters asked the OTS to specify the required contents of service corporation applications filed under 12 CFR 545.74(c) and recommended that these contents conform to the requirements specified by the Federal Deposit Insurance Corporation in 12 CFR 303.13.

Presently, the OTS accepts a copy of the notice prepared in conformity with 12 CFR 303.13, and submitted pursuant to section 18(m) of the FDIA and § 545.74(b)(7), as an application in some situations, while, when necessary, it has requested additional information. At this time, the OTS does not feel it necessary to specify the application contents or to incorporate the FDIC regulation into the OTS regulations.

*G. Other Comments*

One commenter recommended revising proposed § 545.74(a)(5) to include a citation to the statute authorizing service corporation investments. The OTS has added this citation.

Two comment letters supported the corporate separateness requirement, set forth in § 545.81(f), because it will significantly limit the parent association's exposure to risk regarding operating subsidiary activities, while two other comment letters suggested that the operating subsidiary not be required to maintain a separate corporate identity from the parent. The OTS feels that the existing corporate separateness regulations should be applied to operating subsidiaries.

Finally, two commenters requested that the OTS identify the types of depository institutions that can be held as operating subsidiaries and add to § 545.81(j) a reference to section 3(c)(2) of the FDIA. The OTS feels that the definition, as proposed, provides adequate guidance and flexibility and has adopted it in the final regulation.

**III. Analysis of the Final Regulation**

The final regulation is substantially similar to the proposed rule. It differs from the proposed rule in the following sections: (A) Section 545.81(c) is amended to provide that savings associations eligible for expedited treatment in the processing of their applications under § 516.3 are eligible for an expedited approval process, and the reference to "problem associations" is deleted; (B) section 545.74(b)(3) is amended to provide that savings associations ineligible for expedited treatment under § 516.3 are required to file an application to make any new investment in a service corporation engaged in any activity that is not permissible for a federal savings association to engage in directly, and the reference to "problem associations" is deleted; (C) section 545.74(a)(5) is amended to add a reference to 12 U.S.C. 1464 (5)(c)(4)(B); and (D) certain technical changes have been made.

The final regulation's provisions that are being adopted as proposed are discussed at length in the Proposal. The following summarizes provisions that have been revised in the final regulation.

*A. Section 545.81(c), Requirements for Establishing or Acquiring an Operating Subsidiary*

A Federal savings association that is eligible for "expedited treatment" under § 516.3 may submit a notice, rather than an application, to the OTS stating that it intends to establish or acquire an operating subsidiary or engage in new activities through an existing operating subsidiary. The notice may consist of the notice required to be filed with the FDIC and the OTS pursuant to section 18(m) of the FDIA and 12 CFR 303.13(f), and should be filed with the appropriate OTS Regional Director. The association may proceed with the proposed operating subsidiary or new activity unless, within 30 days of filing the notice, the OTS notifies the association that the proposed operating subsidiary or proposed new activity does not qualify for treatment as an operating subsidiary, presents supervisory concerns, or raises significant issues of law or policy. In that case, the association must file a complete application and obtain the prior written approval of the OTS.

A Federal savings association that is ineligible for "expedited treatment" in the processing of its applications under § 516.3 may not use the notice procedure in § 545.81(c)(1). This type of association must submit an application and obtain OTS approval before it establishes or acquires an operating subsidiary or engages in new activities through an existing operating subsidiary. The contents of the application may consist of the information required to be filed with the FDIC and the OTS pursuant to section 18(m) of the FDIA and 12 CFR 303.13(f). The application will be denied unless the OTS finds that the proposed operating subsidiary or proposed new activity would affirmatively promote the financial or managerial condition and the safe and sound operation of the savings association. The OTS may also impose conditions on any approval. The application must generally be filed with and acted upon by the appropriate OTS Regional Director.

*B. Section 545.81(d), Permissible Activities Conducted Through Service Corporations on November 30, 1992*

Where a Federal savings association that is eligible for "expedited treatment" is conducting activities permissible for the association through a service corporation on November 30, 1992, and that service corporation satisfies the control criteria for an operating subsidiary, the service corporation may be deemed to be an operating subsidiary. The parent association must comply with certain internal certification procedures, but is not required to submit a notice to the OTS. However, a Federal association that is ineligible for "expedited treatment" must submit an application to the OTS in order for existing service corporations to be deemed operating subsidiaries, pursuant to the application procedures set forth in § 545.81(c)(2).

*C. Section 545.81(e), Applicability of Laws and Regulations*

Generally, all Federal laws, regulations and policies applicable to the operations of the parent Federal savings association will apply equally to the operations of its operating subsidiary. In addition, the general policy of the OTS will be to consolidate statutory and regulatory requirements for the parent with the operating subsidiary. Areas specifically affected by this policy include loans-to-one-borrower limits, percentage-of-assets or percentage-of-capital limits, branching, asset classification, transactions with affiliates restrictions, CRA requirements, capital requirements, and liquidity. The OTS also notes that state laws that may apply to the activities of an operating subsidiary will be preempted to the same extent as when the activities are conducted directly by a Federal savings association. See, *e.g.*,12 CFR 545.2.

With respect to capital calculations, as already discussed, the OTS has concluded that no capital deduction is required for either: (A) Operating subsidiaries that are savings associations and engage exclusively in activities that are permissible for national banks except that the amount of any investment by a subsidiary savings association in service corporations that engage in activities that are impermissible for national banks would be deducted, or (B) operating subsidiaries that are not savings associations and engage directly or through lower-tier operating subsidiaries in activities that are impermissible for national banks. However, pursuant to the express language of section 5(t)(5)(A) of the HOLA, a capital deduction is required for operating subsidiaries that are savings associations and engage directly in activities that are impermissible for national banks unless the savings association subsidiary in question was acquired before May 1, 1989 or falls within another statutory exception. The OTS notes that the band of activities that are permissible for a Federal savings association but are impermissible for a national bank is extremely limited.

**Paperwork Reduction Act**

The recordkeeping and collections of information contained in this notice of rulemaking have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The recordkeeping and collections of information under 12 CFR 545.74(b)(3) and 545.81 were approved under OMB Control Nos. 1550–0076 and 1550–0077, respectively.

The recordkeeping and collections of information in this regulation are in 12 CFR 545.81 and 545.74(b)(3). The likely recordkeepers and respondents are Federal savings associations.

The recordkeeping is required in 12 CFR 545.81(d) by the OTS to ensure that the Board of Directors of the parent Federal savings association has certified that the operating subsidiary qualifies for treatment as an operating subsidiary and engages solely in activities that are permissible for Federal savings associations to engage in directly. The parent savings association is required to maintain such records in its files and to make them available to OTS staff for examination and audit. OTS staff will examine such records to determine whether the required certification is contained in the records and to determine whether the operating subsidiary is operating in accordance with existing statutory and regulatory criteria and OTS policy.

The collection of information is required in 12 CFR 545.81(c) by the OTS to ensure that the proposed operating subsidiary satisfies the criteria for qualification as an operating subsidiary, including, in part, whether the subsidiary will engage solely in activities that are permissible for Federal savings associations to engage in directly, and that it does not present supervisory, legal, or safety or soundness concerns. The OTS staff makes an in-depth study of all information furnished in the notices or applications to determine whether the savings association's request to establish or acquire an operating subsidiary, or conduct new activities in an existing operating subsidiary, may be authorized in accordance with existing statutory and regulatory criteria and OTS policy.

The collection of information is required in 12 CFR 545.74(b)(3) by the OTS to ensure that activities engaged in by service corporations of certain Federal savings associations are reasonably related to the activities of Federal savings associations, and do not present supervisory, legal, or safety or soundness concerns. The OTS staff makes an in-depth study of all information furnished in the applications to determine whether the savings association's request to invest in a service corporation engaged in the activity may be approved in accordance with existing statutory and regulatory criteria and OTS policy.

In addition, a revised version of the OMB central number table at 12 CFR 506.1(b) is being set out for reader reference.

**Executive Order 12291**

The OTS has determined that this proposal does not constitute a "major rule" and, therefore, the preparation of a regulatory impact analysis is not required.

**List of Subjects**

*12 CFR Part 506*

Reporting and recordkeeping requirements.

*12 CFR Part 545*

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes,

Mortgages, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the OTS hereby proposes to amend subchapters A and C, chapter V, title 12, Code of Federal Regulations, as set forth below:

## SUBCHAPTER A—ORGANIZATION AND PROCEDURES

## PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 is revised to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by revising the table in paragraph (b) to read as follows:

**§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

* * * * *

*(b) Display.*

| 12 CFR part or section where identified and described | Current OMB control No. |
|---|---|
| 502.3 | 1550-0053 |
| 516.1(c) | 1550-0056 |
| Part 528 | 1550-0021 |
| 543.2 | 1550-0005 |
| 543.9 | 1550-0007 |
| 544.2 | 1550-0017 |
| 544.5 | 1550-0018 |
| 545.74 | 1550-0013 |
| 545.74(b)(3) | 1550-0076 |
| 545.81 | 1550-0077 |
| 545.82 | 1550-0033 |
| 545.92 | 1550-0006 |
| 545.95 | 1550-0006 |
| 545.96(c) | 1550-0011 |
| 546.2 | 1550-0016 |
| 546.4 | 1550-0066 |
| 552.2-1 | 1550-0005 |
| 552.2-6 | 1550-0007 |
| 552.4 | 1550-0017 |
| 552.5 | 1550-0018 |
| 552.10 | 1550-0019 |
| 552.11 | 1550-0011 |
| 552.13 | 1550-0016 |
| 562.1(b) | 1550-0011 |
| 563.1(b) | 1550-0011 |
| 563.10 | 1550-0027 |
| 563.22 | 1550-0016, 1550-0025 |
| 563.34 | 1550-0011 |
| 563.37(c) | 1550-0067 |
| 563.38 | 1550-0065 |
| 563.41(e) | 1550-0011 |
| 563.42(e) | 1550-0011 |
| 563.43 (f) through (h) | 1550-0075 |
| 563.43(i)(3) | 1550-0075 |
| 563.45 | 1550-0002 |
| 563.47(e) | 1550-0011 |
| 563.48(c) | 1550-0011 |
| 563.74 | 1550-0050 |
| 563.80 | 1550-0061 |
| 563.81 | 1550-0030 |
| 563.90 | 1550-0011 |
| 563.93(f) | 1550-0011 |
| 563.131 | 1550-0028 |
| 563.132 | 1550-0033 |
| 563.134 | 1550-0059 |
| 563.172 | 1550-0011 |
| 563.173(e) | 1550-0011 |
| 563.174(e) | 1550-0011 |
| 563.174(f) | 1550-0011 |
| 563.175(e) | 1550-0011 |
| 563.175(f) | 1550-0011 |
| 563.177 | 1550-0041 |
| 563.180(d) | 1550-0003 |
| Part 563b | 1550-0014 |
| Part 563d | 1550-0019 |
| Part 563e | 1550-0012 |
| Part 563f | 1550-0051 |
| Part 563g | 1550-0035 |
| Part 564 | 1550-0011 |
| 566.4 | 1550-0011 |
| Part 568 | 1550-0062 |
| 571.6 | 1550-0005 |
| 574.4 | 1550-0032 |
| 574.6 | 1550-0015 |
| 584.2-2 | 1550-0063 |

## SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

## PART 545—OPERATIONS

3. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464 and 1828.

4. A new section 545.81 is added to read as follows.

**§ 545.81 Operating subsidiaries.**

(a) *Authorization.* A Federal savings association may establish or acquire an operating subsidiary provided the subsidiary meets the requirements of this section.

(b) *Operating subsidiary defined.* An operating subsidiary" is a corporation that meets all of the following requirements:

(1) The corporation engages only in activities that a Federal savings association may undertake directly. For purposes of this section, an activity that a Federal savings association may undertake directly means an activity permitted for all Federal savings associations generally;

(2) The Federal savings association owns, directly or indirectly, more than 50 percent of the voting stock of the corporation; and

(3) No person or entity other than the Federal savings association may exercise effective operating control over the corporation.

(c) *Requirements for establishing or acquiring an operating subsidiary*—(1) *Federal savings associations; expedited treatment in the processing of applications.* A Federal savings association that is eligible for "expedited treatment" in the processing of its applications under § 516.3 of this chapter may establish or acquire an operating subsidiary in accordance with this paragraph (c)(1).

(i) An association shall notify the OTS in writing, at least 30 days before the establishment or acquisition of an operating subsidiary, or the performance of new activities in an existing operating subsidiary. The association may proceed with the proposed operating subsidiary or the proposed new activity unless, within 30 days of receipt of the notice, the Office notifies the association that the proposed operating subsidiary or proposed new activity does not satisfy the criteria set forth in paragraph (b) of this section, presents supervisory or safety or soundness concerns, or raises significant issues of law or policy. Under any of the foregoing circumstances, the association must file a complete application and obtain prior written approval by the Office in accordance with paragraph (c)(2) of this section.

(ii) The notice shall state that it is an Operating Subsidiary Notice under this paragraph (c)(1). It shall generally be filed, in accordance with § 500.32(c)(5) of this chapter, with the Regional Director for the Region in which the association's home office is located. The contents of the notice shall otherwise be identical to the contents of the notice required to be filed with the Federal Deposit Insurance Corporation (FDIC) and the Office pursuant to section 18(m) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1828 (m)) and regulations promulgated pursuant to section 18(m) (12 CFR 303.13). Such notices are deemed to be applications for purposes of statutory and regulatory references to "applications."

(2) *Federal savings associations; standard treatment in the processing of applications.* A Federal savings association that is ineligible for "expedited treatment" of the processing of its applications under § 516.3 of this chapter may not establish or acquire an operating subsidiary, or conduct new activities in an existing operating subsidiary, without the prior written approval of the Office.

(i) The Federal savings association shall generally file a written application, in accordance with § 500.32(c)(5) of this chapter, with the Regional Director for the Region in which the Federal savings association's home office is located. The application shall state that it is an Operating Subsidiary Application. The contents of the application shall consist of the information required to be filed with the FDIC and the Office pursuant to section 18(m) of the FDIA (12 U.S.C. 1828(m)) and regulations promulgated pursuant to section 18(m) (12 CFR 303.13). In addition, the association shall affirmatively demonstrate that the establishment or acquisition of an operating subsidiary, or the

commencement of new activities in an existing operating subsidiary, will improve the association's financial and managerial condition.

(ii) Upon receipt of the application, the Regional Director may request any additional information the Office deems necessary or appropriate. The application will be processed in accordance with the procedures and time periods specified in part 516 of this chapter.

(iii) The application will be denied unless the OTS finds that the establishment or acquisition of the operating subsidiary, or the commencement of new activities in the existing operating subsidiary, would affirmatively promote the financial or managerial condition or the safe and sound operation of the Federal savings association. In determining whether to deny the application, the OTS will review the application to determine if the proposed activities are consistent with applicable law, with safe and sound operating principles, and with OTS policies. The Office may impose conditions upon approval.

(3) Compliance with the requirements of paragraph (c)(1) or (c)(2) of this section does not relieve an association of compliance with the requirements of section 18(m) of the FDIA (12 U.S.C. 1828(m)) and the regulations promulgated pursuant to section 18(m) (12 CFR 303.13), and applicable clearances under those requirements must be obtained before the association establishes a new operating subsidiary or commences new activities in an existing operating subsidiary.

(d) *Permissible activities conducted through service corporations on November 30, 1992.* (1) A service corporation of a Federal savings association in existence on November 30, 1992 that is engaging solely in activities that a Federal savings association may undertake directly, and that meets the control criteria set forth in this section, may be deemed an operating subsidiary, *provided that* the Federal savings association is eligible for "expedited treatment" in the processing of its applications under § 516.3 of this chapter and the Federal savings association establishes and maintains appropriate internal records. The record shall consist of a certification by the Board of Directors of the association containing:

(i) A description of the activity and how it will be conducted through the operating subsidiary;

(ii) A statement that the operating subsidiary is engaged exclusively in activities that a Federal savings association may undertake directly; and

(iii) A statement of the authority that the Federal savings association is relying on for the conduct of such activity. A certified copy of the resolution(s) of the Board of Directors of the Federal savings association authorizing the conduct of such activity through an operating subsidiary shall accompany the certification. The certification and the certified copy of the Board of Director resolution(s) need not be filed with the Office; however, the documents, files and other material comprising the record shall be made available at all times for examination and audit by the OTS.

(2) An existing service corporation of a Federal savings association, which on November 30, 1992 is ineligible for expedited treatment in the processing of its applications, that is engaging solely in activities that a Federal savings association may undertake directly, and that meets the control criteria set forth in this section, may be deemed an operating subsidiary only if the Federal savings association obtains the Office's prior written approval to conduct the activity in an operating subsidiary by following the application procedures set forth in paragraph (c)(2) of this section. The date of the OTS's written approval shall be the date on which the activity shall be deemed to be conducted by an operating subsidiary.

(3) If the association seeks to shift activities it is presently conducting to a newly created operating subsidiary, compliance with the certification and application requirements set forth in this paragraph (d) shall not relieve the association of compliance with the requirements of section 18(m) of the FDIA (12 U.S.C. 1828(m)) and regulations promulgated pursuant to section 18(m) (12 CFR 303.13), and applicable clearances under those requirements must be obtained before the association commences activities through the new operating subsidiary.

(e) *Applicability of laws and regulations.* Unless otherwise provided by statute, regulation or policies of the OTS, all provisions of Federal laws, regulations and policies of the OTS applicable to the operations of a Federal savings association shall apply in the same manner and to the same extent to the operations of its operating subsidiaries, and the parent association and its operating subsidiary shall generally be consolidated and treated as a unit for the purpose of applying appropriate statutory and regulatory requirements and limitations.

(f) *Separate corporate identity; liabilities of operating subsidiary.* The provisions of §§ 571.21 and 563.37 of this chapter shall apply equally to operating subsidiaries and their parent Federal savings associations, and references to a "savings association" and "service corporation" wherever they appear in those sections shall be read to mean "Federal savings association" and "operating subsidiary," respectively.

(g) *Examination and supervision.* Each operating subsidiary shall be subject to examination and supervision by the OTS in the same manner and to the same extent as its parent Federal association. If, upon examination, the OTS ascertains that the subsidiary has been created or is operated in violation of law, regulation or OTS policy or that its manner of operation is unsafe or unsound, the OTS shall direct the Federal association to take appropriate remedial action, which may include disposing of all or part of the subsidiary.

(h) *Limitation on activities for supervisory or legal reasons.* The OTS at any time may limit a Federal savings association's investment in an operating subsidiary, limit any operating subsidiary activities, or refuse to permit activities, for supervisory, legal, or safety or soundness reasons.

(i) *Conditions imposed in writing.* In permitting a Federal savings association to acquire or establish an operating subsidiary or perform new activities in an existing operating subsidiary, the OTS may impose conditions for supervisory, legal, or safety or soundness reasons. Any such condition shall be enforceable as a condition imposed in writing by the OTS in connection with the granting of a request by a Federal savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

(j) *Deposit-taking.* At the discretion of the parent savings association, an operating subsidiary may take deposits in any state in which the subsidiary is permitted to operate, provided the operating subsidiary possesses Federal deposit insurance. Another insured depository institution may be held as an operating subsidiary of the parent savings association.

(k) *Change from operating subsidiary to service corporation.* In the event that the parent savings association elects to change an operating subsidiary to a service corporation, or if an operating subsidiary fails to continue to qualify as an operating subsidiary for any reason, the parent savings association shall notify the Office and comply with the requirements of 12 U.S.C. 1464(c)(4)(B) and 12 CFR 545.74 and all other applicable statutes and regulations.

5. Section 545.74 is amended by removing paragraphs (b)(6) and (b)(7); by adding paragraph (a)(5); and by

revising paragraphs (a) introductory text, (a)(1), (b)(1), (b)(2), (b)(3), (b)(5), and the introductory text of paragraphs (c) and (d)(2) to read as follows:

**§ 545.74 Service corporations.**

(a) *Definitions.* As used in this section:

(1) *Aggregate outstanding investment* means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations, less amounts received from the sale, repurchase or redemption of capital stock or securities of service corporations and amounts paid to the association by a service corporation to retire obligations of the service corporation. It also includes all nonconforming loans and conforming loans to the extent that they exceed the amounts specified in paragraph (d)(2) of this section.

* * * * *

(5) Any subsidiary of a savings association that is an "operating subsidiary" as defined under § 545.81 of this part shall not be considered to be a "service corporation" of that savings association for purposes of this section or 12 U.S.C. 1464(5)(c)(4)(B).

(b) * * *

(1) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, have been undertaken in accordance with the requirements of paragraph (c) of this section, or are otherwise specifically approved by the OTS subsequent to the OTS's review of an application;

(2) The association shall notify the FDIC and the OTS not less than 30 days prior to the establishment, or acquisition of any service corporation, and not less than 30 days prior to the commencement of any new activity through a service corporation. This notice requirement is in addition to any application that may be required under paragraph (c) of this section. Notice required under this paragraph (b)(2) shall be made to the OTS in accordance with § 500.32(c)(1)(i) of this chapter;

(3) If a savings association is ineligible for "expedited treatment" in the processing of its applications under § 516.3 of this chapter, the association shall file a service corporation application with and obtain permission from the OTS to make any new investment in a service corporation that will engage in any activity that is not permissible for a federal savings association to engage in directly, notwithstanding the activity being listed as a preapproved activity for service corporations of Federal savings associations;

* * * * *

(5) The OTS at any time may limit any service corporation activities, or refuse to permit activities, for supervisory, legal, or safety or soundness reasons.

(c) *Permitted activities.* A service corporation in which a Federal savings association may invest is permitted to engage in such activities reasonably related to the activities of Federal savings associations as the Office may determine and approve. Applications for approval to engage in such activities shall be made in accordance with § 500.32(c)(5) of this chapter. In addition, a service corporation may engage in the following activities without prior Office approval provided the notice required by paragraph (b)(2) of this section has been given:

* * * * *

(d) * * *

(2) In addition to amounts that it may invest under paragraph (d)(1) of this section, but subject to any applicable restrictions on loans to one borrower, an association may lend additional amounts as follows:

* * * * *

Dated: August 31, 1992.

By the Office of Thrift Supervision.

**Timothy Ryan,**

*Director.*

[FR Doc. 92-26024 Filed 10-28-92; 8:45 am]

BILLING CODE 6720-01-M

## RESOLUTION TRUST CORPORATION

### 12 CFR Part 1615

**RIN 3205-AA07**

### Disclosure of Information

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Resolution Trust Corporation (RTC) is adopting a final rule for the processing of requests for access to RTC records, other than the records of the RTC Inspector General, pursuant to the Freedom of Information Act (FOIA). An interim rule with request for comments was published on July 24, 1992.

**EFFECTIVE DATE:** This final rule is effective October 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Philip Lindenmuth, Chief, FOIA/PA Branch, Office of the Secretary, or call (703) 908-6132. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** With the exception of those records created by the RTC Office of the Inspector General, this rule governs release of all Corporate records, pursuant to the FOIA (5 U.S.C. 552) and by the RTC public reference facilities. This rule sets forth the procedures to be used by members of the public to request records from the RTC, the procedures to be used to appeal a decision to deny access to records, in whole or in part, and the fees for access to records.

Comments were received from one public interest group, Public Citizen, Inc., pertaining to four provisions of the interim rule (57 FR 32881, July 24, 1992). Each comment is addressed below sequentially according to the specific subsections of the rule to which they apply.

**1. Location for Submitting Requests (§ 1615.3(b))**

The commenter suggests that the requirement for submitting requests to RTC Headquarters is "irrational and unnecessary" and will contribute to the agency's backlog of existing requests. The Office of the Secretary has been delegated the responsibility for tracking, processing and responding to requests for information made pursuant to the FOIA and all initial intake and assignment activities relating to FOIA requests are carried out by the FOIA/PA Branch. Requests that reasonably describe the records sought and which conform to applicable fee requirements are assigned to appropriate staff, including field locations, for search and review of responsive records within 24 hours of receipt by the FOIA/PA Branch. Rather than delaying the process of responding to FOIA requests, such a procedure ensures timely consideration of the adequacy of FOIA requests and assignment for search and processing activities.

**2. Receivership and Conservatorship Records (§ 1615.4(f))**

The commenter objected to the statement that the RTC is not an agency for purposes of the FOIA when acting as either conservator or receiver for failed thrift institutions and argued that this statement is incorrect as a matter of law. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 specifically noted the distinction between the RTC in its corporate capacity and its capacity as either conservator or receiver for a failed thrift institution. As the commenter correctly states, the RTC shall be deemed an agency to the same extent as the Federal Deposit Insurance Corporation (FDIC) when it is acting in its capacity as a conservator or receiver of an insured

depository institution. See 12 U.S.C. 1441a(b)(1)(B). The commenter does not cite to any authority which holds that, for purposes of the FOIA, the FDIC is an agency in its capacity as either conservator or receiver. Moreover, contrary to the comment, the FDIC in its FOIA regulations recognizes the distinction between such records and corporate FDIC records by stating that records of FDIC receiverships or conservatorships are specifically subject to "appropriate Federal or State law applicable to FDIC as receiver or liquidator as well as to the determination of any Federal or State court having jurisdiction over FDIC or over such record." See 12 CFR 309.5(h). Such records, therefore, are not presumptively FDIC records. Upon receipt of a FOIA request, the FDIC Division of Liquidation must determine when to exercise FDIC's right of access to such records either for disclosure or denial of access based upon the considerations noted in 12 CFR 309.5(h).

It is not the RTC's intent to foreclose access to all institutional records by this section of the rule. The RTC has developed guidelines, a copy of which is available for inspection and copying at RTC Public Reference Facilities, for making agency record determinations with respect to conservatorship and receivership records. The guidelines state that it may be presumed that many types of institutional records either have been or will be incorporated into corporate files during the course of the resolution and liquidation of the institution. Therefore, for purposes of administrative convenience, in response to a request for records of a type which falls within those which may be presumed to have been incorporated into RTC's corporate files, the RTC will obtain such records by retrieving copies from the institution's files. The guidelines also address procedures to be followed for exercising the RTC's right of access to records that fall outside the presumption.

**3. Cut-off Date for Identifying Responsive Records (§ 1615.4(g))**

The commenter objected to the RTC's use of the date of receipt of request as the cut-off date for determining responsive records. This cut-off date is based upon the administrative practice of assigning otherwise adequate requests for processing, including searches for responsive records, within 24 hours of receipt by the FOIA/PA Branch. There is no requirement in the FOIA or relevant case law to utilize any other cut-off date and notice of the "date of receipt" cut-off date is adequate to inform requesters of the RTC's practice and is fully consistent with other agency practice. *See, e.g.*, 12 CFR 261.9(b) (Federal Reserve); 15 CFR 4.6(a)(6) (Department of Commerce); 28 CFR 16.4(j) (Department of Justice); 32 CFR 1900.31(d) (CIA). The RTC believes that utilization of a later cut-off date will result in delays in processing requests in which large amounts of records require review. For requests for information in which additional records are continually being created or obtained, no date other than the date of actual response would adequately address the commenter's concerns. If such a late date were instituted, the attendant administrative burden of coordinating ongoing search and retrieval of newly created responsive records with the ongoing review of newly located records could extend the processing and resolution of any one request indefinitely to the detriment of other pending requests.

The commenter suggested that the failure of certain other agencies to include notice of a cut-off date for determining responsive records somehow obliges the RTC to not publish a cut-off date and implies that those agencies have therefore adopted the cut-off practice that the commenter suggests.[1] The commenter offers no support for its inference and the failure of most of those agencies to publish a cut-off date for determining records responsive to a request leaves requesters uncertain as to the actual administrative practice pertaining to the scope of a search for such records by those agencies. The RTC believes that by publishing this notice of a cut-off date, requesters can be assured of the scope of records to be included in a final response. Moreover, this notice is in accord with Department of Justice guidance on this matter. See FOIA Update, Fall 1983, at 14.

**4. Duplication Fees (§§ 1615.2(c) and 1615.9)**

The commenter expressed concern over the increase in duplication fees from $0.10 to $0.20 per page for paper copies of records. The original duplication fee was based upon the published fee schedule of the FDIC, see 12 CFR 309.5(b)(4), which has not been amended since prior to the creation of the RTC in 1989. Personnel, equipment and supply costs have increased since publication of that rule. Moreover, the duplication fee is identical to the duplication fee established by the Office of the Inspector General of the RTC. See 12 CFR 1680.8(a).

In a footnote, the commenter noted that the Interim Rule cites to the incorrect section of the FOIA in support of the RTC's definition of the term "Agency." The final rule has been amended to correct this error. In addition, the Appendix to the rule has been amended to reflect the addition of two Public Service Centers serving as public reference facilities and references to "four" Public Service Centers have been changed to "six" Public Service Centers.

**List of Subjects in 12 CFR Part 1615**

Confidential business information, Freedom of information.

Accordingly, the interim rule, which was published at 57 FR 32881, July 24, 1992, adding part 1615 to title 12, Chapter XVI of the Code of Federal Regulations is adopted as a final rule and part 1615 is revised to read as follows:

## PART 1615—DISCLOSURE OF INFORMATION

Sec.

1615.1 General provisions.
1615.2 RTC public reference facilities.
1615.3 Requirements pertaining to requests.
1615.4 Responses to requests.
1615.5 Form and content of responses.
1615.6 Confidential commercial information.
1615.7 Appeals.
1615.8 Preservation of records.
1615.9 Fees.
1615.10 Other rights and services.
Appendix A to Part 1615—Public Information Centers Address List

**Authority:** 5 U.S.C. 552; 12 U.S.C. 1441a; 31 U.S.C. 483a.

**§ 1615.1 General provisions.**

(a) *In general.* This part contains the regulations of the Resolution Trust Corporation (RTC), with the exception of the Office of the Inspector General of the RTC, implementing the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552. Information authorized for customary disclosure to the public by RTC staff in the regular course of the performance of official duties, including information made available by the RTC public reference facilities described in § 1615.2, may be sought directly from those sources rather than by a request pursuant to the FOIA under this part.

(b) *Access to records of the RTC Office of the Inspector General.* Regulations governing the disclosure of information by the Office of the Inspector General of the RTC are published in part 1680 of this chapter.

(c) *Definitions*—(1) *Agency* has the meaning given in 5 U.S.C. 551(1), 5

[1] In support of this comment, the Federal Reserve and the CIA are cited as examples of agencies that have not published a cut-off date. As noted above, however, both agencies currently utilize a cut-off date identical to that adopted herein.

U.S.C. 552(f) and 12 U.S.C. 1441a(b)(1)(B).

(2) *Agency record* means a record created or obtained by the RTC and under the RTC's control at the time a request is received.

(3) *Appeal* means the letter by a requester seeking review of an adverse determination of his/her request, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(4) *Clerical personnel* means RTC personnel at grade level 9 or below.

(5) *Commercial use* is a request from, or on behalf of, one who seeks information for use or purpose that furthers the commercial, trade or profit interests of the requester or person or entity on whose behalf the request is made, which can include furthering those interests through litigation.

(6) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm to the submitter.

(7) *Depository institution* means a thrift savings institution as described in 12 U.S.C. 1441a(b)(3)(A).

(8) *Direct costs* means those expenditures which the RTC actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(9) *Duplication* refers to the process of making a copy of a record necessary to respond to an FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual material, or machine-readable information (e.g., magnetic tape or disk), among others.

(10) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research and requests records in furtherance of scholarly research.

(11) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (c)(5) of this section, and which is operated, and requests records, solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(12) *Offeror* means any person or entity that submits a contract proposal to the RTC in response to a solicitation of services.

(13) *Professional personnel* means RTC personnel at grade levels 10 through and including 14.

(14) *Record* includes records, files, documents, reports, correspondence, books, and accounts, or any portion thereof, whether maintained in paper, electronic or other format.

(15) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use. A freelance journalist who demonstrates a solid basis for expecting publication by a news organization and requests records solely for that purpose will be considered a representative of the news media.

(16) *Request* means any FOIA request for records made pursuant to 5 U.S.C. 552(a)(3).

(17) *Requester* means any person who submits a request to the RTC.

(18) *Review* refers to the process of examining a record located in response to a request to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, i.e., doing all that is necessary to excise it and otherwise prepare it for release, including compliance with the pre-disclosure notification procedures outlined in § 1615.6. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(19) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(20) *Senior professional personnel* means RTC personnel at grade level 15 or above.

(21) *Solicitation of Services* means a written request for proposals distributed to an offeror by the RTC.

(22) *Submitter* means any person or entity that provides confidential commercial information, directly or indirectly, to the RTC. The term submitter includes, but is not limited to, corporations, state governments and foreign governments.

(d) *Responsibilities.* The Secretary of the RTC shall be responsible for all matters pertaining to the administration of this part with the RTC. The Secretary may take or direct such actions through the Freedom of Information Act/Privacy Act (FOIA/PA) Branch of the Office of the Secretary and the field Vice Presidents or their designees as he/she deems necessary to carry out this responsibility.

(e) *Compliance with administrative time limits.* The RTC shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). The RTC shall notify a requester whenever it is unable to respond to or process the request or appeal within the time limits established by the FOIA. The RTC shall respond to and process requests and appeals in their approximate order of receipt, to the extent consistent with sound administrative practice.

**§ 1615.2 RTC public reference facilities.**

(a) *In general.* To disseminate certain documents, the RTC has a specially staffed and equipped public reading room located in Washington, DC, and public reference facilities in the Public Service Centers in six field offices. Any member of the public may seek copies of documents maintained at the public reference facilities either by telephone or in person. The addresses and telephone numbers of the Public Reading Room in Washington, DC, and Public Service Centers are listed in appendix A of this part. Each Public Service Center maintains certain documents on general agency matters and documents pertaining only to activities by that particular geographic region. The Public Reading Room in Washington has available for inspection all of the publicly available documents and information available from each of the six Public Service Centers. The Public Reading Room will send any documents from its document collection to RTC's Public Service Centers for inspection in the public reference

facilities at those offices as desired by a member of the public. Fees for services provided by these public reference facilities are set out at paragraph (c) of this section.

(b) *Index of public reference facility information.* Each public reference facility shall maintain and make available for public inspection and copying, and publish monthly or more frequently, a current index of the materials there available, including such materials which are required to be indexed under 5 U.S.C. 552(a)(2).

(c) *Public reference facility fees.* Pursuant to § 1615.9(i)(1), fees for services at each public reference facility are as follows:

(1) *Inspection.* Members of the public are not charged for their inspection of documents which are maintained at a public reference facility.

(2) *Duplication.* For a paper photocopy of a document, the fee shall be $0.20 per page. For copies produced by computer, such as printouts or diskettes, the actual direct costs shall be charged, including operator time. For other methods of duplication, the actual direct costs of duplicating the document shall be charged.

(3) *Research.* (i) Research fees may be assessed for time spent by public reference facility personnel determining the existence of, and/or locating, documents or information sought by members of the public if the existence of such records or information is not readily ascertainable by reference to the index required by paragraph (b) of this section. Such activity includes, but is not limited to, searches of databases by public reference facility personnel.

(ii) Fees for research conducted by public reference facility personnel will be assessed at the rates stated in § 1615.9(b)(1) (ii) and (iii).

(4) *Payment.* Requesters for information under this section shall pay fees by cash, check or money order made payable to the "Resolution Trust Corporation."

**§ 1615.3 Requirements pertaining to requests.**

(a) *In general.* Any person seeking copies of agency records that are not already available among the document collections of the RTC public reference facilities described in § 1615.2, or that are not included among documents authorized for customary disclosure by RTC staff to the public in the regular course of the performance of their duties, may request such records by submitting a FOIA request in accordance with this part.

(b) *How made and addressed.* A requester may make a request under this part for any agency record of the RTC by writing to the Resolution Trust Corporation, Office of the Secretary, FOIA/PA Branch, International Place, 1735 North Lynn Street, Rosslyn, Virginia 22209. Both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request." A request will not be deemed to have been received by the RTC and the administrative time limits of the FOIA will not begin to run until such request, made in accordance with the requirements of this section, is received by the Office of the Secretary. To facilitate the RTC's response to requests in accordance with § 1615.4, to the extent practicable separate requests should be made for records located in separate field locations.

(c) *Request must reasonably describe the records sought.* (1) A request must describe the records sought in sufficient detail to enable RTC personnel to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of RTC operations. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record. If the request relates to a pending litigation matter, the request should indicate the title of the case, the court in which the case was filed and the nature of the case. If the records are known or believed to be in a particular headquarters, field location or operational division, the request should identify such office or operational division. Organization charts and functions of each RTC operational division can be obtained from any of the public reference facilities listed at appendix A of this part.

(2) If it is determined that a request does not reasonably describe the records sought, the requester shall be advised what additional information is needed or why the request is otherwise insufficient. The requester also shall be extended the opportunity to confer with RTC personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(3) Personnel of the FOIA/PA Branch, and field FOIA Specialists where a request covers only records of one field location as noted in § 1615.4(b)(2), are available to confer with requesters in all instances in order to assist them in conforming their requests to the requirements of this section. A telephone number for the appropriate FOIA Specialist is provided in the acknowledgment letter sent to a requester upon receipt of the request by the FOIA/PA Branch.

(d) *Fee requirements.* A request must also conform to the requirements pertaining to fees as stated in § 1615.9.

**§ 1615.4 Responses to requests.**

(a) *Authority to grant or deny requests.*—The Secretary of the RTC, or designee, is authorized to grant or deny any request for a record of the RTC, excluding records of the Office of Inspector General which are governed by part 1680 of this chapter.

(b) *RTC procedures.*—(1) Initial requests for records will be forwarded by the FOIA/PA Branch to the head of the RTC division or office which is believed to have custody of such records.

(2) Except as otherwise provided in this section, where it is determined that all responsive agency records are located within the area of responsibility of a single RTC Field Office, the response to the request will be provided by the Office Vice President, or designee.

(3) Except as otherwise provided in this section, the headquarters FOIA/PA Branch shall ordinarily be responsible for responding to all other requests.

(c) *Records of another agency.*—(1) *In general.* When it is determined that a requested record originated at or was created by another Federal agency or department, the RTC will either:

(i) Respond to the request, after consulting with the other agency or department; or

(ii) Refer the responsibility for responding to the request to the other agency or department, but only if that other agency or department is subject to the provisions of the FOIA. Ordinarily, the agency or department that originated a requested record or information contained in a responsive record shall be presumed to be the agency or department best able to determine whether or not to disclose the information in response to the request. However, nothing in this section shall prohibit an agency or department that originated a requested record, or the RTC, from referring the responsibility for responding to the request to any other agency or department, if the RTC or the agency or department that originated the requested record determines that the other agency or department has a greater interest in the requested record or the information contained therein.

(2) *Notice of referral.* Whenever the RTC refers all or any part of the responsibility for responding to a request to another agency or department, it ordinarily will inform the requester of the referral and inform the requester of the name and address of each agency or department to which the request has been referred and the portions of the request so referred.

(3) *Agreements regarding consultations and referrals.* No provision of this section shall preclude formal or informal agreements between the RTC and another agency or department to eliminate the need for consultations or referrals of requests or classes of requests.

(d) *Exemptions.*—The RTC may deny access to requested records or reasonably segregable portions thereof when they contain information which falls into one or more of the following categories:

(1) Matters which are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Matters related solely to the personnel rules and practices of the RTC;

(3) Matters specifically exempted from disclosure by statute (other than the Privacy Act of 1974, 5 U.S.C. 552a), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the RTC;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of an individual;

(8) Matters contained in or related to examination, operating or condition reports by or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological and geophysical information and data, including maps, concerning wells.

(e) *Exclusion.* The RTC may treat requested records as not subject to FOIA requirements whenever a request involves access to records described in paragraph (d)(7) of this section and—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that:

(i) The subject of the investigation or proceeding is not aware of its pendency; and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(f) *Records of receiver or conservator.* The RTC is not an agency for purposes of the FOIA when acting in its capacity as receiver or consevator. Records of the receivership or conservatorship may have been, under certain circumstances, incorporated into RTC corporate files. If a requested record is held by the RTC in its non-agency capacity, access to the record under the FOIA is therefore subject to a determination as to whether it has been incorporated into the records of the RTC in its corporate capacity. Such a determination shall not preclude the RTC from disclosing certain non-agency records in response to a request as a matter of public policy.

(g) *Date for determining responsive records.* In determining records responsive to a request, the RTC ordinarily will include only those records within the RTC's possession and control as of the date of its receipt of the request.

**§ 1615.5 Form and content of responses.**

(a) *Form and content of notice granting request.* After a determination to grant a request in whole or in part, the requester shall be so notified in writing. The notice shall describe the manner in which the requested records will be disclosed, whether by providing a copy of each record to the requester, including copies available at an RTC public reference facility, or, at the RTC's discretion, by making a copy of each record available to the requester for inspection at a reasonable time and place The information provided shall be in a form specified by the RTC that is reasonably useable by the requester. The requester shall also be informed in the notice of any fees to be charged in accordance with the provisions of § 1615.9.

(b) *Form of notice denying a request.* A requester shall be informed in writing if a requested record is denied in whole or in part. The notice will be signed by the Secretary, or designee, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which were relied upon in denying the requested records in whole or in part and a brief explanation of the manner in which the exemption or exemptions apply to each record denied; and

(3) A statement that the denial may be appealed under § 1615.7 and a description of the requirement of § 1615.7.

(c) *Nonexistent records.* (1) The FOIA neither requires the compilation or creation of a record for the purposes of responding to a request for records nor does it require agencies to fulfill requests for records not yet in existence, even where such record may be expected to come into existence at a later time.

(2) If a requested record is known to have been destroyed or otherwise disposed of, or if no such record is known to exist or can be located after a reasonable search, the requester will be so notified in writing.

**§ 1615.6 Confidential commercial information.**

(a) *In general.* Confidential commercial information submitted to the RTC shall not be reviewed for disclosure pursuant to a request except in accordance with this section.

(b) *Notice to submitters.* Whenever the RTC receives a request for confidential commercial information and, pursuant to paragraph (c) of this section, the submitter is entitled to receive notice of that request, the RTC shall promptly notify the submitter that it has received the request, unless such notice is excused under paragraph (h) of this section. Such written notice shall either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions thereof containing the confidential commercial information and be sent to the submitter by first class mail (or, in the discretion of the RTC, by certified or registered mail or other means reasonably calculated to ensure actual notice to the submitter). Where notice is required to be given to a voluminous number of submitters, in lieu of mailing, the notice may be posted or published in a manner reasonably calculated to provide notice to the submitters. Whenever the RTC tenders notice to a submitter, it also shall notify the requester that the submitter has been provided with notice and an opportunity to object to the disclosure of all or any portion of the requested information.

(c) *When notice of receipt of request is required.* To the extent permitted by law, notice of receipt of a request shall be given to a submitter whenever:

(1) The submitter has designated the information as confidential commercial information pursuant to the requirements of this section; or

(2) The RTC has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter.

(d) *Designation of confidential commercial information*—(1) In general. Submitters of any confidential commercial information shall use good-faith efforts to designate either at the time of submission, by appropriate markings on their submissions, those portions of their submissions which they deem to contain confidential commercial information or, within a reasonable time after submission, provide to the initial submission recipient or current holder written notice clearly identifying the submission and subject confidential commercial information. Such designations shall be deemed to have expired upon the statutory expiration of the RTC or five years after the date of the submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(2) *Compliance with solicitation of services and other guidance.* A solicitation of services distributed by the RTC to potential offerors may specify the kinds of information which may, may not, and must be designated as confidential commercial information in any contract proposal submitted to the RTC in response to the solicitation of services. Contract proposals submitted to the RTC in response to such solicitations of services must designate confidential commercial information in accordance with the solicitation of services and other applicable guidance. The RTC may be excused from the notice requirements of this section in the case of designations not made in accordance with the solicitation of services and other applicable guidance.

(e) *Opportunity to object to disclosure.* To the extent permitted by law, the RTC shall afford a submitter or its designee a reasonable period of time within which to provide the RTC with a detailed written statement of its objection to any portion of the disclosure of the information it submitted to the RTC and the grounds upon which such disclosure is opposed. Such statement shall specify all grounds for withholding any of the information and demonstrate why the submitter believes that the requested information is confidential commercial information. The submitter's claim of confidentiality should be supported by a statement by the submitter or the submitter's designee that the confidential commercial information has not previously been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* The RTC shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial information. Whenever the RTC decides to disclose confidential commercial information over the objection of a submitter, a written notice shall be forwarded to the submitter which shall include: A statement of the reason(s) for which the submitter's disclosure objections were not sustained; a description of the confidential commercial information to be disclosed; and a specified disclosure date. To the extent permitted by law, such notice of intent to disclose shall be forwarded to the submitter within a reasonable number of days prior to the specified disclosure date. Whenever the RTC provides notice to the submitter of a final decision made with respect to any objection to disclosure, it also shall notify the requester.

(g) *Notice of FOIA lawsuit.* Whenever a requester brings a lawsuit seeking to compel disclosure of confidential commercial information, the RTC shall promptly notify the submitter.

(h) *Exceptions to the notice requirement.* The notice requirements of paragraph (b) of this section shall not apply if:

(1) The RTC determines that the information should not be disclosed;

(2) The information lawfully has been published or has officially been made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) Disclosure of the information is required by an RTC rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the RTC that are to be released under the FOIA; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information requested was not designated by the submitter as exempt from disclosure in accordance with paragraph (d) of this section when the submitter had an opportunity to do so at the time of the submission of the information or a reasonable time thereafter, unless the RTC has substantial reason to believe that the disclosure of the information would cause competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (d) of this section appears obviously frivolous; except that, in such case, the submitter shall be provided with written notice of any final administrative decision to disclose confidential commercial information within a reasonable number of days prior to a specified disclosure date.

**§ 1615.7 Appeals.**

(a) *Appeals to the RTC General Counsel.* When a request for access to records or for a waiver of fees has been denied in whole or in part or when the RTC asserts that records do not exist or could not be located or when the RTC fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal to the RTC General Counsel within 30 days of receipt of RTC's response to the request or lack thereof. An appeal to the RTC General Counsel shall be made in

writing and addressed to the Office of the Secretary, FOIA/PA Branch, International Place, 1735 North Lynn Street, Rosslyn, Virginia 22209. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal." To expedite the appellate process, the appeal should be accompanied by copies of the original request and the initial denial. The appeal should contain a brief statement of the reasons why the requester believes the initial denial is in error. Appeals will be forwarded by the Secretary to the RTC General Counsel for action. An appeal not properly addressed and marked in accordance with this section will be forwarded to the RTC General Counsel as soon as it is identified. An appeal that is improperly addressed will be deemed to not have been received by the RTC until the FOIA/PA Branch receives the appeal, or would have done so with the exercise of reasonable diligence by RTC personnel.

(b) *Action on appeals by the RTC General Counsel or designee.* The RTC General Counsel, or designee, shall notify the appellant within 20 working days after receipt of the appeal meeting the requirements of § 1615.7(a).

(c) *Extension of time.* Under certain circumstances, the RTC may require additional time, to the extent reasonably necessary, to properly process the appeal. The circumstances would arise in cases where the RTC has determined it necessary for a review or additional review of records which are in facilities, such as field offices or storage centers, that are not part of the RTC's Washington office, or which are voluminous and are not in close proximity to one another; or there is a need to consult with another agency or among two or three components of the RTC having a substantial interest in the determination. The RTC will promptly give written notification to the appellant of the estimated date it will make its determination and the reasons why additional time is required.

(d) *Form of action on appeal.* The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including the FOIA exemption or exemptions relied upon and the relation to each record withheld, and a statement that judicial review of the denial is available in the U.S. District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or in the U.S. District Court for the District of Columbia. If the denial of the request is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

**§ 1615.8 Preservation of records.**

The RTC shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized by the General Records Schedules issued by the National Archives and Records Administration. Records known to be the subject of a pending request, appeal or lawsuit under the FOIA shall not be intentionally destroyed.

**§ 1615.9 Fees.**

(a) *In general.* The RTC will assess fees for search, duplication and review pursuant to 5 U.S.C. 552 according to the schedule contained in paragraph (b) of this section for services rendered in responding to and processing requests for records under this part. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requesters shall pay fees by check or money order made payable to the "Resolution Trust Corporation."

(b) *Charges.* Subject to the limitations on charging fees pursuant to paragraph (c) of this section, and unless a waiver or reduction of fees have been granted pursuant to paragraph (d) of this section, RTC will assess the fees applicable to the request under one of the four request categories: commercial use; educational and noncommercial scientific institutions; representatives of the news media; and all other requests. The definitions in § 1615.1(c) (5), (10), (11), and (15) will be considered in determining which fee category is appropriate for assessing fees.

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in § 1615.1(c) (10), (11) and (15), respectively). Search fees shall be assessed in quarter-hour increments with respect to all other requests, subject to the limitations of paragraph (c) of this section. Search fees may be assessed for time spent searching even if responsive records cannot be located or where records located are subsequently determined to be entirely exempt from disclosure. The RTC shall insure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the RTC shall not engage in a line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(ii) For each hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be at the rate of $12.50 per hour. Where a search cannot be performed entirely by clerical personnel—for example where the identification of records within the scope of a request requires the use of professional personnel—the fee shall be at the rate of $30.00 per hour of search time spent by such professional personnel. Where the time of senior professional personnel is required, the fee shall be at the rate of $40.00 per hour spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search. The RTC is not required to alter or develop programming to conduct a search.

(iv) For searches that must be performed by a contractor rather than RTC staff, direct cost for the searches shall be assessed.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.20 per page. For copies produced by computer, such as tapes or printouts, the actual direct costs of producing the copy, including computer operator time, shall be charged. For other methods of duplication, actual direct costs of duplicating the record shall be charged.

(3) *Review.* (i) Review fees shall be assessed in quarter-hour increments with respect to only those requesters who seek records for a commercial use, as defined in § 1615.1(c)(5). For each hour spent by RTC professional personnel in reviewing a requested record for possible disclosure, the fee shall be at the rate of $30.00 per hour, except that where the time of senior professional personnel is required, the hourly fee shall be at the rate of $40.00 per hour. Review costs shall be

recoverable even where there is ultimately no disclosure of a record.

(ii) Review fees shall be assessed only for the initial record review, i.e., all of the review undertaken when analyzing the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in § 1615.1(c)(5)), there shall be no charge for:

(i) The first 100 pages of duplication (or its cost equivalent); and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $25.00 or less, no fee shall be charged.

(d) *Waiver or reduction of fees.* (1) Requests for a waiver or reduction of fees should be included in the initial request for records and must provide information that addresses each of the factors listed in paragraphs (d) (3) and (4) of this section. In providing information addressing each of the factors, the requester should include a full description of the intended use of the records; the specific activity, research, and analysis to be undertaken with the requested records; the manner in which the requested information will be disseminated and the nature and extent of the public to whom it will be disseminated; and any commercial interest the requester has in the requested records. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(2) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the RTC determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the RTC, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(3) In order to determine whether the first fee waiver requirement—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the following four factors shall be considered in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(4) In order to determine whether the second fee waiver requirement—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the following two factors shall be considered in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(5) In determining whether waiver or reduction of fees is appropriate, the RTC shall also consider whether the requested records are already available to the public, or will add appreciably to the substance of information already available to the public, from RTC public reference facilities listed in Appendix A, are documents authorized for customary disclosure by other RTC staff in the regular course of the performance of their duties, or are records available to the public from other sources as described in paragraph (i) of this section.

(6) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of $25.00.* Where it is determined or estimated that the fees to be assessed under this section may amount equal to or more than $25.00 or an amount higher than any fee agreement stated in the request, the requester shall be notified as soon as practicable of the actual or estimated amount of the fees. (If only a portion of the fee can be estimated readily, the requester shall be advised that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount equal to or more than $25.00 or an amount higher than any fee agreement stated in the request, processing of the request will be held in abeyance until the requester has agreed in writing to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him/her the opportunity to confer with RTC personnel to reformulate his/her request to meet his/her needs at a lower cost.

(f) *Aggregating requests.* Multiple requests by or on behalf of the same person for the same type of records or information may, in the discretion of the RTC, be aggregated for purposes of assessing search, duplication and review fees.

(g) *Advance payments.* (1) Where it is estimated that a total fee to be assessed under this section is likely to exceed $250.00, the requester may be required to make an advance payment of an amount up to the entire estimated fee, but not less than 20% of the estimated fees, before beginning to process the request, except, in the RTC's discretion, where the RTC receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the requester may be required to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the RTC begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g) (1) and (2) of this section, the RTC shall not require the requester to make an advance

payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) Where the RTC acts under paragraph (g) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA, 5 U.S.C. 552(a)(6), for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the RTC has received a written agreement to pay estimated fees, payment of the estimated fees or payment of the assessed fee, whichever is applicable.

(h) *Charging interest.* The RTC may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by the RTC, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. The RTC shall follow the provisions of 31 U.S.C. 3716, 3718 and 3719 pertaining to the use of administrative offset, collection agencies and consumer reporting agencies.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—i.e., any statute that specifically requires a government entity such as the Government Printing Office of the National Technical Information Service, to set and collect fees for particular types of records to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible: or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the RTC shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Charges for other services and materials.* Apart from the other provisions of this section, where the RTC elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them by other than ordinary mail, the actual direct costs of providing the service or materials shall be charged.

**§ 1615.10 Other rights and services.**

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which the person is not entitled under 5 U.S.C. 552.

**Appendix A to Part 1615—Public Information Centers Address List**

The addresses of the Washington, DC Public Reading Room and field Public Service Centers are:

RTC Public Reading Room, 801 17th Street, NW., First Floor, Washington, DC (202-416-6940)

Public Service Center, 245 Peachtree Center Avenue, NE, suite 1400, Atlanta, GA 30303, (404) 225-5069;

Public Service Center, 7400 W. 110th Street, Overland Park, KS 66210, (913) 344-8500;

Public Service Center, 3500 Maple Avenue, Dallas, TX 75219-3935, (214) 443-4860;

Public Service Center, 1225 17th Street, suite 3085, Denver, CO 80202, (303) 291-5829;

Public Service Center, 4000 MacArthur Boulevard, 4th Floor, West Tower, Newport Beach, CA 92660-2516, (800) 876-2690;

Public Service Center, 1000 Adams Avenue, Norristown, PA 19403, (215) 631-3715.

Dated at Washington, DC, this 20th day of October, 1992.

Resolution Trust Corporation.

**John M. Buckley, Jr.,**

*Secretary.*

[FR Doc. 92-25981 Filed 10-28-92; 8:45 am]

BILLING CODE 6714-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91-NM-251-AD; Amendment 39-8388; AD 92-22-02]**

### Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that requires inspection to detect chafing of the wire looms in the wing and the horizontal stabilizer, and repair or replacement, protection, and realignment, if necessary. This amendment is prompted by an incident in which a wire loom short circuit caused fire extinguishant to discharge and pop the circuit breaker for a brake fan. The actions specified by this AD are intended to prevent electrical short circuiting due to chafing of the wire loom in the wing and the horizontal stabilizer.

**DATES:** Effective on December 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes was published in the **Federal Register** on June 22, 1992 (57 FR 27712). That action proposed to require inspection to detect chafing of the wire looms in the wing and the horizontal stabilizer, and repair or replacement, protection, and realignment, if necessary.

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the economic impact analysis information for the proposed rule be revised to indicate that the number of work hours necessary to accomplish the actions required by the AD is 30.5, rather than 10, as was indicated in the preamble to the notice. The higher figure coincides with the

number shown in the service information cited in the AD. The FAA concurs. The economic analysis paragraph, below, has been revised accordingly.

One commenter requests that the repetitive inspection interval of 450 hours time-in-service specified in proposed paragraph (a) be changed to every "A" check, and that the repetitive interval of 3,500 hours time-in-service specified in proposed paragraph (b) be changed to every "C" check. This commenter has not experienced the problems identified in the AD. The FAA does not concur with the commenter's request. The inspection intervals, as proposed, represent what the FAA has determined to be the maximum intervals of time allowable wherein the inspections could reasonably be accomplished by the affected fleet and an acceptable level of safety could be maintained. Since regularly scheduled maintenance intervals ("letter checks") may vary from operator to operator and from airplane to airplane, there would be no assurance that the inspections would be accomplished within those maximum intervals. However, paragraph (e) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data is presented to justify such an adjustment.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be nominal in cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $53,680, or $1,678 per airplane.

This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**92-22-02. Airbus Industrie:** Amendment 39-8388. Docket 91-NM-251-AD.

*Applicability:* Model A320 series airplanes, manufacturer's serial numbers through 169, inclusive, certificated in any category.

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

To prevent an electrical short circuit due to chafing of the wire loom in the wing and the horizontal stabilizer, accomplish the following:

(a) Prior to the accumulation of 450 hours time-in-service after the effective date of this AD, inspect the wire looms in wing zones 574 and 674 through panels 574AB and 674AB to detect chafing or contact with the end fittings of the protective conduit, in accordance with Airbus Industrie Service Bulletin A320-24-1044, Revision 2, dated March 3, 1992. Repeat this inspection, thereafter, at intervals not to exceed 450 hours time-in-service.

(1) If any wire is found chafed or damaged due to overheating, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual or Aircraft Wiring Manual.

(2) If any wire loom is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the loom in accordance with Airbus Industrie Service Bulletin A320-24-1045, Revision 2, dated April 12, 1992; or in accordance with the temporary repair described in paragraph 2.B.(2)(b) of Airbus Service Bulletin A320-24-1044, Revision 2, dated March 3, 1992.

(b) Prior to the accumulation of 1,500 hours time-in-service after the effective date of this AD, inspect the wire looms in the wing and horizontal stabilizer, excluding wing zones 574 and 674 through panels 574AB and 674AB, to detect chafing or contact with the ending fittings of the protective conduit, in accordance with Airbus Industrie Service Bulletin A320-24-1044, Revision 2, dated March 3, 1992. Repeat this inspection, thereafter, at intervals not to exceed 3,500 hours time-in-service.

(1) If any wire is found chafed or damaged due to overheating, prior to further flight, repair or replace it in accordance with the Airplane Maintenance Manual or Aircraft Wiring Manual.

(2) If any wire loom is found in contact with the edge of the conduit end fitting, or which might come in contact with the edge of the conduit end fitting due to vibration in flight, prior to further flight, realign and protect the loom in accordance with Airbus Industrie Service Bulletin A320-24-1045, Revision 2, dated April 12, 1992; or in accordance with the temporary repair described in paragraph 2.B.(6)(b) of Airbus Service Bulletin A320-24-1044, Revision 2, dated March 3, 1992.

(c) If a temporary repair is accomplished in accordance with paragraph (a)(2) or (b)(2) of this AD, prior to the accumulation of 450 hours time-in-service after the accomplishment of that temporary repair, realign and protect the loom in accordance with Airbus Industrie Service Bulletin A320-24-1045, Revision 2, dated April 12, 1992.

(d) Accomplishment of the realignment and protection of the looms in accordance with Airbus Industrie Service Bulletin A320-24-1045, Revision 2, dated April 12, 1992, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(e) 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, Standardization Branch, ANM-113, 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, Standardization Branch.

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

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

(g) The inspections, temporary repairs, realignment, and protection shall be done in accordance with the following Airbus Industrie service bulletins, as applicable, which contain the specified effective pages:

| Service bulletin referenced and date | Page No. | Revision level shown on page | Date shown on page |
|---|---|---|---|
| A320-24-1044, revision 2, March 3, 1992 | 1-6, 8, 8A, 8B, 9, 12, 16 | 2 | Mar. 3, 1992. |
| | 7, 10-11, 13-15, 17-23 | 1 | Aug. 23, 1991. |
| A320-24-1045, revision 2, April 12, 1992 | 1-2, 4-8, 8A, 8B, 23 | 2 | Apr. 12, 1992. |
| | 3, 9, 14-16 | 1 | Aug. 23, 1991. |
| | 10-13, 17-22 | Original | Feb. 1, 1991. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on September 30, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26202 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 92-NM-22-AD; Amendment 39-8397; AD 92-22-11]**

## Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce engines, that currently requires inspections for cracked midspar fuse pins, and replacement of the pins, if necessary. The applicability of this action includes additional airplanes equipped with bulkhead-type fuse pins that were installed by the manufacturer and are also subject to cracking. This action also provides a terminating action for the inspection requirements. This amendment is prompted by an analysis conducted by the manufacturer which indicates that bulkhead-type fuse pins must be replaced at specified intervals. The actions specified by this AD are intended to prevent the separation of the strut and engine from the wing.

**DATES:** Effective December 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie K. Sumner, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2778; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-03-51, Amendment 39-6523 (55 FR 7697, March 5, 1990), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on June 5, 1992 (57 FR 23966). The action proposed to continue to require inspections to detect cracking of the midspar fuse pins, and replacement of cracked pins; and replacement of bulkhead fuse pins at specific intervals.

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

One commenter supports the proposed rule.

A second commenter notes an error in the fuse pin part number called out in proposed paragraph (d)(1). The number that appeared in the proposal was "311N5967-1;" however, the correct part number is "311N5067-1." The FAA acknowledges the error and has corrected the final rule accordingly. (The FAA notes that all other references in the proposal to that part number were correct.)

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the accomplishment instructions of Boeing Alert Service Bulletin 757-54-0020, Revision 3, dated March 26, 1992, be reviewed to determine the practicality of requiring precise measurement of the subject bushings to within 0.0012 inch dimensions and requiring corresponding action based upon those measurements. The FAA does not concur that a review is necessary. Such a requirement is practical, since established procedures exist for making such types of measurements.

One commenter asks that the inside dimension on the bushings, which is referenced in paragraph (b)(2) of the rule, be changed to 1.5645 inches to coincide with the service bulletin cited in paragraph (b) of the AD. The commenter reasons that it is not possible for all bushings to have an inside diameter of 1.5644 inches or less with one or more of the dimensions between 1.5633 and 1.5645 inches, as stated in the AD. The FAA concurs and has revised paragraph (b)(2) accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 223 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 86 airplanes of U.S. registry will be affected by this AD; this number represents 38 airplanes that were affected by AD 90-03-51 and 48 additional airplanes affected by this amendment. The manufacturer has installed bulkhead fuse pins on 41 of these U.S.-registered airplanes.

The FAA estimates that it will take approximately 8 work hours per airplane to accomplish the inspections currently required by AD 90-03-51, at an average labor rate of $55 per work hour. This requirement continues to apply to the 38 originally affected airplanes, and now also applies to the 48 airplanes added by this amendment. Based on these figures, the total cost impact of this requirement with regard to the 86 affected airplanes is $37,840.

In addition, it will take 2 additional work hours per airplane to accomplish the bushings inspection required by this amendment, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this requirement with regard to the 86 affected airplanes is $9,460.

For the 41 airplanes equipped with bulkhead fuse pins, it will take 56 work hours per airplane to accomplish the fuse pin replacement, at an average labor rate of $55 per work hour. Required parts will cost approximately $1,640 per airplane. Based on these figures, the total cost impact of this requirement with regard to the 41 affected airplanes is $193,520.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $240,820. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6523 (55 FR 7697, March 5, 1990), and by adding a new airworthiness directive (AD), amendment 39-8397, to read as follows:

**92-22-11. Boeing:** Amendment 39-8397. Docket 92-NM-22-AD. Supersedes AD 90-03-51, Amendment 39-6523.

*Applicability:* Model 757 series airplanes equipped with Rolls Royce engines; as listed in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992; certificated in any category.

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

To prevent separation of the strut and engine from the wing, accomplish the following:

(a) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992: Prior to the accumulation of 5,000 flight cycles on a new fuse pin or 1,500 flight cycles since the last inspection, or within the next 30 days after March 19, 1990 (the effective date of AD 90-03-51, Amendment 39-6523), whichever occurs later; and thereafter at intervals not to exceed 1,500 flight cycles: Perform an eddy current inspection to detect cracks of the engine strut midspar fuse pins, part number 311N5067-1, in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992.

**Note:** Inspections accomplished in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 1, dated January 30, 1990, or Revision 2, dated October 31, 1991, prior to the effective date of this amendment, are considered to comply with the requirements of this paragraph.

(b) If a crack is found in any midspar fuse pin as a result of any inspection required by paragraph (a) of this AD, prior to further flight, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure as specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than or equal to 1.5645 inches: Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (b) of this AD.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have an inside diameter measurement of less than or equal to 1.5645 inches, and one or more of the dimensions is between 1.5633 inches and 1.5645 inches: Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (b) of this AD.

(3) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have inside diameter measurements of less than or equal to 1.5633 inches, accomplish the procedures specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this AD:

(i) Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD; and

(ii) Within 10 days, submit a report of findings of the bushing inspection (in which all bushings are found to have inside diameter measurements of less than or equal to 1.5633 inches) to the Boeing Commercial Airplane Group. 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) If no cracks are found in a midspar fuse pin as a result of the inspections required by paragraph (a) of this AD, prior to further flight, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than or equal to 1.5645 inches: Prior to further flight, re-install the removed fuse pins, and repeat the inspections of the fuse pins in accordance with paragraph (a) of this AD. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (c) of this AD.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have an inside diameter measurement of less than 1.5645 inches: Prior to further flight, re-install the removed fuse pins and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles. Replace all bushings that have an inside diameter measurement of greater than

1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (c) of this AD.

(3) If all of the bushings in the wing side-load fitting and strut duckbill fitting are found to have inside diameter measurements of less than or equal to 1.5633: Prior to further flight, re-install the removed fuse pins. No more inspections in accordance with this AD are required.

(d) For airplanes identified as Group 2 in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992: Prior to the accumulation of 6,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings, and replace the engine midspar fuse pins, part number 311N5211-1, with new fuse pins having the same part number, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure specified in either paragraph (d)(1) or (d)(2) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than 1.5633 inches: Within 6,000 additional flight cycles after the inspection of the bushings required by paragraph (d) of this AD, remove all bushings that have an inside diameter measurement of greater than 1.5633 inches, and install new midspar fuse pins, part number 311N5067-1.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have inside diameter measurements of less than or equal to 1.5633 inches: Within the next 6,000 flight cycles after the inspection of the bushings required by paragraph (d) of this AD, install new fuse pins, part number 311N5067-1. No further inspections are required by this AD.

(e) Accomplishment of the bushing replacement and installation of midspar fuse pins, part number 311N5067-1, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992, constitutes terminating action for the inspection requirements of this AD.

(f) 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: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(h) The inspections and replacement shall be done in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991; or Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on October 2, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26205 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 39

**[Docket No. 92-NM-50-AD; Amendment 39-8398; AD 92-22-12]**

## Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, that requires replacement of certain braking system anti-skid control boxes; an operational test of the anti-skid control box; and an anti-skid braking system integrity test. This amendment is prompted by a report indicating that a malfunctioning integrated circuit board in the braking system anti-skid control box, combined with a single item failure, can cause loss of normal braking. The actions specified by this AD are intended to prevent the loss of normal braking during ground operations.

**DATES:** Effective on December 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes was published in the **Federal Register** on June 16, 1992 (57 FR 26798). (A correction of the rule was published in the **Federal Register** on July 17, 1992 (57 FR 31754).) That action proposed to require replacement of certain braking system anti-skid control boxes; an operational test of the anti-skid control box; and an anti-skid braking system integrity test.

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

The commenter supports the proposed rule.

Since issuance of the notice, British Aerospace has issued Revision 2 to BAe 146 Service Bulletin SB.32-124-70491A&B, dated June 30, 1992, which deletes a superfluous reference to the Aircraft Maintenance Manual test procedures. The FAA has revised the final rule to include the latest revision to the service bulletin as an additional source of service information.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by British Aerospace at no charge to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,775, or

$83 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**92-22-12. British Aerospace:** Amendment 39-8398. Docket 92-NM-50-AD.

*Applicability:* Model BAe 146-100A series airplanes, Constructor's Nos. E1002 and subsequent; Model BAe 146-200A series airplanes, Constructor's No. E2008 and subsequent; and Model BAe 146-300A series airplanes, Constructor's Nos. E3118 and subsequent; certificated in any category.

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

To prevent loss of normal braking during ground operations, accomplish the following:

(a) For airplanes having pre-Modification HCM00716B configuration: Within 6 months after the effective date of this AD, remove the anti-skid control box, and install a new anti-skid control box, Modification HCM70491A; and perform an operational test on the anti-skid control box; in accordance with British Aerospace BAe 146 Service Bulletin SB.32-124-70491A&B, Revision 1, dated November 25, 1991; or Revision 2, dated June 30, 1992.

(b) For airplanes having post-modification HCM00716B configuration: Within 6 months after the effective date of this AD, remove the anti-skid control box, and install a new anti-skid control box, Modification HCM70491B; and perform an anti-skid braking system integrity test; in accordance with British Aerospace BAe 146 Service Bulletin SB.32-124-70491A&B, Revision 1, dated November 25, 1991; or Revision 2, dated June 30, 1992.

(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, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(e) The replacement, operational test, and integrity test shall be done in accordance with the following British Aerospace BAe 146 service bulletins, as applicable, which contain the specified effective pages:

| Service bulletin referenced and date | Page No. | Revision level shown on page | Date shown on page |
|---|---|---|---|
| SB.32-124-70491A&B | 1, 3, 6 | 1 | November 25, 1991. |
| Revision 1, November 25, 1991 | 2, 4-5, 7-10 | Original | (Not dated). |
| SB.32-124-70491A&B | 1, 3, 6 | 2 | June 30, 1992. |
| Revision 2, June 30, 1992 | 2, 4-5, 7-10 | Original | (Not dated). |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on October 2, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26204 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

### 14 CFR Part 39

**[Docket No. 92-NM-70-AD; Amendment 39-8376; AD 92-20-02]**

## Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of currently installed blind bolts that attach the latch brackets to the radome. This amendment is prompted by inspections during final assembly, which revealed that the nose radome latch bracket attach bolts had been installed incorrectly on several airplanes and resulted in the loss of the securing ring. The actions specified by this AD are intended to prevent the loss of the radome during flight or ground operations, which could lead to subsequent structural damage to the wing, empennage, or an engine.

**DATES:** Effective on December 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be

examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on June 18, 1992 (57 FR 27194). That action proposed to require replacement of currently installed blind bolts that attach the latch brackets to the radome.

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

The commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $940. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

92-20-02. **Fokker:** Amendment 39-8376. Docket 92-NM-70—AD.

*Applicability:* Model F28 Mark 0100 series airplanes; serial numbers 11290, 11296, 11298, 11299, 11301, 11306, 11308, 11310, and 11313; certificated in any category.

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

To prevent structural damage to the wing, empennage, or an engine, caused by loss of the radome during flight or ground operations, accomplish the following:

(a) Within 6 months after the effective date of the AD, replace the currently installed blind bolts that attach the latch brackets to the radome with new bolts, in accordance with Fokker Service Bulletin SBF100-53-067, dated July 1, 1991.

(b) 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, Standardization Branch, ANM-113, 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, Standardization Branch.

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

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

(d) The replacement shall be done in accordance with Fokker Service Bulletin SBF100-53-67, dated July 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on September 3, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26200 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 39

**[Docket No. 91-NM-222-AD; Amendment 39-8396; AD 92-22-10]**

## Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 and KC-10A (military) series airplanes, that currently requires inspections for fatigue cracking of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel, and repair, if necessary. This amendment reduces the repetitive inspection intervals for repaired spar caps and upper rear skin panels, expands the inspection area, and provides an alternative method of inspection. This amendment is prompted by service experience and additional data presented by the manufacturer, which indicated that such actions are necessary to ensure the airworthiness of these airplanes. The actions specified by this AD are intended to prevent loss of the fail-safe capability of the horizontal stabilizer.

**DATES:** Effective on December 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications - Technical Administrative Support, C1-L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5238; fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87-06-53 R2, Amendment 39-6149 (54 FR 8527, March 1, 1989), which is applicable to McDonnell Douglas Model DC-10 and KC-10A (military) series airplanes, was published in the **Federal Register** on June 4, 1992 (57 FR 23553). The action proposed to reduce the currently required repetitive inspection intervals for repaired spar caps and upper rear skin panels, expand the inspection area, and provide an alternative method of inspection.

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

One commenter supports the rule as proposed.

One commenter requests that proposed paragraph (f)(3) be amended to allow affected airplanes to continue flying with cracks in the vertical tang (within specified limits), as long as the operator monitors crack growth. The FAA does not concur. The commenter's suggestion would require reliance on frequent repetitive visual inspections of the vertical tang to monitor crack growth. Such long term repetitive inspections may not provide the degree of safety assurance necessary to sustain the continued airworthiness of these airplanes. In consideration of this, coupled with a better understanding of the human factors associated with numerous repetitive inspections, the FAA has determined that long term continued operational safety is better assured by design changes to remove the source of the problem.

One commenter states that a tooling kit should be developed and made available to the affected operators before the stress coining that would be required by proposed paragraph (e) is mandated. The commenter is concerned about the availability of tooling kits for performing the stress coining requirement. The FAA does not concur that such a kit is necessary. The FAA has been advised by the manufacturer that the stress coining tools defined in McDonnell Douglas Process Specification (DPS) 3.67-56 (as specified in McDonnell Douglas Alert Service Bulletin A55-18, Revision 4, dated September 10, 1991), are available and are currently being used by some operators to accomplish the stress coining requirements of this AD.

One commenter has concerns about the ability to perform the inspection of the horizontal stabilizer rear spar upper aft tang fasteners on airplanes with certain modified horizontal stabilizer ribs. The commenter notes that there are no instructions in the referenced service bulletins for inspection or rework of airplanes so modified. The FAA is aware of the commenter's concern. Service information regarding rework provisions for airplanes on which the affected horizontal stabilizer rib has been previously modified can be obtained from the manufacturer. Operators may then apply for an alternative method of compliance for the use of those rework procedures.

One commenter requests that the rule be revised to include inspection intervals and procedures for the inspection of barrel nut holes that have had plugs installed in them. The FAA does not concur; it would be impractical to include an inspection method for every type of modification that may exist. However, for special situations such as this, the commenter may apply for an alternative method of compliance in accordance with paragraph (h) of the final rule.

One commenter requests that the compliance time for the repetitive inspection of the vertical tang fastener holes in the horizontal stabilizer rear upper spar cap after stress coining and installation of oversize attachments be extended or eliminated. The proposed compliance time for this inspection is 3,500 landings. The commenter contends that the fatigue life of the vertical tang with the stress coining and oversized fasteners installed should be long enough to justify an extension of the repetitive inspection interval or elimination of the repetitive inspection altogether. The FAA does not concur. The repetitive inspection interval is based on a damage tolerance analysis conducted by the manufacturer, which was approved by the FAA. Although the fatigue life is enhanced by the installation of oversized fasteners and stress coining of the holes, the quantitative effects of these processes cannot be predicated with a level of confidence that allows deletion of the requirement for repetitive inspection. The FAA has determined that continued inspection of the fastener holes at intervals of 3,500 landings after stress coining and installation of oversized fasteners is necessary to ensure an acceptable level of safety.

One commenter recommends that the appropriate equipment for conducting an eddy current inspection and its associated reference standards be specifically identified within McDonnell Douglas Alert Service Bulletin A55-18, Revision 4, dated September 10, 1991. At present, the equipment and reference standards are defined by the DC-10 Nondestructive Testing Manual, which is referenced in that service bulletin. The FAA recognizes that the service bulletin does not contain the specific equipment and reference standards definitions; however, these standards are sufficiently defined within the DC-10 Nondestructive Testing Manual.

Two commenters request that the rule be revised to clearly provide credit to operators who have already accomplished the inspection/modification of the vertical leg of the spar cap in accordance with McDonnell Douglas Alert Service Bulletin A55-18, Revision 4, dated September 10, 1991. The FAA does not concur that a change to the rule is necessary. The AD specifically states that compliance is required as indicated, "unless accomplished previously." This statement provides credit for operators who have previously accomplished the requirements of the final rule.

Two commenters request that the compliance time for the initial eddy current inspection of the vertical tang of the spar cap be revised based on the series of the Model DC-10 airplane. The commenters recommend that the rule be revised to require an 18-month compliance time for Model DC-10-10 and Model DC-10-15 series airplanes because there is no history of cracking in these airplanes within the subject area. The FAA does not concur. Analyses indicate that factors that influence cracking of the vertical tang are not series dependent, and cracking is as likely to occur on the Model DC-10-10 and Model DC-10-15 series

airplanes as it is on other series of this model.

Several commenters request a revision of the proposed compliance time for accomplishing the eddy current inspection of the vertical tang of the spar cap, as would be required by proposed paragraph (e). Operators who intend to accomplish the initial vertical tang inspection utilizing the "bolt hole" inspection method will encounter severe scheduling difficulties due to the complex nature of the inspection and subsequent modification. The manufacturer states that its analysis indicates, that, if the "bolt hole" method is used, an acceptable level of safety and structural integrity of the airplane can be maintained with a compliance period of 1,000 landings for accomplishing the initial eddy current inspection of the vertical tang. The FAA concurs that the compliance time for accomplishing the initial eddy current inspection when the "bolt hole" inspection method is used can be revised somewhat. Paragraph (e) of the final rule has been revised to provide two options for inspection, which accommodate different scheduling needs. Operators who accomplish the initial vertical tang inspection utilizing the more complex "bolt hole" method now have additional time in which to schedule the initial inspection and the subsequent preventative modification. (The preventative modification (stress coining of attachment holes and the installation of oversize attachments) is accomplished immediately subsequent to the "bolt hole" inspection.) Operators who accomplish the initial inspection using the "surface hole" inspection method may delay accomplishment of the "bolt hole" method inspection, while ensuring that the vertical tang is free of cracks. The FAA has determined that both options provide an acceptable level of operational safety.

Paragraph (h) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 423 Model DC-10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 153 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $210,375, or $1,375 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [AMENDED]

2. Section 39.13 is amended by removing amendment 39-6149 (54 FR 8527, March 1, 1989), and by adding a new airworthiness directive (AD), amendment 39-8396, to read as follows:

**92-22-10. McDonnell Douglas:** Amendment 39-8396. Docket 91-NM-222-AD. Supersedes AD 87-06-53 R2, Amendment 39-6149.

*Applicability:* Model DC-10 and KC-10A (military) series airplanes, certificated in any category.

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

To prevent failure of the horizontal stabilizer rear upper spar cap and/or upper rear skin panel due to fatigue cracking, accomplish the following:

(a) Prior to the accumulation of 30,000 flight hours or 7,500 landings, whichever occurs earlier, or within 15 days after August 14, 1987 (the effective date of AD 87-06-53 R1, Amendment 39-5694), whichever occurs later, unless already accomplished within the last 120 days since August 14, 1987, conduct a dye penetrant or eddy current inspection of the horizontal stabilizer upper outer section rear spar cap and a visual inspection of the horizontal stabilizer upper outer rear skin panel, in accordance with the "Accomplishment Instructions" of McDonnell Douglas Alert Service Bulletin A55-18, dated March 23, 1987; or Revision 1, dated May 21, 1987; or Revision 2, dated February 8, 1988; or Revision 3, dated August 17, 1990; or Revision 4, dated September 10, 1991.

(b) Prior to the accumulation of 2,000 landings after accomplishing the inspections required by paragraph (a) of this AD, or within 100 landings after March 27, 1989 (the effective date of AD 87-06-53 R2, Amendment 39-6149), whichever occurs later, and thereafter at intervals not to exceed 2,000 landings, except as provided below, repeat the dye penetrant or eddy current inspection required by paragraph (a) of this AD.

(c) If the spar cap has been repaired by removing/blending out a crack in accordance with the method described in McDonnell Douglas Service Bulletin A55-18, Revision 2, dated February 8, 1988; or Revision 3, dated August 17, 1990; or Revision 4, dated September 10, 1991; repeat the dye penetrant or eddy current inspection of the spar required by paragraph (a) of this AD prior to the accumulation of 500 landings after the effective date of this amendment, or within 2,000 landings after the last inspection, whichever occurs first. Thereafter, repeat the dye penetrant or eddy current inspection at intervals not to exceed 500 landings.

(d) If the skin panel has been repaired by stop drilling a crack in accordance with the method described in McDonnell Douglas Service Bulletin A55-18, Revision 2, dated February 8, 1988; or Revision 3, dated August 17, 1990; or Revision 4, dated September 10, 1991; repeat the visual inspection of the skin panel required by paragraph (a) of this AD prior to the accumulation of 80 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 80 flight hours.

(e) Conduct an eddy current inspection of the inboard-most end of the horizontal stabilizer rear spar cap upper vertical tang at station XRS-63.810, in accordance with either paragraph (e)(1) or (e)(2) of this AD.

(1) Within 90 days after the effective date of this AD: Conduct an eddy current inspection utilizing the "surface probe" method as described in McDonnell Douglas Service Bulletin A55-18, Revision 4, dated September 10, 1991, (hereafter referred to as

the "Service Bulletin"). If no cracks are found, prior to the accumulation of 2,000 landings after the inspection, inspect the vertical tang in accordance with the "bolt hole" method described in the Service Bulletin. If no cracks are found as a result of the "bolt hole" method, prior to further flight, stress coin the attachment holes and install oversize attachments, in accordance with the Service Bulletin. Thereafter, at intervals not to exceed 3,500 landings, conduct an eddy current inspection utilizing the "surface probe" method, in accordance with the Service Bulletin.

(2) Prior to the accumulation of 1,000 landings after the effective date of this AD: Conduct an eddy current inspection in accordance with the "bolt hole" method as described in the Service Bulletin. If no cracks are found, prior to further flight, stress coin the attachment holes and install oversize attachments, in accordance with the Service Bulletin. Thereafter, at intervals not to exceed 3,500 landings, conduct an eddy current inspection utilizing the "surface probe" method, in accordance with the Service Bulletin.

(f) If any crack is found as a result of the inspections required by this AD, that is within the limits specified in the Service Bulletin, accomplish the procedures specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD, as applicable:

(1) For cracks in the spar cap that are within the limits specified in Table I of the Service Bulletin: Repair prior to further flight, in accordance with paragraph 4.(b) of the Service Bulletin.

(2) For cracks in the skin panel that are within the limits specified in Table II of the Service Bulletin: Repair prior to further flight, in accordance with paragraph 4.(c) of the Service Bulletin.

(3) For cracks in the vertical tang that are within the limits specified in paragraphs 4.3(a)(1), 4.3(a)(2) and 4.3(b) of the Service Bulletin: Repair prior to further flight, in accordance with 4.3(b) of the Service Bulletin.

(g) If any crack is found as a result of the inspections required by this AD that exceeds the limits specified in the Service Bulletin, prior to further flight, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

(j) The inspections and repairs shall be done in accordance with McDonnell Douglas Alert Service Bulletin A55-18, dated March 23, 1987; or McDonnell Douglas Alert Service Bulletin A55-18, Revision 1, dated May 21, 1987; or McDonnell Douglas Alert Service Bulletin A55-18, Revision 2, dated February 8, 1988; or McDonnell Douglas Alert Service Bulletin A55-18, Revision 3, dated August 17, 1990; or McDonnell Douglas Alert Service Bulletin A55-18, Revision 4, dated September 10, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on October 2, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26206 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 39

**[Docket No. 92-NM-122-AD; Amendment 39-8400; AD 92-22-13]**

## Airworthiness Directives; SAAB-SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to SAAB-SCANIA Models SAAB SF340A and SAAB 340B series airplanes, that requires visual inspections to detect corrosion on the wing upper panel in the fuel tank access door area, and modification of the fuel tank access door area. This amendment is prompted by reports of corrosion caused by moisture and contact between the conductive paint on the fuel tank access door and aircraft structure. The actions specified by this AD are intended to prevent reduction of strength of the upper wing panel and possible fuel leakage.

**DATES:** Effective December 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S-581 88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to SAAB-SCANIA Models SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on August 27, 1992 (57 FR 38802). That action proposed to require visual inspections to detect corrosion on the wing upper panel in the fuel tank access door area, and modification of the fuel tank access door area.

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

The commenter supports the proposed rule.

After careful review of the available date, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 96 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by SAAB-SCANIA AB at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $908,160, or $5,280 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is

determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**92-22-13. SAAB-SCANIA:** Amendment 39-8400. Docket 92-NM-122-AD.

*Applicability:* Models SAAB SF340A and SAAB 340B series airplanes; as listed in SAAB Service Bulletin 340-57-020, Revision 1, dated April 3, 1992; certificated in any category.

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

To prevent the reduction of strength of the wing upper panel and possible fuel leakage, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a visual inspection for corrosion on the wing upper panel in the fuel tank access door area, in accordance with SAAB Service Bulletin 340-57-020, Revision 1, dated April 3, 1992.

(1) If corrosion is detected, prior to further flight, blend or grind it out, and measure the thickness of the blended or ground part, in accordance with the service bulletin.

(i) If the thickness of the blended or ground part is within the tolerances specified in the service bulletin, apply surface treatments in accordance with the service bulletin.

(ii) If the blended or ground part is outside the tolerances specified in the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) If corrosion is not found, apply surface treatments in accordance with the service bulletin.

(b) Within 6 months after accomplishing paragraph (a) of this AD, perform a second visual inspection to detect corrosion on the wing upper panel in the fuel tank access door area, in accordance with SAAB Service Bulletin 340-57-020, Revision 1, dated April 3, 1992.

(1) If corrosion is detected, prior to further flight, blend or grind it out, and measure the thickness of the blended or ground part, in accordance with the service bulletin.

(i) If the thickness of the blended or ground part is within the tolerances specified in the service bulletin, apply surface treatments in accordance with the service bulletin.

(ii) If the blended or ground part is outside the tolerances specified in the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) If corrosion is not found, apply surface treatments in accordance with the service bulletin.

(3) Following the visual inspection and repairs required by paragraph (b) of this AD, prior to further flight, install protection plates on all fuel tank access hole doublers, and apply surface treatments, in accordance with the service bulletin.

(c) Installation of protection plates on all fuel tank access hole doublers and application of surface treatments, in accordance with SAAB Service Bulletin 340-57-020, Revision 1, dated April 3, 1992, that is accomplished prior to further flight following the visual inspection required by paragraph (a) of this AD, constitutes terminating action for the visual inspection required by paragraph (b) of this AD.

(d) 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, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The inspections, corrective actions, and the surface treatments shall be done in accordance with SAAB Service Bulletin 340-57-020, Revision 1, dated April 3, 1992, which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1-5, 8-18 | Original | (Not Dated). |
| 6-7, 19-20 | 1 | April 3, 1992. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S-581 88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on October 9, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26203 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 39

**[Docket No. 91-NM-277-AD; Amendment 39-8389; AD 92-22-03]**

## Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, that requires inspections of the rear pressure bulkhead, using both visual and non-destructive test methods, and repair of damaged parts, if necessary. This amendment is prompted by reports of corrosion found on the rear pressure bulkhead. The actions specified by this AD are intended to prevent structural failure of the bulkhead and associated decompression of the passenger cabin, due to the effects of corrosion damage.

**DATES:** Effective December 3, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 3, 1992.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This

information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes was published in the **Federal Register** on July 23, 1992 (57 FR 32746). That action proposed to require initial and repeated inspections of the rear pressure bulkhead, using both visual and non-destructive test methods, and repair of damaged parts, if necessary.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 87 Viscount Model 744, 745D, and 810 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $159,500, or $5,500 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**92-22-03. British Aerospace:** Amendment 39-8389. Docket 91-NM-277-AD.

*Applicability:* All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

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

To prevent structural failure of the bulkhead and associated decompression of the passenger cabin, accomplish the following:

(a) Within 90 days after the effective date of this AD, using both visual and specified non-destructive test methods, inspect the rear pressure bulkhead for corrosion, cracks, and damage, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet 195, Issue 2, dated August 20, 1991 (for Model 810 series airplanes); or British Aerospace Viscount Alert Preliminary Technical Leaflet 325, Issue 2, dated August 22, 1991 (for Model 744 and 745D series airplanes); as applicable.

(b) Repeat the visual and non-destructive test inspections required by paragraph (a) of this AD at the following intervals:

(1) For "Part One: Rear Pressure Bulkhead—Forward Face—Rear Face," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 500 landings or 6 months, whichever occurs first.

(2) For "Part Two: Rear Pressure Bulkhead Web Lap-Joints," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 1,600 landings or 2 years, whichever occurs first.

(3) For "Part Three: Rear Pressure Bulkhead Rear Face, Boundary Member, Adjacent Skin and Structure," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 2,500 landings or 3 years, whichever occurs first.

(c) If corroded, cracked, or damaged parts are found as a result of inspections required by paragraphs (a) or (b) of this AD, prior to further flight, repair in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991; or PTL 325, Issue 2, dated August 22, 1991; as applicable.

(d) 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, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The inspections and repairs shall be done in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet 195, Issue 2, dated August 20, 1991; or British Aerospace Viscount Alert Preliminary Technical Leaflet 325, Issue 2, dated August 22, 1991; as applicable. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on September 30, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26201 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**Office of the Secretary**

**15 CFR Part 4**

**[Docket No. 921052-2252]**

## Public Information; Freedom of Information Initial Denial Officials

**AGENCY:** U.S. Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Department of Commerce is amending its Freedom of Information Act rules by revising a listing of officials authorized to make initial denials for Freedom of Information requests. This amendment revises the list of authorized International Trade Administration (ITA) officials to reflect a recent ITA reorganization.

**EFFECTIVE DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Geraldine P. LeBoo, Departmental Freedom of Information Officer, Office of Federal Assistance and Management Support, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230, Telephone: 202-482-4115.

**SUPPLEMENTARY INFORMATION:** The Department of Commerce is amending its Freedom of Information Act regulations, 15 CFR part 4, to reflect current redelegation of authority for officials within the International Trade Administration who are authorized to make initial denials of requests for records.

The redelegation of authority for this particular Commerce component follows the reorganization within the International Trade Administration which became effective on June 15, 1992. Because this rule relates solely to organization and management, it is exempt from all requirements of section 553 of the Administrative Procedure Act, including notice and comment and delayed effective date. Accordingly, this revision is effective upon publication.

Because a notice of proposed rulemaking is not required by section 553 of the Administrative Procedures Act or any other law, a Regulatory Flexibility Analysis is not necessary for purposes of the Regulatory Flexibility Act.

This rule, relating to agency organization and management, is not subject to the requirements of Executive Order 12291.

This rule does not contain information collection activity as defined by the Paperwork Reduction Act.

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

### List of Subjects in 15 CFR Part 4

Freedom of Information, Public information.

For the reasons set forth in the preamble, 15 CFR part 4 is amended as follows:

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552, 5 U.S.C. 553, Reorganization Plan No. 5 of 1950; 32 U.S.C. 3717.

### PART 4—[AMENDED]

2. Appendix C is amended by revising the list of officials under the "International Trade Administration" heading to read as follows:

### Appendix C—Officials Authorized To Make Initial Denials of Requests for Records

* * * * *

**International Trade Administration**

*Deputy Under Secretary for International Trade*

Deputy Assistant Secretary for Planning
Director, Office of Public Affairs
Director, Office of Legislative and Intergovernmental Affairs

*International Economic Policy*

Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Office of Africa
Director, Office of the Near East
Director, Office of South Asia
Director, Office of Western Europe
Director, Office of European Community Affairs
Director, Office of Eastern Europe, Russia and Independent States
Director, Office of Latin America
Director, Office of Mexico
Director, Office of Canada
Director, Office of the PRC and Hong Kong
Director, Office of the Pacific Basin
Director, Office of Japan Trade Policy
Director, Office of Japan Commercial Programs

*Import Administration*

Director, Foreign Trade Zones Staff
Director, Office of Policy
Director, Statutory Import Programs Staff
Director, Office of Antidumping Compliance
Director, Office of Countervailing Compliance
Director, Office of Countervailing Agreements Compliance
Director, Office of Antidumping Investigations
Director, Office of Countervailing Investigations
Director, Office of Accounting

*Trade Development*

Director, Office of Trade and Economic Analysis
Director, Office of Export Promotion Coordination
Director, Office of Planning, Coordination and Resource Management
Director, Office of Aerospace
Director, Office of Computers and Business Equipment
Director, Office of Microelectronics, Medical Equipment and Instrumentation
Director, Office of Telecommunications
Director, Office of Automotive Affairs
Director, Office of Materials, Machinery and Chemicals
Director, Office of Energy, Environment and Infrastructure
Director, Office of Textiles and Apparel
Director, Office of Consumer Goods
Director, Office of Export Trading Company Affairs
Director, Office of Finance
Director, Office of Service Industries

*U.S. and Foreign Commercial Service*

Director, Office of Information Systems
Deputy Assistant Secretary for International Operations
Deputy Assistant Secretary for Domestic Operations
Director, Planning and Resource Management Staff
Manager, Export Promotion Services

*Administration*

Director, Office of Organization and Management Support
Director, Office of Personnel
Director, Office of Financial Management
Director, Office of Information Resources Management

* * * * *

**Sonya G. Stewart,**

*Director for Federal Assistance and Management Support.*

[FR Doc. 92-26221 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-25-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

**[Release Nos. 33-6965, 34-31349, 35-25658, 39-2296, IC-19048, IA-1352]**

### Records Services, Fee Schedule

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is revising § 200.80e, Appendix E, of Title 17, to increase the costs for photocopying services provided in connection with requests made pursuant to the Freedom of Information Act. Based on a review of cost and revenue information provided for the past year, the Commission has determined that a price increase from $.20 per page to $.22 per page is justified.

**EFFECTIVE DATE:** November 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jessica L. Kole ((202) 272-2700), Office of Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The price for copying services provided in connection with FOIA requests was last increased in November, 1989. After a review of cost and revenue information for the past year, the Commission has determined that a $0.02 price increase for this service is justified.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment.

### List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information.

### Text of Amendments

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

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

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

**Authority:** 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

2. Section 200.80e is amended by revising the paragraph entitled "Regular service" to read as follows:

**§ 200.80e Appendix E—Schedule of fees for records services.**

* * * * *

*Freedom of Information Act services.* Paper copies of original paper copies, or from microfiche accessible to the contractor, provided in connection with Freedom of Information Act requests, will be shipped within seven calendar days after order and material are received by the contractor—each page—$0.22. (Delivery costs and applicable sales taxes are additional.) This service is the same price as similar services provided through the Public Reference Room.

* * * * *

Dated: October 23, 1992.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-26259 Filed 10-28-92; 8:45 am]

BILLING CODE 8010-01-M

---

### 17 CFR Parts 230, 239, 240 and 249

**[Release Nos. 33-6964, 34-31345]**

**RIN 3235-AD67**

### Simplification of Registration Procedures for Primary Securities Offerings

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today adopted revisions to rules and forms under the Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") to provide issuers greater flexibility and efficiency in accessing the public securities markets. The availability of Form S-3, the short-form registration statement under the Securities Act, has been expanded to additional issuers and classes of transactions. The expanded availability of Form S-3 also extends the benefits of rule 415, the shelf registration rule, to a greater variety of offerings, including investment grade asset-backed securities offerings. Today's revised rules also permit shelf registration of debt, equity and other securities without a specific allocation of offering amounts among the classes of securities being registered; provide for immediate effectiveness of Form S-3 registration statements for dividend and interest reinvestment plans; permit specified price and volume changes to be made after effectiveness under Rule 430A without the filing of a post-effective amendment; and streamline the registration of securities on Form 8-A under the Exchange Act. A change to the prospectus filing rule, rule 424, also has been adopted that will accommodate the special timing constraints in connection with offerings of mortgage-related and other asset-backed securities.

**EFFECTIVE DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Darrell N. Braman, Jr. or Meredith B. Cross, at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission today adopted amendments to Form S-3 [1] under the Securities Act.[2] The amendments increase the classes of issuers and transactions eligible to use that registration statement form and consequently the shelf registration offering procedures of rule 415,[3] and permit eligible issuers to register debt, equity and other classes of securities on a single shelf registration statement without a specific allocation of offering amounts among the classes of securities being registered. Corresponding revisions to rule 457,[4] the fee calculation rule, and Forms S-3 and S-4,[5] implement this registration procedure. Revisions to Form S-3 and rule 462 [6] provide for automatic effectiveness of registration statements on Form S-3 for dividend and interest reinvestment plans upon filing with the Commission. The Commission also amended rule 430A [7] to permit specified changes in price and volume information to be made after effectiveness without the need to file a post-effective amendment, provided the changes do not materially change the disclosure contained in the registration statement at effectiveness. Further, an instruction has been added to the prospectus filing rule, rule 424,[8] to allow prospectus supplements containing pricing and other transaction-specific information with respect to mortgage-related and investment grade asset-backed offerings to be filed no later than two business days following first use. Finally, the Commission amended Form 8-A,[9] the short-form used to register securities under Section 12 of the Exchange Act,[10] and rule 12b-

---

[1] 17 CFR 239.13.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 230.415.

[4] 17 CFR 230.457.

[5] 17 CFR 239.25.

[6] 17 CFR 230.462.

[7] 17 CFR 230.430A.

[8] 17 CFR 230.424.

[9] 17 CFR 249.208a.

[10] 15 U.S.C. 78*l*(g).

23[11] to permit limited information about the terms of the securities to be incorporated by reference from prospectus supplements filed after the effective date.

## I. Executive Summary

The Commission today adopted several initiatives that will simplify substantially the securities registration process. These initiatives, which were published for comment in July of this year,[12] received enthusiastic support from commenters.[13] Commenters agreed that, if adopted, the proposed revisions would provide significant cost savings, efficiency and flexibility for many issuers. The initiatives have been adopted substantially as proposed.

Today's initiatives recognize and build on the success of the integrated disclosure system and shelf registration process adopted 10 years ago. Form S-3, the short-form registration statement that permits maximum reliance upon Exchange Act reports filed by issuers, will now be available to a larger class of issuers and transactions, including issuers of investment grade asset-backed securities. The Commission's shelf registration procedures also are extended to these newly eligible issuers, thereby allowing significantly greater numbers of issuers the flexibility to access the public securities markets on demand without having to obtain additional clearance from the Commission's staff. These changes remove unnecessary regulatory obstacles to capital raising and should reduce the costs of securitizing a variety of financial assets, including pools of small business loans.

Three principal changes to the Form S-3 eligibility requirements have been made. First, the reporting history necessary to register on Form S-3 has been reduced from 36 to 12 months for most issuers. Second, the aggregate market value of the issuer's voting stock held by non-affiliates (referred to as the "public float") qualifying an issuer for use of Form S-3 for any of its securities has been reduced from $150 million to $75 million, and the 3 million share trading volume test has been eliminated. Third, Form S-3 has been amended to specifically permit registration of investment grade asset-backed securities without regard to whether the issuer or registrant has a reporting history.

Because shelf registration is available for offerings registered, or eligible to be registered, on Form S-3,[14] these changes to Form S-3 also extend shelf registration to these newly eligible issuers and offerings. Thus, Rule 415 shelf registration will be available for offerings of investment grade asset-backed securities, whether registered on Form S-3 or one of the Commission's other registration forms, such as Form S-1 or Form S-11.

To provide additional flexibility and facilitate the use of shelf registration for delayed offerings of common stock, Form S-3 has been revised as proposed to permit Form S-3 eligible companies to register debt, equity and other securities on a single shelf registration statement, without having to specify in the registration statement the amount of each class of securities to be offered. Prospectus supplements filed after effectiveness will disclose the amount of the particular security being offered to investors, thereby insuring that investors receive the same information currently provided. In addition, an amendment to the prospectus filing rule has been adopted as proposed to accommodate the special timing constraints present in asset-backed securities offerings. Under this revision, prospectus supplements containing price and other offering information for asset-backed securities offerings may be filed within two business days following first use, rather than two business days following the earlier of pricing or first use as was previously required.[15]

The Commission also has adopted the proposed revisions to provide for immediate effectiveness of Form S-3 registration statements covering dividend and interest reinvestment plans; the proposed revision to rule 430A to allow certain changes in the offering price and decreases in the amount of the securities offered to be reflected after effectiveness in the final prospectus without the need to file a post-effective amendment; and the proposed revision to Form 8-A, the Exchange Act short-form registration statement, to eliminate the need to file a pre-effective pricing amendment to that form. Each of these changes was endorsed by commenters.

## II. Initiatives to Simplify the Registration Process

### *A. Revisions to the Form S-3 Registration Statement*

#### 1. Introduction

The rule and form changes adopted today expand the number of issuers and types of transactions eligible for Form S-3 and, thereby, accord these newly eligible issuers the benefits of shelf registration. With the exceptions noted below, these revisions have been adopted substantially as proposed.

#### 2. Registrant Requirements—Reporting History

The proposal to reduce Form S-3's reporting history requirement from 36 to 12 months for all offerings of non-asset-backed securities was overwhelmingly supported by commenters and has been adopted as proposed. Under this change, an issuer subject to reporting for at least 12 months prior to filing its registration statement, and which had timely filed all required reports during the 12 months prior to filing, will be eligible to use Form S-3, assuming other applicable transaction requirements are met.[16] This change applies to all offerings of non-asset-backed securities permitted to be registered on Form S-3, including, for example, primary offerings of debt, equity or other securities (whether or not investment grade), secondary offerings, rights offerings to shareholders and offerings of securities issuable upon exercise of warrants.

#### 3. Transactional Requirements

a. *Public float requirement.* The proposal to reduce the minimum public float eligibility criteria of Form S-3 to $75 million, which also was favored by commenters, has been adopted as proposed. Under the amendment, an issuer with at least $75 million in voting stock held by non-affiliates is now eligible to use Form S-3 to register any class of its securities, so long as the issuer satisfies the other issuer eligibility requirements.[17] Consistent with the proposal, the trading volume test for companies with a public float of under $150 million has been eliminated.[18] As a result of the changes

[11] 17 CFR 240.12b-23.

[12] See Securities Act Release No. 6943 (July 16, 1992) [57 FR 32461] ("Proposing Release").

[13] Pursuant to Commission request for comment, 29 commenters submitted letters. The letters and a staff summary of the letters are available for public inspection and copying at the Commission's Public Reference Room. (See File No. S7-20-92).

[14] See Rule 415(a)(1)(x).

[15] This revision codifies a staff interpretive position applicable to offerings of collateralized mortgage obligations. See Division of Corporation Finance Interpretive Letter to Skadden, Arps, Slate, Meager & Flom regarding "Certain Mortgage Related Securities Under Rule 415(a)(1)(vii) and Prospectus Filing Requirements of Rule 424(b) (2) and (5)" (avail. Aug. 19, 1987).

[16] The amendment does not alter any other registrant eligibility requirements set forth in General Instruction I.A. of Form S-3.

[17] General Instruction I.B.1 ("Primary Offerings by Certain Registrants") of Form S-3 formerly required a minimum public float of $150 million.

[18] Until today, issuers with a public float between $100 million and $150 million were required to have an annual trading volume of 3 million shares in order to use Form S-3 for primary offerings of securities.

in the reporting history and public float criteria, an estimated 450 additional companies with an aggregate public float of $88 billion will now be eligible to register primary offerings of any of their securities on Form S-3.

b. *Investment grade non-convertible securities.* The Form S-3 eligibility criteria for investment grade securities have been amended as proposed to substitute the term "non-convertible securities" for the current specific references to non-convertible debt or preferred stock. This change clarifies that other investment grade financing instruments (such as foreign currency or other cash settled derivative securities) may be registered under the investment grade eligibility standard.

In addition, Form S-3 has been revised to clarify that investment grade securities must have the required rating at the time of sale to the public in order to qualify for this Form S-3 eligibility category. However, in response to commenter concern that the proposed instruction could be construed to require an investment grade rating at the time the registration statement is filed rather than at the time that the securities are actually sold, the term "offer" has been deleted to make clear that the requirement must be satisfied at the time of sale.[19] If the final rating falls below investment grade, a post-effective amendment on Form S-1 or Form S-2 could be used before a particular take-down is made for sales of securities off the shelf; or alternatively, the issuer could file a new registration statement with respect to the non-qualifying securities.

c. *Investment grade asset-backed securities.*—(i) *General.* Before today, the benefits of Form S-3 and shelf registration for delayed offerings generally were not available to issuers of non-mortgage related investment grade asset-backed securities. As a result, for example, investment grade small business loan or credit card receivables trust certificates generally could not be registered for sale on a delayed basis. By contrast, mortgage-related asset backed securities, which may be of comparable character and quality to other investment grade asset-backed securities, were specifically permitted to be offered on a delayed basis under rule 415(a)(1)(vii), whether or not registered on Form S-3.

In order to eliminate this anomaly, Form S-3 has been amended in substantially the same manner as proposed to add offerings of investment grade asset-backed securities as an additional category of transactions that may be registered on the form. As a result of this change, asset-backed securities registered, or qualified to be registered, on Form S-3 may be sold on a delayed basis pursuant to Rule 415(a)(1)(x). The shelf rule will be available for offerings of these securities whether registered on Form S-3 or on another form, such as Form S-1 or Form S-11, since Rule 415(a)(1)(x) requires only that the securities be "qualified" to be registered on Form S-3.

(ii) *Reporting history.* Asset-backed securities may be registered on Form S-3 whether or not the issuer (i.e., the trust or other limited purpose entity) or the registrant (i.e., the trust or other limited purpose entity) or the registrant (i.e., the sponsor, servicer or depositor) has a previous Exchange Act reporting history. Technical changes have been made to the Form S/3 eligibility requirements in response to commenter concerns over the use of the terms "issuer" and "registrant" in the proposed instructions. To clarify that neither the issuer nor the registrant is required to have a previous reporting obligation, proposed Instruction A.4. to Form S-3 has been revised to read that the reporting history requirements do not apply to "any registered offerings of investment grade asset-backed securities." [20] Commenters agreed that a reporting history requirement would be of limited utility due to the unique nature of asset-backed securities offerings—ordinarily a different issuer with its own discrete asset pool is formed for each particular offering, and therefore, a reporting history would be of little practical use for investors.

(iii) *"Asset-backed security" definition.* The definition of "asset-backed security" has been adopted substantially as proposed. A broad standard has been adopted in order to provide sufficient flexibility and to accommodate future developments in the asset-backed marketplace. To qualify for Form S-3 registration, the securities must be investment grade and must be primarily serviced by the cashflows of a discrete pool of receivables or other financial assets.

The definition does not distinguish between pass-through (i.e., equity) and pay-through (i.e., debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, can be registered on the form if all other conditions are met. At a commenter's suggestion, the term "obligations," in the proposed definition has been deleted from the phrase "a security the obligations of which are primarily serviced" in order to clarify that the definition does not distinguish between debt and equity. The definition also does not distinguish between whole securities and components of such securities, such as interest-only ("IO") and principal-only ("PO") securities.

The definition does not include a list of "eligible" assets that could be securitized. Although some commenters suggested that a non-exclusive list of eligible assets be included for guidance, this approach has not been adopted because the Commission believes it could prove to be too limiting. Instead, the definition is intended to be quite broad, referring to "receivables or other financial assets" that by their terms convert into cash within a finite time period. This would encompass any of the assets included in proposed Rule 3a-7 under the Investment Company Act of 1940,[21] such as notes, leases, installment contracts and interest rate swaps, as well as other financial assets, such as small business loans, credit card receivables, accounts receivable and franchise or servicing arrangements.

In response to commenter concern that the reference to a "discrete" pool of assets in the proposed definition might not permit securitization of revolving assets, the phrase "fixed or revolving" has been added in order to make clear that the definition covers "revolving" credit arrangements, such as credit card and short-term trade receivables, home equity loans and automotive dealer floorplan financings, where account or loan balances revolve due to periodic payments, charge-offs and closings of the receivables.[22] Thus, Form S-3 and

[19] At the time of filing, the registrant must have a reasonable belief based upon, for example, the registrant's own investment grade rating or a recent rating assigned to a similar class of securities, that the security rating requirement will be met by the time of sale. Generally, in order to sign the Form S-3, the registrant must certify that it has reasonable grounds to believe that it meets all the requirements for filing on the form. A conforming amendment has been made to the Form S-3 signature instruction applicable to the investment grade rating eligibility requirement. Under this instruction as amended, a registrant may sign the registration statement notwithstanding the fact that a security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the rating requirement will be met by the time of sale.

[20] An additional change has been made to the proposed instruction in order to make clear that the conditions of Instruction A.2. to Form S-3, which requires that a registrant have a class of equity securities registered under sections 12(b) or 12(g) or otherwise be required to file reports pursuant to section 15(d) of the Exchange Act, do not apply to investment grade asset-backed securities offerings.

[21] *See* Investment Company Act Release No. 18736 (May 29, 1992).

[22] In credit card financings, for example, the securities are backed by current and future

Continued

shelf registration would be available for asset-backed securities where the payment obligations on the securities are serviced primarily by the cashflows of a pool of discrete liquidating assets, whether fixed or revolving.

The assets also may include guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the securities of the issuer or which support the underlying assets in the pool. Several commenters requested clarification as to whether "ancillary" or "incidental" assets would be encompassed by the definition. For example, many structured financings permit the servicer or trustee to reinvest idle cash in short-term debt obligations when there is a timing mismatch between collections and payments to investors. Another example would include equipment or property obtained by the trustee or servicer upon the lease default of a third-party lessee. The definition is not intended to exclude "ancillary" or "incidental" assets that comprise a portion of the asset pool during the term of the structured finance arrangement, and which are necessary in the course of servicing the underlying assets or to assure the distribution of cashflow and/or proceeds to securityholders. Because the definition as proposed did not exclude such assets, no change is necessary to address this concern.

Commenters were also concerned that the phrase "convert into cash within a specified period of time" connotes that the cash flow from the underlying assets must be constant and uninterrupted. The definition, as proposed and as adopted, is sufficiently broad to encompass any self-liquidating asset which by its terms converts into one or more cash payments within a finite period of time. There are no substantive requirements as to the timing of the cashflows under the definition—the payments on the asset-backed securities, however, must be based primarily upon the cashflow from the assets held by the asset-backed issuer.

The requirement that the asset-backed securities be rated "investment grade" by a nationally recognized statistical rating organization ("NRSRO") has been adopted. Under this standard, asset-backed securities will be "investment grade" if at the time of sale to the public the securities are rated by at least one NRSRO in one of its generic rating categories which signifies investment grade, typically one of the four highest categories.[23] Consistent with the proposal, this standard will extend the benefits of shelf registration to mortgage-backed securities that are rated in the top four rating categories, but not the top two categories, as was previously required.[24] Commenters supported the investment grade rating requirement for asset-backed securities, as well as the broadening of the standard for mortgage-related securities.

(iv) *Disclosure obligations.* By making Form S-3 and shelf registration available for asset-backed securities offerings, the Commission does not intend to change the character or quality of the disclosure that is customary in these offerings. The type or category of asset to be securitized must be fully described in the registration statement at the time of effectiveness. A registration statement may not merely identify several alternative types of assets that may be securitized. In addition, the risks associated with changes in interest rates or prepayment levels should be fully disclosed. The various scenarios under which payments on the asset-backed securities could be impaired should also be discussed.

When asset-backed securities are registered for the shelf, in addition to identifying the assets that will be used, the registration statement must identify the types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO or PO securities), planned amortization or companion classes or residual or subordinated interests.

Consistent with staff practice for offerings of mortgage-related securities, when an offering of asset-backed securities includes classes which bear a disproportionate share of the credit or prepayment risks, the prospectus (or prospectus supplement in a shelf offering) must include clear, concise and understandable descriptions of the characteristics of such classes and the consequences of the characteristics. Some of the consequences which may be material, depending on the prepayment pattern of the assets and the characteristics of the offered class, include: (1) Past prepayment of principal rates and the factors that affect the rate of principal repayment; (2) the risk that interest-weighted classes bought at a premium may not return the purchase price in the event of rapid repayment; (3) the degree to which an investor's yield is sensitive to principal repayments; (4) the consequences of an increasing prepayment rate in a declining interest rate environment and a declining prepayment rate in an increasing interest rate environment; and (5) an explanation of what an NRSRO rating addresses and the characteristics the rating does not address.

(v) *Asset concentration.* Asset-backed securities generally are serviced by a pool of financial assets representing obligations of a large number of obligors. For example, in a credit card receivables trust, payments on the underlying credit cards would come from numerous members of the general public. In that situation, the information about the financial condition of any one obligor is not important to an investment decision. With this structure in mind, the Proposing Release requested comment as to whether the definition of asset-backed security should include an "asset concentration" limit—that is, a security would be excluded from the definition if a certain amount of the pool assets represented obligations of one obligor or related obligors. Most commenters opposed a specific asset concentration test, believing that such a test would unnecessarily limit the intended flexibility of the new rules.

The definition as adopted does not include an asset concentration test. Instead, questions with respect to asset concentration will be addressed through existing disclosure rules. For example, if a significant amount of the asset pool represents obligations of a single obligor or related obligors, financial information and other disclosure about the obligor(s) may be required. Similarly, asset-backed offerings with significant asset concentration may involve one or more co-issuers under Securities Act Rule 140.[25] Finally, although an asset

receivables generated by specified credit card accounts. The balances of the pooled assets fluctuate as new receivables are generated and existing amounts are paid or charged off as a default. If the accounts do not generate sufficient cashflow to support the securities, the sponsor may be required to assign additional receivables from other accounts to the public securityholders' interest in the pool.

[23] Consistent with the revision to the eligibility criteria for investment grade securities on Form S-3, the required rating is not required to be obtained at the time of filing. Rather, the rating must be obtained before the securities are sold.

[24] In order to rely upon rule 415(a)(1)(vii), mortgage-related securities must fall within Section 3(a)(41) under the Exchange Act [15 U.S.C. 78(c)(a)(41)], which imposes a condition that such securities be rated in one of the two highest rating categories. Mortgage-backed securities that are rated in the top four rating categories and that otherwise qualify for Form S-3 now may rely upon rule 415(a)(1)(x).

[25] 17 CFR 230.140. Securities Act Rule 140 states, in pertinent part, as follows:

"A person, the chief part of whose business consists of the purchase of the securities of one issuer, or two or more affiliated issuers, and the sale of its own securities, * * * to furnish the proceeds with which to acquire the securities of such issuer or affiliated issuers, is to be regarded as engaged in

Continued

concentration test has not been included, the definition does not encompass securities issued in structured financings for one obligor or group of related obligors.

(vi) *Prospectus supplements.* Finally, in connection with the use of shelf registration for asset-backed securities offerings, rule 424(b), the prospectus filing rule, has been amended as proposed to codify a staff interpretive position that permits issuers of collateralized mortgage obligations to file prospectus supplements containing price and other offering information within two business days following first use (or to transmit such supplements by a means reasonably calculated to result in filing by such date), rather than rule 424(b)'s general rule that the prospectus be filed not later than the earlier of two business days following pricing or first use (or transmitted by a means reasonably calculated to result in filing by such date). This revision also extends to issuers of other mortgage-related and asset-backed securities.

4. Majority-Owned Subsidiaries

Form S-3 is available to majority-owned subsidiaries in three circumstances.[26] General Instruction I.C.3. has been revised to make it clear that Form S-3 is available where a Form S-3 eligible parent fully and unconditionally guarantees the "payment obligations" on the subsidiary's non-convertible securities being registered. This change, which was favored by commenters, is intended to clarify that the form is available to register securities other than traditional debt securities.

5. Dividend or Interest Reinvestment Plans

Form S-3 has also been amended to provide for the automatic effectiveness upon filing of a Form S-3 registration statement relating solely to a dividend or interest reinvestment plan, including those plans which permit voluntary investment of additional funds by existing securityholders.[27] A corresponding amendment was made to rule 462 to provide for such immediate effectiveness. Commenters were supportive of this proposed change.

6. Shelf Registration of Aggregate Amounts of Securities Without Allocation Among Classes

The proposal relating to the shelf registration of an aggregate amount of securities, without specifying particular amounts, has been adopted as proposed. Registrants offering securities on a Form S-3 shelf registration statement will no longer be required to specify the amount of each class of securities to be offered—registration of an aggregate amount of securities is acceptable. Thus, an issuer registering securities on Form S-3 based on the public float of its voting stock or investment grade rating of the securities being offered [28] may now disclose the various types and categories of securities covered by the registration statement (both debt and equity), but is not required to assign a specific dollar amount to each category to be offered. The registration statement would list the types of securities covered and the prospectus supplement would specify the amount of the particular security to be offered. In this way, the registrant would be able to offer any category of securities specified in the registration statement up to the total dollar amount registered.[29] Investors will receive the same information as is currently required for any self offering. No change is intended concerning the disclosures necessary in a shelf registration statement with respect to the types of each category of securities being registered. A conforming change to Form S-4 was made for shelf acquisition registrations by Form S-3 eligible issuers.

One commenter requested clarification of an informal staff practice regarding a 48-hour waiting period before securities may be sold from an effective, delayed-basis, shelf registration statement. The practice apparently had developed in response to concerns about immediate underwritten sales of a large (or the entire) amount of securities offered pursuant to a registration statement that disclosed that the securities would be offered from time to time in the market, and did not disclose the terms of the distribution effected immediately after effectiveness. The 48-hour practice has been discontinued; such delay does not address the fundamental issue—whether the registration statement was accurate at the time of effectiveness with respect to the plan of distribution. Questions about the accuracy of such disclosure will be treated like any other disclosure issues that are raised after effectiveness of the registration statement. Registrants are reminded that disclosure in the registration statement at the time of effectiveness should accurately reflect the registrant's current plans and arrangements with respect to the distribution of its securities—a 48-hour waiting period is not a prescription for a "delayed basis" shelf registration under rule 415(a)(1)(x).[30]

*B. Revisions to Rule 430A*

An amendment to rule 430A has been adopted as proposed to permit price changes and volume decreases that do not materially change the disclosure in the registration statement to be reflected in the final prospectus without the need to file a post-effective amendment. Rule 430A permits the omission of specified price-related information from the registration statement at the time of effectiveness, provided specific conditions are met. Formerly, even immaterial decreases in the volume of securities offered and a pricing change which fell outside of a bona fide range would have required the filing of a post-effective amendment.

As of today, a new materiality standard is to be used in determining whether a post-effective amendment would be required to reflect a decrease in volume or to update price range information. Under this materiality standard, a post-effective amendment will not be required unless a decrease in the volume or a change in the price range would materially change the disclosure included in the registration statement at effectiveness.[31] Examples of situations in which a post-effective amendment would be required include changes to the volume or price that would materially affect the public float after the offering, the use of proceeds, the issuer's financial condition or the control of the issuer.

---

the distribution of the securities of such issuer or affiliated issuers within the meaning of Section 2(11) of the [Securities] Act."

[26] See General Instruction I.C. to Form S-3.

[27] See rule 405 [17 CFR 230.405] under the Securities Act, which defines "dividend or interest reinvestment plan" to include plans that permit existing securityholders to reinvest dividends but "also may allow additional cash amounts to be contributed by the participants in the plan."

[28] Of course, registrants relying solely upon the investment grade eligibility requirement for use of Form S-3 could not include unrated securities, such as common stock, among the categories of securities being offered.

[29] In computing the amount available on the registration statement, the dollar amount of each offering would be subtracted from the remaining amount. See new Securities Act Rule 457(o) for the computation of the filing fee.

[30] A registrant that is eligible to engage in a delayed basis offering, and which is uncertain at the time of filing of whether or not the securities will be offered promptly after effectiveness or on a delayed basis under rule 415, may follow an established administrative procedure to retain the option to proceed under either rule 430A or rule 415 with respect to all or a portion of the registered securities. See Section II.A.11. of Securities Act Release No. 6714 (May 27, 1987).

[31] This information will be treated the same as any other information omitted in reliance upon paragraph (a) of Rule 430A.

*C. Concurrent Securities Act and Exchange Act Registration*

The Exchange Act registration form used in a concurrent registration has been amended to permit price-related terms of the securities to be omitted at the time of effectiveness in a manner similar to Securities Act Rule 430A. This revision has been adopted as proposed—comment was overwhelmingly favorable.

Form 8–A is used to accomplish concurrent Exchange Act registration of securities sold pursuant to an effective Securities Act registration statement. Prior to today's change, where the security being registered was one in which the "terms" were established at the time of pricing, an amendment to the Form 8–A was required before sales could commence to set forth the pricing-related terms. The need for this Form 8–A pricing amendment undercut the utility and efficiencies of rule 430A and rule 415.

In order to address this concern, Form 8–A has been amended to permit the Form 8–A to become effective without the final, price-related terms of the securities. This price-related information may be incorporated by reference into the Form 8–A from a prospectus or prospectus supplement filed in accordance with current rule 424(b) under the Securities Act.[32] The same price-related information that is permitted to be omitted from the Securities Act registration statement at the time of effectiveness in reliance upon Rule 430A may now be omitted from the Form 8–A.[33]

## III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendments to Form S–3, Form S–4, rule 424, rule 430A, rule 457, rule 462, Form 8–A, and rule 12b–23, the Commission requested commenters to provide views and empirical data as to the costs and benefits associated with amending the rules and forms to expand the availability of Form S–3 and the resultant extension of rule 415 to a greater variety of offerings. The vast majority of public commenters were of the view that the proposals, if adopted, would work substantial cost savings to issuers by expanding the availability of shelf registration to a greater variety of offerings, including investment grade asset-backed securities. The expanded use of shelf registration by both newly eligible corporate issuers and asset-backed securities issuers would, according to commenters, reduce issuers' out-of-pocket expenses for printing, accounting, and legal services as well as mailing costs. Also, commenters believed that the proposals would bring additional financing flexibility to the structured finance market by reducing transaction costs associated with offering multiple issues of a series of asset-backed securities. In fact, one asset-backed securities issuer anticipated that its particular cost savings resulting from the proposals would be approximately $30,000 to $50,000 per transaction. Furthermore, these cost savings will be effected without a reduction in the amount of information or a change in the nature of the disclosure to the investing public under the Securities Act or the Exchange Act.

## IV. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared regarding the amendments in accordance with 5 U.S.C. 604. A copy of the analysis may be obtained by contacting Darrell N. Braman, Jr., Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The summary of the corresponding Initial Regulatory Flexibility Analysis appears at 57 FR 32461 (Rel. No. 33–6943).

## V. Effective Date

The amendments to the rules and forms relating to the simplification of registration procedures for primary securities offerings are effective upon publication in the **Federal Register**. Pursuant to 5 U.S.C. 553(d)(1), immediate effectiveness is appropriate because the amendments to the rules and forms relieve restrictions on the use of Form S–3, thereby expanding the availability of shelf registration to additional classes of issuers and transactions, which will provide issuers greater flexibility and efficiency in accessing the public securities markets. The amendments also will relieve issuers of certain procedural restrictions which formerly impaired the efficiency of the shelf registration process. The benefits of these amendments to both persons subject to the federal securities laws as well as potential investors should be available at the earliest possible time.

## VI. Statutory Bases

The amendments to the Commission's rules and forms are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended, sections 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934, as amended.

## List of Subjects

*17 CFR Parts 230, 239, 240 and 249*

Reporting and recordkeeping requirements, Securities.

## VII. Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

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

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

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

2. By amending § 230.424 by adding a new Instruction after paragraph (b)(6) to read as follows:

**§ 230.424 Filing of Prospectuses, Number of Copies.**

* * * * *

(b) * * *

(6) * * *

*Instruction.* Notwithstanding § 230.424 (b)(2) and (b)(5) above, a form of prospectus or prospectus supplement relating to an offering of mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(1)(x) that is required to be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

3. By amending § 230.430A by adding an instruction after paragraph (a)(3) to read as follows:

**§ 230.430A Prospectus in a Registration Statement at the Time of Effectiveness.**

(a) * * *

[32] A related technical amendment to rule 12b–23 under the Exchange Act has been made to except rule 424(b) supplements filed after effectiveness of a Form 8–A from rule 12b–23's requirement that information incorporated by reference into an Exchange Act registration statement be included as an exhibit to the registration statement.

[33] Registrants are permitted to provide the title of the securities on the cover of the Form 8–A in preliminary form before the securities are priced (e.g., ____% debentures due 20 ____), so that the requirement to provide the title of the securities would not be an impediment to the effectiveness of the Form 8–A prior to pricing.

Because foreign issuers also may use Form 8–A for concurrent Exchange Act registration, the new Form 8–A pricing amendment procedure will be available to these issuers.

(3) * * *

*Instruction to paragraph (a):* A decrease in the volume of securities offered or change in the bona fide estimate of the maximum offering price range from that indicated in the form of prospectus filed as part of a registration statement that is declared effective may be disclosed in the form of prospectus filed with the Commission pursuant to § 230.424(b) or § 230.497(h) under the Securities Act so long as the decrease in the volume or change in the price range would not materially change the disclosure contained in the registration statement at effectiveness.

* * * * *

4. By amending § 230.457 by adding new paragraph (o) to read as follows:

**§ 230.457 Computation of Fee.**

* * * * *

(o) Where an issuer eligible to use Form S-3 is registering securities pursuant to General Instruction I.B.1 or I.B.2 to Form S-3 to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x), or pursuant to General Instruction H. to Form S-4 in connection with a business combination transaction pursuant to § 230.415(a)(1)(viii), the registration fee may be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table.

5. By revising § 230.462 to read as follows:

**§ 230.462 Effective Date of a Registration Statement Filed on Form S-8 and Dividend or Interest Reinvestment Plan Filed on Form S-3.**

A registration statement on Form S-8 (§ 239.16b of this chapter) and a registration statement on Form S-3 (§ 239.13) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

7. By amending § 239.13 by revising the introductory text to paragraph (a); revising paragraph (a)(3)(i); redesignating paragraphs (a)(4) through (a)(6) as paragraphs (a)(5) through (a)(7); adding new paragraph (a)(4); in the introductory text of newly redesignated paragraph (a)(7), revise the phrase "in paragraph (a) (1), (2), (3) and (4)" to read "in paragraph (a) (1), (2), (3), and (5)"; revising the introductory text to paragraph (b); revising paragraphs (b)(1) and (b)(2); adding new paragraph (b)(5); revising paragraph (c)(2) and the first sentence of paragraph (c)(3) to read as follows:

**§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.**

* * * * *

(a) *Registrant requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

* * * * *

(3) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

* * * * *

(4) The provisions of paragraphs (a)(2) and (a)(3)(i) of this section do not apply to any registered offerings of investment grade asset-backed securities as defined in paragraph (b)(5) of this section.

* * * * *

(b) *Transaction requirements.* Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary and secondary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *provided* that the aggregate market value of the voting stock held by non-affiliates of the registrant is $75 million or more.

**Instruction**

The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of affiliate in Securities Act Rule 405 (§ 230.405 of this chapter).

(2) *Primary offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided such securities at the time of sale are investment grade securities, as defined below. A non-convertible security is an investment grade security if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

(5) *Offerings of investment grade asset-backed securities.* Asset-backed securities to be offered for cash, provided the securities are investment grade securities, as defined in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities). For purposes of this Form, the term "asset-backed security" means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(c) * * *

(2) The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities) are met; or

(3) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities. * * *

* * * * *

**§ 239.13 [Amended]**

8. By amending Form S-3 (§ 239.13) by revising the introductory text to paragraph A. and paragraph A.3.(a); redesignating paragraphs A.4. through A.6. as paragraphs A.5. through A.7.; adding new paragraph A.4. and in the introductory text of newly redesignated paragraph A.7. revise the phrase "conditions 1., 2., 3., and 4.," to read "conditions 1., 2., 3., and 5.," of General Instruction I; revising the introductory text to paragraph B. and paragraphs B.1.

and B.2. and adding new paragraph B.5 to General Instruction I; revising paragraph C.2. and the first sentence of paragraph C.3. of General Instruction I; adding new paragraph D to General Instruction II; removing the first four sentences of General Instruction III and adding the following two sentences; and revising Instruction 3. to the Signatures to read as follows:

**Note:** Form S-3 does not appear in the Code of Federal Regulations.

Form S-3

* * * * *

**General Instructions**

I. * * *

A. *Registrant Requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in I.B. below:

* * * * *

3. The registrant:

(a) has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

* * * * *

4. The provisions of paragraphs A.2. and A.3.(a) above do not apply to any registered offerings of investment grade asset-backed securities as defined in I.B.5. below.

* * * * *

B. *Transaction Requirements.* Security offerings meeting any of the following conditions and made by a registrant meeting the Registrant Requirements specified in I.A. above may be registered on this Form:

1. *Primary Offerings by Certain Registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *Provided* that the aggregate market value of the voting stock held by non-affiliates of the registrant is $75 million or more.

*Instruction.* The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. *Primary Offerings of Non-convertible Investment Grade Securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided such securities at the time of sale are "investment grade securities," as defined below. A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

5. *Offerings of Investment Grade Asset-backed Securities.* Asset-backed securities to be offered for cash, provided the securities are "investment grade securities," as defined in I.B.2. above (Primary Offerings of Non-convertible Investment Grade Securities). For purposes of this Form, the term "asset-backed security" means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders.

C. * * *

2. The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement B.2. (Primary Offerings of Non-convertible Investment Grade Securities) are met; or

3. The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities. * * *

II. * * *

* * * * *

D. Where two or more classes of securities being registered on this Form pursuant to General Instruction I.B.1. or I.B.2. are to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price. * * *

III. * * *

A registration statement on this Form S-3 relating solely to securities offered pursuant to a dividend or interest reinvestment plan will become effective automatically (rule 462, § 230.462 of this chapter) upon filing (Rule 456, § 230.456 of this chapter). Post-effective amendments of such a registration statement on this Form shall become effective upon filing (rule 464, § 230.464 of this chapter). * * *

* * * * *

Signatures

* * * * *

*Instructions.* * * *

3. Where eligibility for use of the Form is based on the assignment of a security rating pursuant to Transaction Requirements B.2. or B.5., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

**§ 239.25 [Amended]**

9. By amending the General Instructions to Form S-4 (§ 239.25) by adding new paragraph J. to read as follows:

**Note:** Form S-4 does not appear in the Code of Federal Regulations.

Form S-4

* * * * *

**General Instructions**

* * * * *

J. Where two or more classes of securities being registered on this Form pursuant to General Instruction H. are to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price.

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

10. The authority citation for part 240 continues to read as follows:

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

11. By amending § 240.12b-23 by revising paragraph (a)(3) to read as follows:

**§ 240.12b-23 Incorporation by reference.**

(a) * * *

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K and Form 10-KSB (§ 249.310 and § 249.310b); and

(ii) a form of prospectus filed pursuant to § 230.424(b) incorporated by reference

in response to Item 1 of Form 8–A [§ 249.208a] need not be filed as an exhibit.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for part 249 continues to read as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

**§ 249.208a [Amended]**

13. By amending Form 8–A (§ 249.208a) by revising the instruction to Item 1 to read as follows:

**Note:** Form 8–A does not appear in the Code of Federal Regulations.

Form 8–A

* * * * *

*Item 1.* * * *

*Instruction.* If a description of the securities comparable to that required here is contained in any prior filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If such description will be included in a form of prospectus subsequently filed by the registrant pursuant to rule 424(b) under the Securities Act [§ 230.424(b) of this chapter], this registration statement shall state that such prospectus shall be deemed to be incorporated by reference into the registration statement. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

* * * * *

Dated: October 22, 1992.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–26129 Filed 10–28–92; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 111

### Annual User Fee for Customs Broker Permit

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Notice of due date for broker user fee.

**SUMMARY:** This is to advise Customs brokers that for 1993 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 15, 1993. This announcement is being published to comply with the Tax Reform Act of 1986.

**DATES:** Due date for fee: January 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Page, Chief, Entry Compliance Branch (202), 927–0380.

**SUPPLEMENTARY INFORMATION:** Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in § 111.96 19 CFR 111.96).

Section 111.96, Customs Regulations, provides that the fee is payable for each calendar year in each district where a broker has a permit to do business by the due date which will be published in the **Federal Register** annually.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514), provides that notices of the date on which payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. This document notifies brokers that for 1993 the due date for payment of the user fee is January 15, 1993. It is expected that annual user fees for brokers for subsequent years will be due on or about the fifteenth of January each year. This is a change from the previous date of on or about the first.

Dated: October 21, 1992.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

[FR Doc. 92–26250 Filed 10–28–92; 8:45 am]

BILLING CODE 4820–02–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 91F–0342]**

### Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2'-methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate as a stabilizer for adhesives and pressure-sensitive adhesives intended for use in food-contact applications. This action is in response to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective October 29, 1992; written objections and requests for a hearing by November 30, 1992.

**ADDRESSES:** Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of September 24, 1991 (56 FR 48212), FDA announced that a food additive petition (FAP 1B4284) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2,2'-methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate as a stabilizer for adhesives complying with § 175.105 *Adhesives* (21 CFR 175.105) and § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125) and intended for use in food-contact applications.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.2010(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before November 30, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry "2,2'-Methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate" by numerically adding a new entry "3." under the heading "Limitations" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * * * | * * |
| 2,2'-Methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate (CAS Reg. 61167-58-6). | For use only: * * * 3. At levels not to exceed 1 percent by weight of adhesives complying with § 175.105 of this chapter and pressure sensitive adhesives complying with § 175.125 of this chapter. |
| * * * | * * |

Dated: October 6, 1992.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-26173 Filed 10-28-92; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[T.D. 8444]**

**RIN 1545-AN81**

## Applicable Conventions Under the Accelerated Cost Recovery System

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains the final regulations relating to the applicable conventions under the accelerated cost recovery system. Changes to the applicable tax law were made by the Technical and Miscellaneous Revenue Act of 1988 and the Tax Reform Act of 1986. The regulations provide the public with guidance relating to the mid-quarter and half-year conventions under section 168(d).

**DATES:** These regulations are effective January 31, 1991, and apply to property placed in service in taxable years ending after January 30, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mark Pitzer of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, 202-622-3110 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information requirement contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1146. The estimated annual burden per respondent varies from .05 to .15 hour, depending on individual circumstances, with an estimated average of .10 hour.

These estimates are an approximation of the average time expected to be necessary to collect required information. They are based on the information that is available to the Internal Revenue Service. Individual respondents may require greater or less time depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

### Background

Proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 168(d) of the Internal Revenue Code (the Code) were published in the **Federal Register** on December 31, 1990 (55 FR 53571). These amendments were proposed to reflect amendments made by section 1002(a) of the Technical and Miscellanous Revenue Act of 1988 and section 201 of the Tax Reform Act of 1986. The amendments were issued under the authority contained in sections 168(d)(3) and 7805 of the Code.

Three written comments were received in response to the proposed regulations. No request for a public hearing was received and, therefore, none was held. All written comments have been considered. This document adopts the proposed regulations as final regulations with slight modifications.

### Explanation of Provisions

*In General*

Section 168(d) of the Code prescribes the applicable conventions to be used in determining when depreciable property is placed in service or disposed of. Sections 168(d)(1) and 168(d)(4)(A) provide that, unless otherwise provided, the applicable convention is the half-year convention, which treats all property (other than certain real property) placed in service (or disposed of) during a taxable year as placed in service (or disposed of) on the mid-point of the taxable year.

Section 168(d)(3) of the Code provides that a mid-quarter convention applies, instead of the half-year convention, to depreciable property placed in service during a taxable year if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property (with certain exceptions) placed in service during the taxable year ("the 40-percent test"). Section 168(d)(4)(C) defines a mid-quarter convention as one that treats all property placed in service (or disposed of) during any quarter of a taxable year as placed in service (or disposed of) on the mid-point of the quarter. Section 168(d) applies to both the general depreciation system under section 168(a) and the alternative depreciation system under section 168(g).

*Changes to the Proposed Regulations*

Section 1.168(d)-1(b)(3)(ii) of the proposed regulations provided a rule for applying the applicable convention to property placed in service and disposed of in the same taxable year. It provided that the applicable convention determined for the taxable year also is applied to property placed in service and disposed of in the same taxable year. Under this approach no depreciation deduction was allowed for property subject to the half-year convention because the property was deemed to have been acquired and disposed of on the same date. However, if the mid-quarter convention was applicable, a depreciation deduction was allowed for property placed in service and disposed of in different quarters.

One written comment questioned the practicality of requiring taxpayers to compute depreciation on assets placed in service and disposed of in the same taxable year. It was suggested that while the net tax impact of this approach would be a direct offset of income with expense, a significant administrative burden would have to be

borne by taxpayers complying with the provision. These additional depreciation computations would have to be maintained for regular tax purposes, alternative minimum tax purposes, and adjusted current earnings purposes. The final regulations provide that no depreciation is allowed in the case of property placed in service and disposed of in the same taxable year. This modification is consistent with the exclusion of property placed in service and disposed of in the same taxable year from the determination of whether the 40-percent test is satisfied and is also consistent with the policy of regulatory simplification and taxpayer burden reduction.

One commentator objected to § 1.168(d)–1(b)(5) of the proposed regulations, which provided that all members of a consolidated group are treated as one taxpayer in applying the 40-percent test and the mid-quarter convention. This provision was not modified in the final regulations because the Service believes that the provision discourages manipulation of the 40-percent test.

One commentator recommended that the scope of the proposed regulations be expanded to include the effect of the applicable conventions on property placed in service and disposed of for purposes of the investment tax credit recapture rules. The Service believes it would be inappropriate to expand the scope of these regulations to cover investment tax credit issues.

*Special Analyses*

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis 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 final Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, a copy of these regulations was submitted to the Small Business Administration for comment on their impact on small business.

*Drafting Information*

The principal author of these regulations is Richard Blumenreich of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR 1.161–1 through 1.194–4*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—[AMENDED]

**Paragraph 1.** The authority citation for part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805 * * * Section 1.168(d)–1 also issued under 26 U.S.C. 168(d)(3); * * *

**Par. 2.** Sections 1.168(d)–0 and 1.168(d)–1 are added to read as follows:

**§ 1.168(d)–0 Table of contents for the applicable convention rules.**

This section lists the major paragraphs in § 1.168(d)–1.

*§ 1.168(d)–1 Applicable conventions—Half-year and mid-quarter conventions.*

(a) In general.
(b) Additional rules for determining whether the mid-quarter convention applies and for applying the applicable convention.
(1) Property described in section 168(f).
(2) Listed property.
(3) Property placed in service and disposed of in the same taxable year.
(4) Aggregate basis of property.
(5) Special rules for affiliated groups.
(6) Special rule for partnerships and S corporations.
(7) Certain nonrecognition transactions.
(c) Disposition of property subject to the half-year or mid-quarter convention.
(1) In general.
(2) Example.
(d) Effective date.

**§ 1.168(d)–1 Applicable convention—Half-year and mid-quarter conventions.**

(a) *In general.* Under section 168(d), the half-year convention applies to depreciable property (other than certain real property described in section 168(d)(2)) placed in service during a taxable year, unless the mid-quarter convention applies to the property. Under section 168(d)(3)(A), the mid-quarter convention applies to depreciable property (other than certain real property described in section 168(d)(2)) placed in service during a taxable year if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property placed in service during the taxable year ("the 40-percent test"). Thus, if the depreciable property is placed in service during a taxable year that consists of three months or less, the mid-quarter convention applies to the property. Under section 168(d)(3)(b)(i), the depreciable basis of nonresidential real property, residential rental property, and any railroad grading or tunnel bore is disregarded in applying the 40-percent test. For rules regarding property that is placed in service and disposed of in the same taxable year, see paragraph (b)(3) of this section. For the definition of "aggregate basis of property," see paragraph (b)(4) if this section.

(b) *Additional rules for determining whether the mid-quarter convention applies and for applying the applicable convention*—(1) *Property described in section 168(f).* In determining whether the 40-percent test is testified for a taxable year, the depreciable basis of property described in section 168(f) (property to which section 168 does not apply) is not taken into account.

(2) *Listed property.* The depreciable basis of listed property (as defined in section 280F(d)(4) and the regulations thereunder) placed in service during a taxable year is taken into account (unless otherwise excluded) in applying the 40-percent test.

(3) *Property placed in service and disposed of in the same taxable year*—(i) Under section 168(d)(3)(B)(ii), the depreciable basis of property placed in service and disposed of in the same taxable year is not taken into account in determining whether the 40-percent test is satisfied. However, the depreciable basis of property placed in service, disposed of, subsequently reacquired, and again placed in service in the same taxable year must be taken into account in applying the 40-percent test, but the basis of the property is only taken into account on the later of the dates that the property is placed in service during the taxable year.

(ii) The applicable convention, as determined under this section, applies to all depreciable property (except nonresidential real property, residential rental property, and any railroad grading or tunnel bore) placed in service during the taxable year, excluding property placed in service and disposed of in the same taxable year. No depreciation deduction is allowed for property placed in service and disposed of during the same taxable year.

(iii) The provisions of this paragraph (b)(3) are illustrated by the following examples.

**Example 1.** During 1990, A, a calendar-year taxpayer, purchases a light general purpose truck costing $8,000, an office desk costing

$500, a safe costing $1,000, and a computer costing $3,000. The truck is placed in service in January, the desk and safe in August, and the computer in November. These are the only items placed in service during 1990. In September, A sells the truck and the desk. Thus, the truck and the desk were placed in service and disposed of in the same taxable year. Therefore, the depreciable basis of the truck and the desk are not taken into account in determining whether the mid-quarter convention applies to depreciable property placed in service during 1990. Because the computer was placed in service during the last three months of the taxable year and its basis ($3,000) exceeds 40 percent of the aggregate basis of depreciable property placed in service during the taxable year (safe and computer with an aggregate basis of $4,000), the mid-quarter convention applies to the safe and the computer. No depreciation is allowed with respect to the truck and desk because they were placed in service and disposed of in the same taxable year.

**Example 2.** The facts are the same as in **Example 1**, except that, in December, A reacquires the truck for $7,000. Thus, the truck is considered placed in service in December and its basis is included in determining whether the mid-quarter convention applies. The mid-quarter convention is applicable, because the computer ($3,000) and the truck ($7,000) are placed in service during the last three months of the taxable year and their aggregate basis ($10,000) exceeds 40 percent of the aggregate basis of property placed in service during the taxable year (safe, computer, and truck with an aggregate basis of $11,000).

(4) *Aggregate basis of property.* For purposes of the 40-percent test, the term "aggregate basis of property" means the sum of the depreciable bases of all items of depreciable property that are taken into account in applying the 40-percent test. "Depreciable basis" means the basis of depreciable property for purposes of determining gain under sections 1011 through 1024. The depreciable basis for the taxable year the property is placed in service reflects the reduction in basis for—

(i) Any portion of the basis the taxpayer properly elects to treat as an expense under section 179;

(ii) Any adjustment to basis under section 48(q); and

(iii) The percentage of the taxpayer's use of the property for the taxable year other than in the taxpayer's trade or business (or for the production of income), but is determined before any reduction for depreciation under section 167(a) for that taxable year.

(5) *Special rules for affiliated groups*—(i) In the case of a consolidated group (as defined in § 1.1502–1(h)), all members of the group that are included on the consolidated return are treated as one taxpayer for purposes of applying the 40-percent test. Thus, the depreciable bases of all property placed in service by members of a consolidated group during a consolidated return year are taken into account (unless otherwise excluded) in applying the 40-percent test to determine whether the mid-quarter convention applies to property placed in service by the members during the consolidated return year. The 40-percent test is applied separately to the depreciable bases of property placed in service by any member of an affiliated group that is not included in a consolidated return of the taxable year in which the property is placed in service.

(ii) In the case of a corporation formed by a member or members of a consolidated group and that is itself a member of the consolidated group ("newly-formed subsidiary"), the depreciable bases of property placed in service by the newly-formed subsidiary in the consolidated return year in which it is formed is included with the depreciable bases of property placed in service during the consolidated return year by the other members of the consolidated group in applying the 40-percent test. If depreciable property is placed in service by a newly-formed subsidiary during the consolidated return year in which it was formed, the newly-formed subsidiary is considered as being in existence for the entire consolidated return year for purposes of applying the applicable convention to determine when the recovery period begins.

(iii) The provisions of paragraph (b)(5)(ii) of this section are illustrated by the following example.

**Example.** Assume a member of a consolidated group that files its return on a calendar-year basis forms a subsidiary on August 1. The subsidiary places depreciable property in service on August 5. If the mid-quarter convention applies to property placed in service by the members of the consolidated group (including the newly-formed subsidiary), the property placed in service by the subsidiary on August 5 is deemed placed in service on the mid-point of the third quarter of the consolidated return year (*i.e.*, August 15). If the mid-quarter convention does not apply, the property is deemed placed in service on the mid-point of the consolidated return year (*i.e.*, July 1).

(iv) In the case of a corporation that joins or leaves a consolidated group, the depreciable bases of property placed in service by the corporation joining or leaving the group during the portion of the consolidated return year that the corporation is a member of the consolidated group is included with the depreciable bases of property placed in service during the consolidated return year by the other members in applying the 40-percent test. The depreciable bases of property placed in service by the joining or leaving member in the taxable year before it joins or after it leaves the consolidated group is not taken into account by the consolidated group in applying the 40-percent test for the consolidated return year. If a corporation leaves a consolidated group and joins another consolidated group, each consolidated group takes into account, in applying the 40-percent test, the depreciable bases of property placed in service by the corporation while a member of the group.

(v) The provisions of paragraph (b)(5)(iv) of this section are illustrated by the following example.

**Example.** Assume Corporations A and B file a consolidated return on a calendar-year basis. Corporation C, also a calendar-year taxpayer, enters the consolidated group on July 1 and is included on the consolidated return for that taxable year. The depreciable bases of property placed in service by C during the period of July 1 to December 31 is included with the depreciable bases of property placed in service by A and B during the entire consolidated return year in applying the 40-percent test. The depreciable bases of property placed in service by C from January 1 to June 30 is not taken into account by the consolidated group in applying the 40-percent test. If C was a member of another consolidated group during the period from January 1 to June 30, that consolidated group would include the depreciable bases of property placed in service by C during that period.

(vi) A corporation that joins or leaves a consolidated group during a consolidated year is considered as being a member of the consolidated group for the entire consolidated return year for purposes of applying the applicable convention to determine when the recovery period begins for depreciable property placed in service by the corporation during the portion of the consolidated return year that the corporation is a member of the group.

(vii) If depreciable property is placed in service by a corporation in the taxable year ending immediately before it joins a consolidated group or beginning immediately after it leaves a consolidated group, the applicable convention is applied to the property under either the full taxable year rules or the short taxable year rules, as applicable.

(viii) The provisions of paragraphs (d)(5)(vi) and (vii) of this section are illustrated by the following example.

**Example.** Assume that on July 1, C, a calendar-return corporation, joins a consolidated group that files a return on a calendar-year basis. The short taxable year rules apply to C for the period of January 1 to June 30. However, in applying the applicable

convention to determine when the recovery period begins for depreciable property placed in service for the period of July 1 to December 31, C is considered as being a member of the consolidated group for the entire consolidated return year. Thus, if the half-year convention applies to depreciable property placed in service by the consolidated group (taking into account the depreciable bases of property placed in service by C after June 30), the property is deemed placed in service on the mid-point of the consolidated return year (*i.e.*, July 1, if the group did not have a short taxable year).

(ix) In the case of a transfer of depreciable property between members of a consolidated group, the following special rules apply for purposes of applying the 40-percent test. Property that is placed in service by one member of a consolidated group and transferred to another member of the same group is considered as placed in service on the date that it is placed in service by the transferor member, and the date it is placed in service by the transferee member is disregarded. In the case of multiple transfers of property between members of a consolidated group, the property is considered as placed in service on the date that the first member places the property in service, and the dates it is placed in service by other members are disregarded. The depreciable basis of the transferred property that is taken into account in applying the 40-percent test is the depreciable basis of the property in the hands of the transferor member (as determined under paragraph (b)(4) of this section), or, in the case of multiple transfers of property between members, the depreciable basis in the hands of the first member that placed the property in service.

(x) The provisions of paragraph (b)(5)(ix) of this section are illustrated by the following example.

**Example.** Assume the ABC consolidated group files its return on a calendar-year basis. A, a member of the consolidated group, purchases depreciable property costing $50,000 and places the property in service on January 5, 1991. On December 1, 1991, the property is transferred for $75,000 to B, another member of the consolidated group. In applying the 40-percent test to the members of the consolidated group for 1991, the property is considered as placed in service on January 5, the date that A placed the property in service, and the depreciable basis of the property that is taken into account is $50,000.

(6) *Special rule for partnerships and S corporations.* In the case of property placed in service by a partnership or an S corporation, the 40-percent test is generally applied at the partnership or corporate level. However, if a partnership or an S corporation is formed or availed of for the principal purpose of either avoiding the application of the mid-quarter convention or having the mid-quarter convention apply where it otherwise would not, the 40-percent test is applied at the partner, shareholder, or other appropriate level.

(7) *Certain nonrecognition transaction*—(i) Except as provided in paragraph (b)(6) of this section, if depreciable property is transferred in a transaction described in section 168(i)(7)(B)(i) (other than in a transaction between members of a consolidated group) in the same taxable year that the property is placed in service by the transferor, the 40-percent test is applied by treating the transferred property as placed in service by the transferee on the date of transfer. Thus, if the aggregate basis of property (including the transferred property) placed in service by the transferee during the last three months of its taxable year exceeds 40 percent of the aggregate basis of property (including the transferred property) placed in service by the transferee during the taxable year, the mid-quarter convention applies to the transferee's depreciable property, including the transferred property. The depreciable basis of the transferred property is not taken into account by the transferor in applying the 40-percent test for the taxable year that the transferor placed the property in service.

(ii) In applying the applicable convention to determine when the recovery period for the transferred property begins, the date on which the transferor placed the property in service must be used. Thus, for example, if the mid-quarter convention applies, the recovery period for the transferred property begins on the mid-point of the quarter of the taxable year that the transferor placed the property in service. If the transferor placed the transferred property in service in a short taxable year, then for purposes of applying the applicable convention and allocating the depreciation deduction between the transferor and the transferee, the transferor is treated as having a full 12-month taxable year commencing on the first day of the short taxable year. The depreciation deduction for the transferor's taxable year in which the property was placed in service is allocated between the transferor and the transferee based on the number of months in the transferor's taxable year that each party held the property in service. For purposes of allocating the depreciation deduction, the transferor takes into account the month in which the property was placed in service but does not take into account the month in which the property was transferred. The transferee is allocated the remaining portion of the depreciation deduction for the transferor's taxable year in which the property was transferred. For the remainder of the transferee's current taxable year (if the transferee has a different taxable year than the transferor) and for subsequent taxable years, the depreciation deduction for the transferee is calculated by allocating to the transferee's taxable year the depreciation attributable to each recovery year, or portion thereof, that falls within the transferee's taxable year.

(iii) If the applicable convention for the transferred property has not been determined by the time the transferor files its income tax return for the year of transfer because the transferee's taxable year has not ended, the transferor may use either the mid-quarter or the half-year convention in determining the depreciation deduction for the property. However, the transferor must specify on the depreciation form filed for the taxable year that the applicable convention has not been determined for the property. If the transferee determines that a different convention applies to the transferred property, the transferor should redetermine the depreciation deduction on the property, and, within the period of limitation, should file an amended income tax return for the taxable year and pay any additional tax due plus interest.

(iv) The provisions of the paragraph (b)(7) are illustrated by the following example.

**Example.** (i) During 1991, C, a calendar-year taxpayer, purchases satellite equipment costing $100,000, and computer equipment costing $15,000. The satellite equipment is placed in service in January, and the computer equipment in February. On October 1, C transfers the computer equipment to Z Partnership in a transaction described in section 721. During 1991, Z, a calendar-year partnership, purchases 30 office desks for a total of $15,000. The desks are placed in service in June. These are the only items of depreciable property placed in service by C and Z during 1991.

(ii) In applying the 40-percent test, because C transferred the computer equipment in a transaction described in section 168(i)(7)(B)(i) in the same taxable year that C placed it in service, the computer equipment is treated as placed in service by the transferee, Z, on the date of transfer, October 1. The 40-percent test is satisfied with respect to Z, because the computer equipment is placed in service during the last three months of Z's taxable year and its basis ($15,000) exceeds 40 percent of the aggregate basis of property placed in service by Z during the taxable year (desks and computer equipment with an aggregate basis of $30,000).

(iii) In applying the mid-quarter convention to determine when the computer equipment is deemed to be placed in service, the date on which C placed the property in service is used. Accordingly, because C placed the computer equipment in service during the first quarter of its taxable year, the computer equipment is deemed placed in service on February 15, 1991, the mid-point of the first quarter of C's taxable year. The depreciation deduction allowable for C's 1991 taxable year, $5,250 [$15,000×40 percent×10.5/12), is allocated between C and Z based on the number of months in C's taxable year that C and Z held the property in service. Thus, because the property was in service for 11 months during C's 1991 taxable year and C held it for 8 of those 11 months, C is allocated $3,818 (8/11×$5,250). Z is allocated $1,432, the remaining 3/11 of the $5,250 depreciation deduction for C's 1991 taxable year. For 1992, Z's depreciation deduction for the computer equipment is $3,900, the sum of the remaining 1.5 months of depreciation deduction for the first recovery year and 10.5 months of depreciation deduction for the second recovery year [($15,000×40 percent×1.5/12)+($9,000×40 [percent×10.5/12)).

(c) *Disposition of property subject to the half-year or mid-quarter convention*—(1) *In general.* If depreciable property is subject to the half-year (or mid-quarter) convention in the taxable year in which it is placed in service, it also is subject to the half-year (or mid-quarter) convention in the taxable year in which it is disposed of.

(2) *Example.* The provisions of paragraph (c)(1) of this section are illustrated by the following example.

**Example.** In October 1991, B, a calendar-year taxpayer, purchases and places in service a light general purpose truck costing $10,000. B does not elect to expense any part of the cost of the truck, and this is the only item of depreciable property placed in service by B during 1991. The 40-percent test is satisfied and the mid-quarter convention applies, because the truck is placed in service during the last three months of the taxable year and no other assets are placed in service in that year. In April 1993 (prior to the end of the truck's recovery period), B sells the truck. The mid-quarter convention applies in determining the depreciation deduction for the truck in 1993, the year of disposition.

(d) *Effective date.* This section applies to depreciable property placed in service in taxable years ending after January 30, 1991. For depreciable property placed in service after December 31, 1986, in taxable years ending on or before January 30, 1991, a taxpayer may use a method other than the method provided in this section in applying the 40-percent test and the applicable convention, provided the method is reasonable and is consistently applied to the taxpayer's property.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.10 [Amended]**

**Par. 4.** Section 602.101(c) is amended by adding the following entry in the table to read as follows: "1.168(d)–1 * * *. 1545–1146".

**Shirley D. Peterson,**
*Commissioner of Internal Revenue.*

Approved: September 1, 1992.

**Fred T. Goldberg, Jr.,**
*Assistant Secretary of the Treasury.*

[FR Doc. 92–25929 Filed 10–28–92; 8:45 am]

BILLING CODE 4830–01–M

---

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 950

## Wyoming Permanent Regulatory Program

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

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

**SUMMARY:** OSM is announcing approval, with exceptions and required amendments, of a proposed amendment to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, submitted June 24, 1991, pertains to the definition of public building, elimination of the two acre exemption, definition of joint agency approval, fish and wildlife resource information outside the permit area, solid waste permitting for mines, information requirements and confidentiality—historic and archaeological resources, stability analysis waiver, cultural resources management plan, revegetation monitoring, livestock grazing, topsoil substitutes, conditions for removal of diversions, information on historic and archaeological resources for coal exploration permits, definition of self-bond, required finding on historic resources for permit approval, wild and scenic river study corridors, coal mine permit renewal processing, time frame for permit revisions, and area of water rights reporting for in-situ mines. The amendment revises the Wyoming program to be consistent with the corresponding Federal standards and to incorporate the additional flexibility afforded by the revised Federal rules.

**EFFECTIVE DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Guy V. Padgett, Telephone: (307) 261–5776.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

### II. Submission of Amendment

On June 24, 1991, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. WY–16–1). Wyoming submitted the proposed amendment in response to the December 23, 1985; June 9, 1987; and November 7, 1988, notifications that OSM sent in accordance with the Federal regulations at 30 CFR 732.17(d) (Administrative Record Nos. WY–12–15, WY–12–16, and WY–16–10). Wyoming proposes to amend the following Department of Environmental Quality—Land Quality Division (DEQ/LQD) rules and regulations relating to coal exploration and coal mining and reclamation operations: Chapter I—Definition of Public Building, Elimination of the Two Acre Exemption, Definition of Joint Agency Approval; Chapter II—Fish and Wildlife Resource Information Outside the Permit Area, Solid Waste Permitting for Mines, Information Requirements and Confidentiality—Historic and Archaeological Resources, Stability Analysis Waiver, Cultural Resources Management Plan, Revegetation Monitoring, Livestock Grazing; Chapter IV—Solid Waste Permitting for Mines, Topsoil Substitutes, Revegetation Monitoring, Conditions for Removal of Diversions; Chapter XI—Information on Historic and Archaeological Resources for Coal Exploration Permits; Chapter XII—Definition of Self-Bond; Chapter XIII—Required Finding on Historic Resources for Permit Approval, Wild and Scenic River Study Corridors, Coal Mine Permit Renewal Processing; Chapter XIV—Time Frame for Permit

Revisions; Chapter XXI—Area of Water Rights Reporting for In-Situ Mines.

OSM published a notice, in the July 12, 1991, **Federal Register** (56 FR 31898), announcing receipt of the proposed amendment and in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (Administrative Record No. WY-16-9). The public comment period closed on August 12, 1991. The public hearing scheduled for August 6, 1991, was not held because no one requested to testify.

During its review of the amendment, OSM identified seven issues included under the following topics: solid waste permitting for mines, information requirements and confidentiality—historic and archaeological resources, topsoil substitutes, information on historic and archaeological resources for coal exploration permits, required finding on historic resources for permit approval, coal mine permit renewal processing, and time frame for permit revisions. OSM notified Wyoming of these issues by letter dated September 13, 1991 (Administrative Record No. WY-16-7). Wyoming responded in a letter dated October 15, 1991 (Administrative Record No. WY-16-8) to four of the seven issues cited in the September 13, 1991, OSM letter.

In a January 10, 1992, **Federal Register** (57 FR 1137), OSM announced receipt of the additional information and reopened the public comment period for the proposed amendment (Administrative Record No. WY-16-12). The public comment period closes on December 27, 1992.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Wyoming on June 24, 1991, and subsequently clarified on October 15, 1991.

*1. Substantive Revisions to Wyoming's Regulations That Are Substantially Identical to the Counterpart Federal Regulations*

Wyoming proposes revisions to the following sections of the DEQ/LQD rules and regulations that are substantive in nature and contain language substantially identical to the corresponding Federal regulations (counterpart Federal regulations are indicated in brackets): Chapter I, Section 2(br), definition of public building, (30 CFR 761.5); Chapter I, Section 2(ba), definition of joint agency approval, (30 CFR 761.12(f)); Chapter I, Section 3(b)(i), elimination of the two acre exemption, (30 CFR 700.11(b)); Chapter II, Section 3(b)(xx), cultural resources management plan, (30 CFR 780.31(a)&(b) and 784.17(a)&(b)); Chapter II, Section 3(b)(v)(C) and Chapter IV, Section 3(d)(vii), revegetation monitoring, (30 CFR 816.116 and 817.116); Chapter IV, Section 3(e)(i)(H), conditions for removal of diversions, (30 CFR 816.43(a)(3)); Chapter XII, Section 1(a), definition of self-bond, (30 CFR 800.5(c)); Chapter XIII, Section 1(a)(v)(A), wild and scenic river study corridors, (30 CFR 761.11(a)); Chapter XXI, Section 3(b)(vii) and Chapter XXI, Section 3(b)(x), area water rights reporting for insitu mines, (30 CFR 784.14(b), 785.22(b), 817.41, and 828.11). The Director therefore, finds that these proposed revisions to Wyoming's regulations are no less effective than the corresponding Federal regulations and is approving them.

*2. W.S. 35-11-103(d)(ii)(D); LQD Rules Chapter II, Section 2(b)(iii)(I), Section 3(a)(v)(A)(II), Section 3(b)(xxi), Section 3(b)(xxii); LQD Rules Chapter IV, Section 2(c)(v), Section 3(c)(iii)(C), Section 3(c)(iii)(D); Solid Waste Permitting and Management for Mines*

Wyoming proposes to amend its regulations at LQD Rules Chapter II, Section 2(b)(iii)(I), Section 3(a)(v)(A)(II), Section 3(b)(xxi), Section 3(b)(xxii); and LQD Rules Chapter IV, Section 2(c)(v), Section 3(c)(iii)(C), Section 3(c)(iii)(D) that place permitting requirements and performance standards on coal and non-coal waste. These rule changes implement the 1989 statutory changes made to Wyoming's Environmental Quality Act (EQA) at W.S. 35-11-103(d)(ii)(D). The following sub-findings will discuss the proposed statute and regulations:

a. Wyoming's Proposed Modification of W.S. 35-11-103(d)(ii)(D)

Wyoming proposes to modify W.S. 35-11-103(d)(ii)(D) of the EQA to exclude Solid Waste Management Program jurisdiction for all on-site solid waste management facilities subject to the permitting requirements of Articles 2, 3, or 4 (Air Quality, Water Quality and Land Quality). Wyoming states that "This provision provides for the transfer of jurisdiction of the Solid Waste Management Section for mines [coal mining] to the Land Quality Division [DEQ/LQD] relative to informational requirements and compliance standards" (see Administrative Record No. WY-16-1).

Pursuant to the provisions of 30 CFR 732.15, the State must clearly demonstrate that the State regulatory authority has laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations and that these laws and regulations are in accordance with SMCRA and consistent with the Federal regulations. Wyoming has met this standard as prerequisite to the Secretary's conditional approval of the Wyoming program in 1980. The additional jurisdictional authority granted to the DEQ/LQD in the proposed W.S. 35-11-103(d)(ii)(D) does not necessarily conflict with the Secretary's prior approval of the State program, provided that this statute merely supplements and does not supersede or replace existing State program requirements applicable to coal exploration and surface coal mining and reclamation operations. On this basis the Director is approving Wyoming's Statutory revision at W.S. 35-11-103(d)(ii)(D) of the EQA and is notifying DEQ/LQD that this revision will be reviewed through OSM oversight for implementation with the other responsibilities of the Wyoming program.

b. Wyoming's Proposed Modification of LQD Rule Chapter II, Section 3(a)(v)(A)(II)

Wyoming proposes to modify LQD Rule Chapter II, Section 3(a)(v)(A)(II) that currently requires "Solid Waste Information: The information from the approved construction and operating plans for an industrial solid waste land disposal facility which affirmatively demonstrates that disposal of non-coal wastes shall be in accordance with the standards set out in Section 11, paragraph c., Solid Waste Management Rules and Regulations (1980)." Wyoming proposes to modify the existing rule by adding the modified definition of Solid Waste Management Facility contained in W.S. 35-11-103(d)(ii)(D) and by removing the requirement that non-coal wastes shall be disposed of in accordance with Section 11, paragraph c., of the Solid Waste Management Rules and Regulations. Additionally, the proposed rule would require facilities receiving solid waste that is generated outside the proposed permit area by any activity other than a mine-mouth power plant or mine-mouth coal drier, to follow the Solid Waste Management rules of Article 5 of the EQA.

OSM must reasonably assume that all types of solid waste material, i.e., both coal and non-coal waste materials, could potentially be generated by the regulated operations. Federal regulations governing the disposal of non-coal waste at 30 CFR 816.89 and 817.89 require:

(a) Non-coal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mine machinery, lumber, and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of non-coal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the non-coal mine waste area does not degrade surface or underground water. Waste shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized and revegetation accomplished in accordance with § § 816.111 through 816.116. Operation of the disposal site shall be conducted in accordance with all local, State and Federal requirements.

(c) At no time shall any non-coal mine waste be deposited in a refuse pile or impounding structure, nor shall an excavation for non-coal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

Federal regulations for coal waste disposal at 30 CFR 816.81(a) and 817.81(a) require "all coal mine waste shall be placed in new or existing disposal areas within the permit area, which are approved by the regulatory authority for this purpose". Federal regulations at 30 CFR 816.81(b) and 817.81(b) require "coal mine waste material from activities outside a permit area may be disposed of in the permit area only if approved by the regulatory authority. Approval shall be based upon showing that such disposal will be in accordance with the standards of this section".

Corresponding Wyoming Rules for coal waste disposal at LQD Rules Chapter IV, Section 3(c)(ii) and Chapter VII, Section 2(b)(i), would allow for coal mine waste generated from a mine-mouth power plant or coal drier to be disposed of on the permit area. In interpreting 30 CFR 816.89 and 817.89, OSM has historically allowed the disposal of off-site non-coal waste within the permit area when the requirements of these Federal regulation performance standards are followed.

The proposed LQD Rules at Chapter II, Section 3(a)(v)(A)(II) remove the specific performance standards for non-coal waste disposal as approved by OSM in Wyoming's original program. Specifically the proposed rule would remove the language "disposal of non-coal wastes shall be in accordance with the standards set out in Section 11, paragraph c., Solid Waste Management Rules and Regulations (1980)." The regulations at Section 11, paragraph c. are the counterpart performance standards for the Federal regulations at 30 CFR 816.89 and 817.89. The proposed Statute change of Article 5 of EQA does not contain counterpart rules to the Federal requirements at 30 CFR 816.89 and 817.89. Since the original program was approved with specific incorporation of Solid Waste Management Rules and then later amended to incorporate a reference to the Solid Waste Management Rules, at Section 11, paragraph c., the proposed modification will render Wyoming's rules less effective than the Federal regulations at 30 CFR 816.89 and 817.89.

The Director is not approving the proposed LQD rule at Chapter II, Section 3(a)(v)(A)(II) and is requiring Wyoming to either reinstate the removed cited reference "disposal of non-coal wastes shall be in accordance with the standards set out in Section 11, paragraph c., Solid Waste Management Rules and Regulations (1980)" or otherwise amend its program in a manner to render it no less effective than the Federal regulations at 30 CFR 816.89 and 817.89.

c. Wyoming's Proposed LQD Rules at Chapter II, Section 3(b)(xxii) and Chapter IV, Section 3(c)(iii)(D)

Wyoming proposes to amend LQD Rules at Chapter II, Section 3(b)(xxii) and Chapter IV, Section 3(c)(iii)(D). The proposed LQD Rule at Chapter II, Section 3(b)(xxii) would require "Plans for the management and disposal within the permit area of solid wastes generated by a mine-mouth power plant or mine-mouth coal drier, in accordance with LQD Rules at Chapter IV, Section 2(c) and 3(c) and with those provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the administrator". The proposed rule at LQD Rule Chapter IV, Section 3(c)(iii)(D) is similar in wording, "Management and final burial on the permit area of solid wastes generated by a mine-mouth power plant or mine-mouth coal drier shall be in accordance with this section and with provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the administrator".

Both proposed rules reference LQD Rules at Chapter IV, Section 3(c). Proposed LQD Rule Chapter II, Section 3(b)(xxii) additionally references proposed LQD Rule Chapter IV, Section 2(c). Referenced existing LQD Rule Chapter IV, Section 3(c)(iii) (C) reads "final burial of non-coal mine waste materials (such as grease, lubricants, paints, flammable liquids, garbage, trash, abandoned mine machinery, lumber, and other combustible materials) and any waste classified as hazardous shall be in a designated disposal site authorized by the Solid Waste Management Section of the Department". Referenced proposed LQD Rule Chapter IV, Section 2(c)(v) reads "Management and final burial on the permit area of all industrial solid wastes generated by the operation (such as, but not limited to, grease, lubricants, paints, flammable liquids, garbage, trash, discarded mining machinery, lumber and other combustible materials) shall be in accordance with this section and with those provisions of the Solid Waste Management Rules and regulations deemed appropriate by the administrator".

The requirements of the Federal regulations at 30 CFR 816.81, 817.81, 816.89, and 817.89 have specific performance standards for disposal of coal and non-coal wastes as discussed previously in Finding 2(b). Wyoming's proposed rules both discuss solid wastes generated by a mine-mouth power plant or mine-mouth coal drier. As stated earlier OSM can only assume that such solid waste could include both coal and non-coal waste from these two sources. Wyoming's proposed LQD Rule at Chapter II, Section 3(b)(xxii) incorporates the proposed LQD Rule at Chapter IV, Section 2(c)(v) which does not not specify any performance standards for the disposal of either coal nor non-coal waste materials. Both proposed rules also incorporate LQD Rule Chapter IV, Section 3(c)(iii)(C) disposal standards for non-coal wastes. It is not clear, however, as to whether Section 3(c)(iii)(C) applies only to off-site non-coal wastes since the approval of the disposal site is by the Solid Waste Management Section or if it also applies to on-site non-coal waste disposal. The language of referenced LQD Rule Chapter IV, Section 3(c)(iii)(C) indicates that both proposed rules apply only to non-coal waste which does not cover coal waste generated by a mine-mouth power plant and a mine-mouth coal drier. Regardless, these proposed rules have basically the same problem as

stated in Finding 2(b) for LQD Rule Chapter II, Section 3(a)(v)(A)(II), there are no specific performance standards for non-coal waste disposal.

The Director finds that LQD Rules at Chapter II, Section 3(b)(xxii) and Chapter IV, Section 3(c)(ii)(D) are less effective than the Federal regulations and is not approving them. The Director is requiring Wyoming to amend LQD Rules at Chapter II, Section 3(b)(xxii) and Chapter IV, Section 3(c)(iii)(D) to include specific performance standards for non-coal waste disposal that are no less effective than the Federal regulations at 30 CFR 816.89 and 817.89.

d. Wyoming's Proposed LQD Rules at Chapter II, Section 2(b)(iii)(I); Chapter II Section 3 (b)(xxii); Chapter IV Section 2(c)(v); and Chapter IV Section 3 (c)(iii)(C)

Wyoming proposes to amend LQD Rules at Chapter II, Section 2(b)(iii)(I); Chapter II Section 3(b)(xxii); Chapter IV Section 2(c)(v); and Chapter IV Section 3 (c)(iii)(C). The proposed rules discuss permitting or management requirements of non-coal waste and industrial solid waste. All the proposed rules include Federal counterpart language at 30 CFR 816.89 and 817.89 "such as, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mine machinery, lumber, and other combustible materials" and all include the language "with provisions of the Solid Waste Management Rules and Regulations deemed appropriate by the Administrator". As was also the case in finding 2(c), the proposed rules reference LQD rules at Chapter IV, Section 2(c) and Section 3(c), that do not specify performance standards for non-coal waste disposal that are no less effective than the Federal requirements at 30 CFR 816.89 and 817.89.

Therefore the Director finds Wyoming's proposed LQD Rules at Chapter II, Section 2(b)(iii)(I); Chapter II, Section 3(b)(xxi); Chapter IV, Section 2(c)(v); and Chapter IV, Section 3(c)(iii)(C) to be less effective than the Federal regulations and is not approving them. Wyoming is required to amend its program to provide standards that are no less effective than the Federal regulations requirements at 30 CFR 816.89 and 817.89.

*3. LQD Rule Chapter II, Section 3(a)(vi)(M), Information Requirements and Confidentiality—Historic and Archaeological Resources*

Wyoming proposes to amend LQD Rule Chapter II, Section 3(a)(vi)(M) to require boundaries and descriptions of all cultural, historic, and archaeological resources listed on or eligible for listing on the National Register of Historic places. Additionally the proposed rule would limit the display of this information at the county clerk's office where such resources occur on lands owned by the United States.

Counterpart Federal regulations at 30 CFR 773.13(d)(3), 779.12(b)(1), 779.24(i), 783.12(b)(1), and 783.24(i) require similar information on the nature and location of cultural, historical, and archaeological resources and at 30 CFR 773.13(d)(3)(iii), to maintain confidentiality as required under the Archaeological Resources Protection Act of 1979 (ARPA) (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470). Additionally 30 CFR 773.13(d)(3) requires the regulatory authority to "provide procedures, including notice and opportunity to be heard for persons seeking disclosure, to ensure confidentiality of qualified information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application". Wyoming's proposed rule does not provide similar requirements to those of 30 CFR 773.13(d)(3).

The Director finds that Wyoming's proposed LQD Rule Chapter II, Section 3(a)(vi)(M) is no less effective than the Federal regulations at 30 CFR 779.12(b)(1), 779.24(i), 783.12(b)(1), 783.24(i), and 773.13(d)(3)(iii) and is approving it. However Wyoming must further amend its regulations regarding procedures, including notice and opportunity to be heard for persons seeking disclosure, to ensure confidentiality of qualified information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application, as required by the Federal regulations 30 CFR 773.13(d)(3).

In its September 13, 1991, letter OSM noted that Wyoming had incorrectly cited reference to P.L. 96-95 as P.L. 96.85. On October 15, 1991, (Administrative Record No. WY-16-8) the State responded that the incorrectly cited reference will be changed to the correct cite, P.L. 96-95.

*4. LQD Rule Chapter IV, Section 3(b)(vii), Topsoil Substitutes*

Wyoming proposes language at LQD Rule Chapter IV, Section 3(b)(vii), governing topsoil substitutes, that is substantially the same as previously proposed revisions to LQD Rules at Chapter IV, Section 2(c)(iii)(A) and that OSM found in 1986 to be less effective than the Federal regulations at 30 CFR 816.22(b) and 817.22(b). At that time, OSM also imposed a required program amendment at 30 CFR 950.16(j) (see 51 FR 42211). In 1990, OSM approved LQD Rule Chapter IV, Section 3(b)(vii) addressing this required program amendment (see 55 FR 30224). Instead of promulgating the 1990 approved rule, Wyoming is now proposing new rule language at LQD Rule Chapter IV, Section 3(b)(vii) governing topsoil substitutes. This language provides:

If a sufficient volume of suitable topsoil or subsoil is not available for salvage or redistribution then selected overburden may be used as a topsoil substitute or supplement. The operator shall demonstrate by analyses or test plots that the resulting soil medium is of an equivalent or better suitability than the existing topsoil and will be the best available at the time of use.

As discussed in the 1990 final rule notice, Wyoming's approved LQD Rule at Chapter IV, Section 3(b)(vii) is as follows: "If sufficient volume of suitable topsoil or subsoil is not available for salvage or redistribution then selected overburden may be used as a topsoil substitute or supplement. The operator must demonstrate by analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and a real extent of the different kinds of soils that the resulting soil medium is of equivalent or better suitability than the existing topsoil or will be the best available at the time of use. For underground coal mining, Chapter VII, section 2 requires that underground coal mining operations comply with the surface coal mining performance standards of Chapter VI, section 3." Additionally the final rule notice approving this rule noted "* * * Wyoming stated that by meeting the established analytic parameters the best available will be used." (55 FR 30224, July 25, 1990).

On October 15, 1991 (Administrative Record No. WY-16-8) the State responded to OSM's issue letter of September 13, 1991, regarding the topsoil substitute issue (Administrative Record No. WY-16-7). Wyoming stated "this rule [the 1990 approved rule] was not adopted by the State because it made no sense to the technical staff. The Federal rule for topsoil substitutes requires the analysis of the same parameters as those used for soils. Topsoil substitutes are, by definition, not topsoil; therefore do not have the same characteristics as soil."

As previously discussed, the current proposed rule is substantially the same as that proposed in 1986 and found to be less effective than the Federal rules at 30 CFR 816.22(b) and 817.22(b). Also the 1990 approval of Wyoming's rule was partially based on Wyoming's statement that by meeting the established analytic

parameters the best available material will be used. As now proposed the LQD Rule at Chapter IV, Section 3(b)(vii) would remove the analytic parameter provisions which define the best available materials and that are counterpart to 30 CFR 780.18(b)(4) and 783.14(b)(4). Thus, the Director finds the proposed LQD Rule Chapter IV, Section 3(b)(vii) to be less effective than the Federal Regulations at 30 CFR 780.18(b)(4), 784.13(b)(4), 816.22(b), and 817.22(b). The Director is not approving this rule and is requiring Wyoming to amend its program to be no less effective than the cited Federal regulations.

*5. LOD Rule Chapter XI, Section 2(b)(iv), Information on Historical/ Archaeological Resources for Coal Exploration Permits*

Wyoming proposes to amend LQD Rule Chapter XI, Section 2(b)(iv) to require a description of historic or cultural features or resources listed or known to be eligible for listing on the National Register of Historic Places. This shall include a detailed description of all archaeological and historic resources located within the areas to be directly affected by the proposed exploration activities.

Counterpart Federal regulations at 30 CFR 772.12(b)(8) provide for the same requirements but additionally require a description of any other information which the regulatory authority may require on known and unknown historic or archaeological resources. In the preamble to the Federal regulations (52 FR 4256, February 10, 1987) OSM stated as the rationale for this description requirement that it was "making explicit that the regulatory authority has the discretion to require (information on unknown archaeological sites) should the regulatory authority need the information to make informed decisions in the public interest concerning important historic properties that may be disturbed by coal exploration activities".

The Director finds that Wyoming's proposed LQD Rule at Chapter XI, Section 2(b)(iv), is no less effective than the Federal regulations at 30 CFR 772.12(b)(8)(i–iii), and is approving it. However, the Director also finds that the proposed Wyoming rule lacks the 30 CFR 772.12(b)(8)(iv) requirement that "any other information which the regulatory authority may require on known and unknown historic or archaeological resources". Therefore Wyoming is required to further amend its regulations at LQD Rule Chapter XI, Section 2(b)(iv) to provide for this ability.

*6. LQD Rule Chapter XIII, Section 1(a)(iv), Required Finding on Historic Resources for Permit Approval*

Wyoming proposes to amend LQD Rule Chapter XIII, Section 1(a)(iv) to require specific findings on historic properties. Wyoming proposes that written findings be made for the effect of the proposed operation on properties eligible for listing on the National Register of Historic Places.

Counterpart Federal regulations at 30 CFR 773.15(c)(11) require findings for properties *listed on* and eligible for listing on the National Register of Historic Places (emphasis added).

The Director finds that Wyoming's proposed LQD Rule at Chapter XIII, Section 1(a)(iv), is less effective than the Federal regulations, to the extent that it does not include a finding for properties listed on the National Register of Historic Places and is not approving it. Wyoming is required to further amend its LQD Rule at Chapter XIII, Section 1(a)(iv) to include findings for properties listed on the National Register of Historic Places.

*7. LQD Rule Chapter XIII, Section 1(b)(iii), Coal Mine Permit Renewal Processing*

Wyoming proposes to amend LQD Rule Chapter XIII, Section 1(b) by adding language at (iii) that would require "If the Administrator determines that there is insufficient time within the 120 days to review the revised or updated information, he may renew the existing valid coal mining permit for another five year term and consider the revised or updated information submitted in the renewal application as a revision of the renewed permit, subject to the provisions of Chapter XIV".

The Federal regulations at 30 CFR 774.15 specify requirements for permit renewals. At 30 CFR 774.15(b)(4) is a provision that "if an application for renewal includes any proposed revisions to the permit, such revisions shall be *identified* and subject to the requirements of section 774.13" (emphasis added). The Federal regulations at 30 CFR 774.13 provide requirements for permit revisions.

The "revised or updated information" required for permit renewals by Wyoming's existing LQD Rule at Chapter XIII, Section 1(b)(i) would appear to be needed by the regulatory authority in order to make a decision on a renewal application but this information is not of the type intended to be processed as permit revisions under 30 CFR 774.13 pursuant to 30 CFR 774.15(b)(4). As written, Wyoming's proposed rule would allow information that is critical for evaluating the adequacy of a renewal application, whether or not it includes permit revisions, to remain unreviewed prior to the decision on the renewal application. Thus, there is no assurance that such application would be complete and accurate as required by the Federal regulations at 30 CFR 774.15(c)(1) (Criteria for approval).

Therefore, the Director finds that to the extent that Wyoming's proposed LQD Rule at Chapter XIII, Section 1(b)(iii) would allow the regulatory authority to approve a permit renewal application without first determining that the application is complete and accurate, the proposed amendment is less effective than the Federal rule at 30 CFR 774.15(c)(1). Accordingly, the Director is not approving this proposed amendment to the extent it could so be applied and is requiring that Wyoming either remove this provision or amend it and related rules to correct the deficiency discussed above. Nothing in this finding or the Director's decision shall be interpreted as prohibiting the State from separately processing, or requiring that the applicant separately submit, permit revision materials not essential to the evaluation of the permit renewal application.

*8. LQD Rule Chapter XIV, Section 1(b), Time Frame for Permit Revisions*

Wyoming proposes to amend LQD Rule Chapter XIV, Section 1(b) to provide that non-significant permit revisions shall be submitted in a format approved by the Administrator. If promptly filed, and unless notified by the Administrator to delay, the operator may initiate the proposed change within 72 hours of filing.

Wyoming's proposed LQD Rule at Chapter XIV, Section 1(b) is substantially the same as a previous rule it proposed and that OSM found to be less effective than the Federal regulations in a 1990, rulemaking action. As discussed in that final rule at Finding 19 OSM stated: "The September 28, 1983, preambles to the Federal regulations governing permit revisions made clear that all permit revisions, whether significant or not, must be based on written findings and subject to administrative and judicial review (48 FR 44344, 44376). 'Under the final rule, the regulatory authority will establish the guidelines for revisions. However, all revisions must be approved and incorporated into the permit since they are changes to the document' (Id. at 44376). The proposed State rule does not require 'written approval' of a proposed non-significant permit revision prior to

implementation nor does it require the findings specified in sections 511(a) of SMCRA and 30 CFR 774.13(c) of the Federal regulations." (55 FR 30233, July 25, 1990).

On this basis the Director finds that Wyoming's proposed LQD Rule at Chapter XIV, Section 1(b) is less effective than the Federal regulations at 30 CFR 774.13 and less stringent than section 511(a) of the Act and is not approving it. The Director is requiring Wyoming to remove the statement "[i]f promptly filed, and unless notified by the Administrator to delay, the operator may initiate the proposed change within 72 hours of filing" from this rule.

*9. LQD Rules Chapter II, Section 3(a)(vi)(E), Fish and Wildlife Resource Information*

Wyoming proposes to add new language to the LQD Rules at Chapter II, Section 3(a)(vi)(E) that would require "Studies of fish, wildlife, and their habitats, in the level of detail and for those areas as determined by the Administrator, after consultation with the Wyoming Game and Fish Department in accordance with the Memorandum of understanding between the two agencies; and Federal agencies having responsibilities for the management or conservation of such environmental values; including: (I) a list of species as specified in Section 2(a)(i)(E)(1) of this chapter within and adjacent to the permit area. The area of survey for the possible presence of threatened or endangered species shall be on or within (1) mile of the permit area." Section 2(a)(i)(E)(I) requires "The operator shall submit a list of indigenous vertebrate wildlife species in the permit area by common and scientific names. Special attention shall be paid to the possible presence of wildlife on or adjacent to the proposed permit area which are listed on the 'Threatened or Endangered Species list' ".

Federal regulations at 30 CFR 780.16(a) and 784.21(a) require "(a) Resource information. Each application shall include fish and wildlife information for the permit area and adjacent area." Also that the scope and level of detail for such information shall be determined by the regulatory authority in consultation with State and Federal agencies with responsibility for fish and wildlife.

Because the initial provisions of proposed LQD Rule Chapter II, Section 3(a)(vi)(E) requires studies for both fish and wildlife, OSM interprets the rule's subsequent reference to Section 2(a)(i)(E)(I) "indigenous vertebrate wildlife species" to include fish species. On this basis the Director finds the proposed rule to be no less effective than the Federal regulation requirement at 30 CFR 780.16(a) and 784.21(a) and is approving the change.

*10. LQD Rules Chapter II, Section 3(b)(xvi)(D), Disposal of Excess Spoil Stability Analysis*

Wyoming's current LQD Rule at Chapter II, Section 3(b)(xvi)(D) reads "A stability analysis including, but not limited to, strength parameters, pore pressures and long term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods. The stability analysis may be waived by the administrator if he determines, in writing, that the proposed spoil-pile design is so conservative relative to site conditions that risk of slope and foundation failure is remote." Wyoming proposes to delete the last sentence in the above passage. This deleted language was included in a Wyoming state program amendment not approved by OSM (July 25, 1990, 55 FR 30224). With this deletion, the LQD Rules at Chapter II, Section 3(b)(xvi)(D) will now be identical to the Federal regulations at 30 CFR 780.35(b)(5). The Director therefore finds the Wyoming rule to be no less effective than the Federal regulations and is approving the deletion.

## IV. Summary and Disposition of Comments

*Public Comments*

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

*Agency Comments*

Pursuant to Section 503(b) of SMCRA and implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Wyoming program. A summary of the comments and the Director's responses to them appear below:

1. The Bureau of Indian Affairs, U.S. Geological Survey, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, U.S. Department of Labor—Mine Safety and Health Administration, U.S.D.I.—Bureau of Reclamation and the Bureau of Land Management, responded with no comment (Administrative Record Nos. WY-16-3, WY-16-4, WY-16-5, WY-16-6, WY-16-13b, and WY-16-13c).

2. The U.S. Department of Agriculture—Farmers Home Administration responded by "we concur with the formal amendment to the Wyoming permanent program submitted for our review" (Administrative Record No. WY-16-3).

3. U.S. Department of Labor—Mine Safety and Health Administration—Coal Mine Safety and Health District 9 responded by "The proposed amendment to Wyoming's Surface Coal Mining Program (State Program Amendment IB) is acceptable and does not appear to conflict with any current MSHA regulations" (Administrative Record No. WY-16-6).

4. The U.S. Army Corps of Engineers responded by "Our review finds the revision satisfactory to our agency" (Administrative Record No. WY-16-3).

5. U.S. Department of Interior, Bureau of Land Management responded by "We have no objections to the implementation of these rule changes with the addition" (Administrative Record No. WY-16-13a).

*State Historic Preservation Office (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments*

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and ACHP for comment. No comments were received from the ACHP. The Wyoming Division of Parks and Cultural Resources—State Historic Preservation Office, responded favorably to the proposed amendments regarding cultural resources by "We believe the regulations provide adequate protection to cultural resources and have no objections to their implementation" (Administrative Record No. WY-16-3).

*Environmental Protection Agency Concurrence*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On April 23, 1992, the EPA concurred with Wyoming's proposed amendment. The EPA stated "EPA concurs with proposed amendment 1B with the understanding that all proposed revisions to the Program's Rules and Regulations will be implemented in

accordance with all applicable sections of the Wyoming Solid Waste Management Rules and with those State rules and regulations necessary to maintain water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) We believe Wyoming law currently contains such authority. We refer especially to Chapter 1, Section 1(c) of the Wyoming Solid Waste Management Rules, which require minimum standards to be met in order to '* * * carry out the policy and purpose of the Wyoming Environmental Quality Act, W.S. 35–11–102.' We interpret this to include:

Article 3, 35–11–301, of the Environmental Quality Act, which expressly prohibits any act which shall 'cause, threaten or allow the discharge of any pollution or wastes into the waters of the state; * * *';

Chapter IV, Section 5(v) of the Wyoming Solid Waste Management Rules states that '* * * [f]acilities shall be operated such that leachate is not allowed to enter any surface water, either on-site or off-site, unless authorized by a National Pollutant Discharge Elimination Systems (NPDES) permit pursuant to the Clean Water Act' and,

Chapter IV, Section 3(j)(i)(C) of State SMCRA Program Rules and Regulations, in which activities related to roads and other transportation facilities shall not result in exceedance of State or Federal law or degradation of the quality of receiving water."

EPA has concurred on this amendment with specific understandings and interpretations as noted above. OSM is approving in part and not approving in part, with required amendments, the proposed statute and rules. With regards to those portions of the Wyoming amendment that relate to solid waste disposal, Section 702(a) of SMCRA prohibits any of its provisions from being construed as superseding, amending, modifying or repealing the Solid Waste Disposal Act or its implementing regulations. OSM's findings as to the solid waste disposal portions of the Wyoming amendment do not rely upon EPA's concurrence regarding the Solid Waste Disposal Act but solely upon a comparison of such portions of the amendment with the coal and non-coal waste provisions of 30 CFR 816.81, 817.81, 816.89, and 817.89.

With regard to those portions of the Wyoming amendment that relate to water quality standards, OSM's approval is conditioned upon the State satisfying the understandings and interpretations upon which EPA's concurrence is based.

## V. Director's Decision

Based on the above findings, the Director approves Wyoming's proposed program amendment as submitted June 24, 1991, and October 15, 1991, with the exception of certain provisions and for reasons set forth in findings: 2b, concerning the removal of non-coal waste permitting and performance standards; 2c, concerning non-coal waste disposal standards for mine-mouth power plants and mine-mouth coal driers; 2d, concerning non-coal waste performance requirements; 4, concerning topsoil substitutes; 6, concerning findings for properties listed on the National Register of Historic Places; 7, concerning findings on permit renewals; and 8, concerning approval of permit revisions within specific time frames.

The Director is requiring the following program amendments at 30 CFR 950.16 as discussed in Findings: 2b, to require Wyoming to submit revisions to the LQD Rule at Chapter II, Section 3(a)(v)(A)(II), to either reinstate the removed cited reference "disposal of non-coal wastes shall be in accordance with the standards set out in Section 11, paragraph c., Solid Waste Management Rules and Regulations (1980)" or otherwise amend its program to render it no less effective than the Federal regulations at 30 CFR 816.89 and 817.89; 2c, to require Wyoming to submit revisions to the LQD Rules at Chapter II, Section 3(b)(xxii) and Chapter IV, Section 3(c)(iii)(D), to include specific performance standards for non-coal waste disposal that are no less effective than the Federal regulations at 30 CFR 816.89 and 817.89; 2d, to require Wyoming to submit revisions to the LQD Rules at Chapter II, Section 2(b)(iii)(I); Chapter II, Section 3(b)(xxi); Chapter IV, Section 2(c)(v); and Chapter IV, Section 2(c)(iii)(C), to provide standards that are no less effective than the Federal regulations requirements at 30 CFR 816.89 and 817.89; 3, to require Wyoming to further amend LQD Rules at Chapter II, Section 3(a)(vi)(M), regarding procedures, including notice and opportunity to be heard for persons seeking disclosure, to ensure confidentiality of qualified information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application to be no less effective than the Federal regulations 30 CFR 773.13(d)(3); 4, to require Wyoming to submit revisions to the LQD Rules at Chapter IV, Section 3(b)(vii), or otherwise amend its program to be no less effective than the Federal regulations at 30 CFR 780.18(b)(4), 784.13(b)(4), 816.22(b) and 817.22(b); 5, to require Wyoming to further amend LQD Rules at Chapter XI, Section 2(b)(iv), to include the Federal requirement that "any other information which the regulatory authority may require on known and unknown historic or archaeological resources" to be no less effective than the Federal regulation requirements at 30 CFR 772.12(b)(8)(iv); 6, to require Wyoming to submit revisions to the LQD Rules at Chapter XIII, Section 1(a)(iv), to include findings for properties listed on and eligible for listing on the National Register of Historic Places; 7, to require Wyoming to submit revisions to the LQD Rules at Chapter XIII, Section 1(b), to remove the provisions at (iii) or amend its rules to be no less effective than the Federal regulation requirements at 30 CFR 774.15; 8, to require Wyoming to submit revisions to the LQD Rules at Chapter XIV, Section 1(b) to remove the statement "[i]f promptly filed, and unless notified by the Administrator to delay, the operator may initiate the proposed change within 72 hours of filing" from its rule.

In addition the Director is removing previous program disapprovals as codified at 30 CFR 950.12(a)(2) for reasons discussed in Finding 9, and at 30 CFR 950.12 (a)(5) for reasons discussed in Finding 10.

The Federal regulations at 30 CFR part 950 codifying decisions concerning the Wyoming program are being amended to implement this decision. The Director is approving these regulations with the provision that they will be fully promulgated in a form identical to that submitted to and reviewed by OSM. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the

Wyoming program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Wyoming of only such provisions.

## VII. Procedural Determinations

*Compliance With Executive Order 12291*

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

*Compliance With Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

*Compliance With the National Environmental Policy Act*

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

*Paperwork Reduction Act*

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

*Compliance With the Regulatory Flexibility Act*

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

**List of Subjects in 30 CFR Part 950**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 10, 1992.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

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

## PART 950—WYOMING

1. The authority citation for part 950 continues to read a follows:

**Authority:** Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

**§ 950.12 [Amended]**

2. Section 950.12 is amended by removing and reserving (a)(2) and (a)(5).

3. Section 950.15 is amended by adding paragraph (n) to read as follows:

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

* * * * *

(n) With the exceptions of LQD Rules at Chapter II, Section 3(a)(v)(A)(II), concerning the removal of non-coal waste permitting and performance standards; Chapter II, Section 3(b)(xxii), concerning non-coal waste disposal standards for mine-mouth power plants and mine-mouth coal driers; Chapter IV, Section 3(c)(iii)(D), concerning non-coal waste disposal performance standards for mine-mouth power plants and mine-mouth coal driers; Chapter II, Section 2(b)(iii)(I), concerning non-coal waste performance requirements; Chapter II, Section 3(b)(xxi), concerning non-coal waste performance requirements; Chapter IV, Section 2(c)(v), concerning non-coal waste performance standards; Chapter IV, Section 3(c)(iii)(C), concerning non-coal waste performance standards; Chapter IV, Section 3(b)(vii), concerning topsoil substitutes; Chapter XIII, Section 1(a)(iv), concerning findings for properties listed on the National Register of Historic Places; Chapter XIII, Section 1(b)(iii), concerning findings on permit renewals; and Chapter XIV, Section 1(b), concerning approval of permit revisions within specific time frames; the following provisions of the laws, rules and regulations of the Wyoming Department of Environmental Quality—Land Quality Division, as submitted on June 24, 1991, and as modified and clarified on October 15, 1991, are approved effective October 29, 1992: W.S. 35–11–103(d)(ii)(D), solid waste management; Chapter I, Section 2(br), definition of public building; Chapter I, Section 2(ba), definition of joint agency approval; Chapter I, Section 3(b)(i), elimination of the two acre exemption; Chapter II, Section 3(a)(vi)(E), fish and wildlife resource information outside the permit area; Chapter II, Section 3(a)(vi)(M), concerning confidentially of information; Chapter II, Section 3(b)(xvi)(D), stability analysis waiver; Chapter II, Section 3(b)(xx), cultural resources management plan; Chapter II, Section 3(b)(v)(C) and Chapter IV, Section 3(d)(vii), revegetation monitoring; Chapter IV, Section 3(e)(i)(H), conditions for removal of diversions; Chapter XI, Section 2(b)(iv), concerning information on historic and archaeological resources; Chapter XII, Section 1(a), definition of self-bond; Chapter XIII, Section 1(a)(v)(A), wild and scenic river study corridors; Chapter XXI, Section 3(b)(vii) and Chapter XXI, Section 3(b)(x), area water rights reporting for in-situ mines.

4. In § 950.16, paragraphs (r), (s), (t), (u), (v), (w), (x), (y), and (z) are added to read as follows:

**§ 950.16 Required program amendments.**

* * * * *

(r) By December 28, 1992, Wyoming shall submit revisions to the LQD Rule at Chapter II, Section 3(a)(v)(A)(II), to either reinstate the removed cited reference "disposal of non-coal wastes shall be in accordance with the standards set out in Section 11, paragraph c., Solid Waste Management Rules and Regulations (1980)" or otherwise amend its program to render it no less effective than the Federal regulations at 30 CFR 816.89 and 817.89.

(s) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter II, Section 3(b)(xxii) and Chapter IV, Section 3(c)(iii)(D), to include specific performance standards for non-coal waste disposal that are no less effective than the Federal regulations at 30 CFR 816.89 and 817.89.

(t) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter II, Section 2(b)(iii)(I); Chapter II, Section 3(b)(xxi); Chapter IV, Section 2(c)(v); and Chapter IV, Section 3(c)(iii)(C), to provide standards for non-coal waste disposal that are no less effective than the Federal regulation requirements at 30 CFR 816.89 and 817.89.

(u) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter II, Section 3(a)(vi)(M), to amend its regulations regarding procedures, including notice and opportunity to be heard for persons seeking disclosure, to ensure confidentiality of qualified information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application, to be no less effective than the Federal regulations 30 CFR 773.13(d)(3).

(v) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter IV, Section 3(b)(vii), concerning topsoil substitutes, to be no less effective than the Federal regulations at 30 CFR 780.18(b)(4), 784.13(b)(4), 816.22(b) and 817.22(b).

(w) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter XI, Section 2(b)(iv), to further amend its rule to include the requirement "any other information which the regulatory authority may require on known and unknown historic or archaeological resources", to be no less effective than the Federal regulation requirements at 30 CFR 772.12(b)(8)(iv).

(x) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter XIII, Section 1(a)(iv), to include findings for properties listed on the National Register of Historic Places, to be no less effective than the Federal regulation requirements at 30 CFR 773.15(c)(11).

(y) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter XIII, Section 1(b), concerning permit renewals, to remove the provisions at (iii) or amend it and related rules to be no less effective than the Federal rule requirements at 30 CFR 774.15(c)(1).

(z) By December 28, 1992, Wyoming shall submit revisions to the LQD Rules at Chapter XIV, Section 1(b) to remove the statement "[i]f promptly filed, and unless notified by the Administrator to delay, the operator may initiate the proposed change within 72 hours of filing" in this rule.

[FR Doc. 92-26281 Filed 10-28-92; 8:45 am]
BILLING CODE 4310-05-M

## DEPARTMENT OF DEFENSE

### Defense Contract Audit Agency

### 32 CFR Part 317

**[DCAA Regulation 5410.10 and DCAA Manual 5410.16]**

### Defense Contract Audit Agency Privacy Act Program

**AGENCY:** Defense Contract Audit Agency, DoD.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the Defense Contract Audit Agency (DCAA) Privacy Act Program that implements the Privacy Act of 1974 (5 U.S.C. 552a), as amended, within DCAA.

**EFFECTIVE DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dave Henshall at (703) 274-4400 or DSN 284-4400.

**SUPPLEMENTARY INFORMATION:**

On September 3, 1992, at 57 FR 40397, DCAA published proposed rule revising 32 CFR part 317. No comments were received during the thirty day public comment period, therefore, the rule is being adopted. **Executive Order 12291.** The Director of Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation. **Regulatory Flexibility Act of 1980.** The Director of Administration and Management, Office of the Secretary of Defense certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense. **Paperwork Reduction Act.** The Director of Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

### List of Subjects in 32 CFR Part 317

Privacy.

Accordingly, 32 CFR part 317 is revised to read as follows:

## PART 317-DEFENSE CONTRACT AUDIT AGENCY PRIVACY ACT PROGRAM

### Subpart A-General Provisions

Sec.
317.1 Purpose.
317.2 Applicability and scope.
317.3 Definitions.
317.4 Policy.
317.5 Responsibilities.
317.6 Procedures.

### Subpart B-Systems of Records

317.10 General.
317.11 Federal Government contractors.
317.12 Safeguarding information in systems of records.

### Subpart C-Collecting Information About Individuals

317.20 General considerations.
317.21 Forms.

### Subpart D-Access to Records

317.30 Individual access to records.
317.31 Reproduction fees.
317.32 Denying individual access.
317.33 Privacy Act case files.

### Subpart E-Amendment of Records

317.40 Individual review and amendment.
317.41 Amending records.
317.42 Burden of proof.
317.43 Verifying identity.
317.44 Limits on amending judicial and quasi-judicial evidence and findings.
317.45 Standards for amendment request determinations.
317.46 Time limits.
317.47 Granting an amendment request in whole or in part.
317.48 Denying an amendment request in whole or in part.
317.49 Appeal procedures.
317.50 Requests for amending OPM records.
317.51 Individual's statement of disagreement.
317.52 Agency's statement of reasons.

### Subpart F-Disclosure of Records

317.60 Conditions of disclosure.
317.61 Non-consensual disclosures.
317.62 Disclosures to commercial enterprises.
317.63 Disclosing health care records to the public.
317.64 Accounting for disclosures.

**Subpart G–Publication Requirements**

317.70 Federal Register publication.
317.71 Exemption rules.
317.72 System of records notices.
317.73 New and altered record systems.
317.74 Amendment and deletion of system notices.

**Subpart H–Training Requirements**

317.80 Statutory training requirements.
317.81 DCAA training programs.

**Subpart I–Computer Matching Program Procedures**

317.90 General.
317.91 Federal personnel or payroll record matches.
317.92 Federal benefit matches.
317.93 Matching program exclusions.
317.94 Conducting matching programs.
317.95 Providing due process to matching subjects.
317.96 Matching program agreement.
317.97 Cost-benefit analysis.
317.98 Appeals of denials of matching agreements.
317.99 Proposals for matching programs.

**Subpart J–Enforcement Actions**

317.110 Administrative remedies.
317.111 Civil court actions.
317.112 Criminal penalties.
317.113 Litigation status report.
317.114 Annual review of enforcement actions.

**Subpart K–Reports**

317.120 Report requirements.
317.121 Reports.

**Subpart L–Agency Exemption Rules**

317.130 Establishing and using exemptions.
317.131 General exemptions.
317.132 Specific exemptions.
317.133 DCAA exempt record systems.

Appendix A to part 317–DCAA Blanket Routine Uses
Appendix B to part 317–Provisions of the Privacy Act from which a General or Specific Exemption may be claimed
Appendix C to part 317–Litigation Status Report

**Authority:** Privacy Act of 1974, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

## Subpart A–General Provisions

### § 317.1 Purpose.

(a) This part consolidates into a single document, the Defense Contract Audit Agency policies and procedures for implementing the Privacy Act of 1974 (5 U.S.C. 552a), as amended, by authorizing the development, publication and maintenance of the DCAA Privacy Act Program set forth by DCAA Regulation 5410.10 [1], "Privacy Act Program", and DCAA Manual 5410.16 [2], "DCAA Privacy Act Processing Guide."

(b) Its purpose is to delegate authorities and assign responsibilities for the administration of the DCAA Privacy Act Program and to prescribe uniform procedures for agency personnel consistent with DoD 5025.1–M [3], "DoD Directives System Procedures."

### § 317.2 Applicability and scope.

(a) This part applies to all DCAA organizational elements and takes precedence over all regional regulatory issuances that supplement the DCAA Privacy Program.

(b) This part shall be made applicable by contract or other legally binding action to contractors whenever a DCAA contract provides for the operation of a system of records or portion of a system of records to accomplish an agency function.

### § 317.3 Definitions.

(a) *Access.* The review of a record or a copy of a record or parts thereof in a system of records by any individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act among DoD components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and recordkeeping as regards release to non-DoD agencies; each DoD component, including DCAA, is considered an agency within the meaning of the Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government under an express promise that the person's or the organization's authority will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

(d) *Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as established pursuant to 32 CFR part 310, and in addition the Inspector General, DoD or the designee, when convening to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal benefit program.* Any program administered or funded by the Federal Government, or by any agent or state on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals.

(g) *Federal benefit program match.* A computerized comparison of two or more automated systems of records or an automated system of records with automated non-Federal records for the purpose of establishing or verifying the eligibility of or continuing compliance with statutory and regulatory requirements by, applicants for, recipients and beneficiaries (both present and past) of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs; or recouping payments or delinquent debts under such Federal benefit programs.

(h) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the reserve components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(i) *Federal personnel match.* A computerized comparison of two or more automated Federal personnel or payroll systems of records or an automated Federal personnel or payroll system of records with automated non-Federal records.

(j) *Individual.* A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a dead person under this chapter and the term "individual" does not embrace an individual acting in an interpersonal capacity (for example, sole proprietorship or partnership).

(k) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(l) *Maintain.* Includes maintain, collect, use, or disseminate.

[1] Copies may be obtained, at cost, from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station, Alexandria, VA 22304–6178.

[2] See footnote 1 to § 317.1(a).

[3] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(m) *Matching agency.* The agency which actually performs the match.

(n) *Matching program.*(1) The term means any computerized comparison of:

(i) Two or more automated systems of records or a system of records with non-Federal records for the purpose of:

(A) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(B) Recouping payments or delinquent debts under such Federal benefit programs, or

(ii) Two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(iii) But does not include:

(A) Matches performed to produce aggregate statistical data without any personal identifiers.

(B) Matches performed to support any research for statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals.

(C) Matches performed by an agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons.

(iv) Matches of tax information.

(A) Pursuant to section 6103(d) of the Internal Revenue Code of 1986.

(B) For purposes of tax administration as defined in section 6301(b)(4) of such Code.

(C) For the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or

(D) For the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act.

(E) Matches.

*(1)* Using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v) of the Privacy Act).

*(2)* Conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(F) Matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel.

(o) *Member of the public.* Any individual or party acting in a private capacity to include Federal employees or military personnel.

(p) *Non-Federal agency.* Any state or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program.

(q) *Official use.* Within the context of this chapter, this term is used when officials and employees of the Agency have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DCAA Regulation 5410.10.

(r) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(s) *Privacy Act.* The Privacy Act of 1974 (5 U.S.C. 552a), as amended.

(t) *Privacy Act request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records. The request must indicate that it is being made under the Privacy Act to be considered a Privacy Act request.

(u) *Recipient agency.* Any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program.

(v) *Record.* Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(w) *Risk assessment.* An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity. Applies to manual and automated systems.

(x) *Routine use.* The disclosure of a record outside the Agency for a use that is compatible with the purpose for which the information was collected and maintained by the Agency. The routine use must be included in the published system notice for the system of records involved.

(y) *Source agency.* Any agency which discloses records contained in a system of records to be used in a matching program, or any state or local government, or agency thereof, which discloses records to be used in a matching program.

(z) *Statistical record.* A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

(aa) *System of records.* A group of records under the control of the Agency from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register**.

(bb) *Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (programmable software, hard wiring, or similar equipment) that permits the processing of textual data.

(cc) *Word processing system.* A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator.

**§ 317.4 Policy.**

It is DCAA policy that personnel will comply with the DCAA Privacy Program and the Privacy Act of 1974. Strict adherence is necessary to ensure uniformity in the implementation of the DCAA Privacy Program and create conditions that will foster public trust. It is also agency policy to safeguard personal information contained in any system of records maintained by DCAA organizational elements and to make that information available to the

individual to whom it pertains to the maximum extent practicable. DCAA policy specifically requires that DCAA organizational elements:

(a) Collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

(b) Collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

(c) Inform individuals who are asked to supply personal information for inclusion in any system of records:

(1) The authority for the solicitation.

(2) Whether furnishing the information is mandatory or voluntary.

(3) The intended uses of the information.

(4) The routine disclosures of the information that may be made outside of Department of Defense; and

(5) The effect on the individual of not providing all or any part of the requested information.

(d) Ensure that records used in making determinations about individuals and those containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside of Department of Defense, other than a Federal agency, unless the disclosure is made under DCAA Regulation 5410.10, DCAA Freedom of Information Act Program (32 CFR part 290).

(e) Keep no record that describes how individuals exercise their rights guaranteed by the First Amendment to the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertain or is pertinent to and within the scope of an authorized law enforcement activity.

(f) Notify individuals whenever records pertaining to them are made available under compulsory legal processes, if such process is a matter of public record.

(g) Establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

(h) Establish rules of conduct for DCAA personnel involved in the design, development, operation, or maintenance of any system of records and train them in these rules of conduct.

(i) Assist individuals in determining what records pertaining to them are being collected, maintained, used, or disseminated.

(j) Permit individual access to the information pertaining to them maintained in any system of records, and to correct or amend that information, unless an exemption for the system has been properly established for an important public purpose.

(k) Provide, on request, an accounting of all disclosures of the information pertaining to them except when disclosures are made:

(1) To DoD personnel in the course of their official duties.

(2) Under 32 CFR part 290; and

(3) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States conducting law enforcement activities authorized by law.

(l) Advise individuals on their rights to appeal any refusal to grant access to or amend any record pertaining to them, and file a statement of disagreement with the record in the event amendment is refused.

**§ 317.5 Responsibilities.**

(a) *Headquarters.* (1) The *Assistant Director, Resources* has overall responsibility for the DCAA Privacy Act Program and will serve as the sole appellate authority for appeals to decisions of respective initial denial authorities. Under his direction, the *Chief, Information Resources Management Branch*, under the supervision of the *Chief, Administrative Management Division* shall:

(i) Establish, issue, and update policies for the DCAA Privacy Act Program; monitor compliance with this part; and provide policy guidance for the DCAA Privacy Act Program.

(ii) Resolve conflicts that may arise regarding implementation of DCAA Privacy Act policy.

(iii) Designate an agency Privacy Act Advisor, as a single point of contact, to coordinate on matters concerning Privacy Act policy.

(iv) Make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(2) The *DCAA Privacy Act Advisor* under the supervision of the Chief, Information Resources Management Branch shall:

(i) Manage the DCAA Privacy Act Program in accordance with this part and applicable DCAA policies, as well as Department of Defense and Federal regulations.

(ii) Provide guidelines for managing, administering, and implementing the DCAA Privacy Act Program.

(iii) Implement and administer the Privacy Act program at the Headquarters.

(iv) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(v) Maintain and publish DCAA Pamphlet 5410.13 [4], "DCAA Compilation of Privacy Act System Notices"; DCAA Pamphlet 5410.15 [5], "Privacy Act of 1974, An Employee Guide to Privacy"; and DCAA Manual 5410.16, "DCAA Privacy Act Processing Guide."

(vi) Prepare promptly any required new, amended, or altered system notices for systems of records subject to the Privacy Act and submit them to the Defense Privacy Office for subsequent publication in the **Federal Register**.

(vii) Prepare the annual Privacy Act Report as required by 32 CFR part 310, "DoD Privacy Act Program."

(viii) Conduct training on the Privacy Act program for agency personnel.

(3) *Heads of Principal Staff Elements* are responsible for:

(i) Reviewing all regulations or other policy and guidance issuances for which they are the proponent to ensure consistency with the provisions of this part.

(ii) Ensuring that the provisions of this part are followed in processing requests for records.

(iii) Forwarding to the DCAA Privacy Act Advisor, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(iv) Ensuring the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(v) Providing recommendations to the DCAA Privacy Act Advisor regarding the releasability of DCAA records to members of the public, along with the responsive documents.

(vi) Providing the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the DCAA Privacy Act Advisor. Those portions to be excised should be

[4] See footnote 1 to § 317.1(a).

[5] See footnote 1 to § 317.1(a).

bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(4) The *General Counsel* is responsible for:

(i) Ensuring uniformity is maintained in the legal position, and the interpretation of the Privacy Act (32 CFR part 310), and this part.

(ii) Consulting with General Counsel, Department of Defense on final denials that are inconsistent with decisions of other DoD components, involve issues not previously resolved, or raise new or significant legal issues of potential significance to other Government agencies.

(iii) Providing advice and assistance to the Assistant Director, Resources; Regional Directors; and the Regional Privacy Act Officer, through the DCAA Privacy Act Advisor, as required, in the discharge of their responsibilities.

(iv) Coordinating Privacy Act litigation with the Department of Justice.

(v) Coordinating on Headquarters denials of initial requests.

(5) Each *Regional Director* is responsible for the overall management of the Privacy Act program within their respective regions. Under his/her direction, the *Regional Resources Manager* is responsible for the management and staff supervision of the program and for designating a *Regional Privacy Act Officer.*

(i) *Regional Directors* will, as designee of the Director, make the initial determination to deny an individual's written Privacy Act request for access to or amendment of documents filed in Privacy Act systems of records. This authority cannot be delegated.

(ii) *Regional Privacy Act Officers* will:

(A) Implement and administer the Privacy Act program throughout the region.

(B) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(C) Prepare input for the annual Privacy Act Report as shown in DCAA Manual 5410.16 when requested by the DCAA Information and Privacy Advisor.

(D) Conduct training on the Privacy Act program for regional and FAO personnel.

(E) Provide recommendations to the Regional Director through the Regional Resources Manager regarding the releasability of DCAA records to members of the public.

(6) *Managers, Field Audit Offices (FAOs)* will:

(i) Ensure that the provisions of this part are followed in processing requests for records.

(ii) Forward to the Regional Privacy Act Officer, any Privacy Act requests received directly from a member of the public, so that the request may be administratively controlled and processed.

(iii) Ensure the prompt review of all Privacy Act requests, and when required, coordinating those requests with other organizational elements.

(iv) Provide recommendations to the Regional Privacy Act Officer regarding the releasibility of DCAA records to members of the public, along with the responsive documents.

(v) Provide the appropriate documents, along with a written justification for any denial, in whole or in part, of a request for records to the Regional Privacy Act Officer. Those portions to be excised should be bracketed in red pencil, and the specific exemption or exemptions cited which provide the basis for denying the requested records.

(7) *DCAA Employees* will:

(i) Not disclose any personal information contained in any system of records, except as authorized by this part.

(ii) Not maintain any official files which are retrieved by name or other personal identifier without first ensuring that a notice for the system has been published in the **Federal Register**.

(iii) Report any disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized by this part to the appropriate Privacy Act officials for their action.

### § 317.6 Procedures.

Procedures for processing material in accordance with the Privacy Act of 1974 are outlined in subparts B through L of this part.

## Subpart B–Systems of Records

### § 317.10 General

(a) *System of records.* To be subject to this part, a "system of records" must:

(1) Consist of "records" that are retrieved by the name or some other personal identifier of an individual, and

(2) Be under the control of the Agency.

(b) *Retrieval practices.* (1) Records in a group of records that could be retrieved by personal identifiers, but are not covered by this part, even if the records contain information about individuals and are under the control of the agency. The records must, in fact, be retrieved by personal identifiers in order to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system of records is created and a notice of the system must be published in the **Federal Register** of its existence.

(3) If records in a system of records are rearranged so retrieval no longer is by personal identifiers, the records are no longer subject to this part and the records system notice shall be deleted.

(c) *Recordkeeping standards.* A record maintained in a system of records must meet the following criteria:

(1) The record must be accurate--all information in the record must be factually correct.

(2) The record must be relevant--all information contained in the record must be related to the individual who is the subject of record and also must be related to a lawful purpose or mission of the agency.

(3) The record must be timely--all information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) The record must be complete--it must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) The record must be necessary--all information in the record must be needed to accomplish the agency mission or purpose established by Federal law or Executive Order of the President.

(d) *Authority to establish systems of records.* The specific Federal statute or Executive Order of the President should be identified that authorizes maintaining each system of records. A statute or Executive Order authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(e) *Exercise of first amendment rights.* (1) Records should not be maintained describing how an individual exercises rights guaranteed by the first amendment of the U.S. Constitution unless:

(i) Expressly authorized by Federal law;

(ii) Expressly authorized by the individual; or

(iii) Pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(f) *System manager's evaluations and reviews.* (1) Each new proposed system of records shall be evaluated.

(i) The information to be included in the system should be evaluated before establishing it.

(ii) The following factors should be considered:

(A) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained. All information must be relevant to the purpose.

(B) The specific impact on the purpose or mission if each category of information is not collected. All information must be necessary to accomplish a lawful purpose or mission.

(C) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?).

(D) The length of time each item of information must be kept.

(E) The methods of disposal; and

(F) The cost of maintaining the information.

(2) All existing systems of records shall be evaluated and reviewed.

(i) When an alteration or amendment of an existing system is prepared, an evaluation must be performed.

(ii) Reviews should be conducted often and reports prepared which outline the results and corrective actions taken to resolve problems uncovered.

(A) Training practices should be reviewed annually to ensure all personnel are familiar with the requirements of the Privacy Act and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices should be reviewed annually to ensure compliance with this part.

(C) Each ongoing computer matching program in which records from the system have been matched with non-DoD records should be reviewed annually to ensure that the applicable requirements have been met.

(D) Actions of agency personnel that resulted in either the agency being found civilly liable or an employee being found criminally liable should be reviewed annually to determine the extent of the problem and find the most effective way of preventing the problem in the future.

(E) Each system of records notice should be reviewed annually to ensure it accurately describes the system. Where minor changes are needed, amend the system notice. If major changes are needed, alter the system notice.

(F) A random sample of agency contracts that provide for the operation of a system of records on behalf of the agency to accomplish an agency function should be reviewed every even-numbered year to ensure the wording of each contract complies with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(G) The routine use disclosures associated with each system of records should be reviewed every three years to ensure the recipient's use of the records continues to be compatible with the purpose for which the agency originally collected the information.

(H) Each system of records for which exemption rules have been established should be reviewed every three years to determine whether each exemption is still needed.

(iii) When directed, the reports should be sent through proper channels to the agency Privacy Act Advisor who will forward them to the Defense Privacy Office.

(g) *Discontinued information requirements.* (1) Any category or item of information about individuals that is no longer justified should not be collected, and when feasible, the information should be removed from existing records.

(2) Records that must be kept in accordance with retention and disposal needs established under DCAA Manual 5015.1 [6], "Files and Disposition Manual," shall not be destroyed.

(h) *Review records before disclosing them outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, reasonable steps should be taken to ensure the record to be disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

**§ 317.11 Federal government contractors.**

(a) *Applicability to Federal government contractors.* (1) When the agency contracts for the operation of a system of records or portion thereof to accomplish an agency function, this part and 5 U.S.C. 552a are applicable. For purposes of the criminal penalties, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(2) Consistent with Parts 24 and 52 of the Federal Acquisition Regulation [7], contracts for the operation of a system of records or portion thereof shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract such terms specifically prescribed by the FAR.

(3) If the contractor must use records that are subject to this part to perform any part of a contract, and the information would have been collected and maintained by the agency but for the contract, the contractor activities are subject to this rule.

(4) This rule does not apply to records of a contractor that are:

(i) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract; or

(ii) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the agency.

(iii) For contracting that is subject to this part, the agency shall:

(A) Inform prospective contractors of their responsibilities under the DCAA Privacy Program.

(B) Establish an internal system for reviewing contractor performance to ensure compliance with the DCAA Privacy Program; and

(C) Provide for the biennial review of a random sampling of agency contracts that are subject to this rule.

(b) *Contracting procedures.* The Defense Acquisition Regulatory Council is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts.

(c) *Contractor compliance.* The agency shall establish contract surveillance programs to ensure contractors comply with the procedures established by the Defense Acquisition Regulatory Council pursuant to the preceding subsection.

(d) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a contract for the agency is considered a disclosure within the agency. The contractor is considered the agent of DCAA when receiving and maintaining the records for the agency.

**§ 317.12 Safeguarding information in systems of records.**

(a) *General responsibilities.* Appropriate administrative, technical, and physical safeguards shall be established to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. The records

[6] See footnote 1 to § 317.1(a).

[7] For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

shall be protected from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) *Minimum standards.* (1) Risk analysis and management planning shall be conducted for each system of records. Sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards should be considered. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) All personnel operating a system of records or using records from a system of records should be trained in proper record security procedures.

(3) Information exempt from disclosure under DCAA Freedom of Information Act Program (32 CFR part 290), shall be labeled to reflect its sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other language that alerts individuals to the sensitivity of the records.

(4) Special administrative, physical, and technical safeguards shall be employed to protect records stored or processed in an automated data processing or word processing system from threats unique to those environments.

(c) *Records disposal.* (1) Records from systems of records should be disposed of to prevent inadvertent disclosure. Disposal methods such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation are considered adequate if the records are rendered unrecognizable or beyond reconstruction. Magnetic media may be cleared by degaussing, overwriting, or completely erasing.

(2) The transfer of large volumes of records (e.g., computer cards and printouts) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records under this rule if volume of the records, coding of the information, or some other factor renders it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernible, dispose of the records in accordance with paragraph (c)(1) of this section.

## Subpart C–Collecting Information About Individuals

### § 317.20 General considerations.

(a) *Collect directly from the individual.* To the greatest extent practicable, information should be collected for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under Federal programs.

(b) *Soliciting the Social Security number.* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide the Social Security Number (SSN). However, this prohibition does not apply if:

(i) A Federal law requires that the SSN be provided, or

(ii) The SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual shall be told:

(i) Whether providing the SSN is voluntary or mandatory,

(ii) By what law or other authority the SSN is solicited, and

(iii) What uses will be made of the SSN.

(3) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. Executive Order 9397 permits Federal agencies to solicit SSNs as numerical identifiers for individuals in Federal records systems.

(4) Upon entrance into employment with the agency, individuals must provide their SSNs; therefore, they must be given the notification. The SSN is then the individual's numerical identifier and used to establish personnel, financial, medical, and other official records. After the individual has provided the SSN to establish the records, the notification is not required when the SSN is requested only for verification or to locate the records.

(5) The Federal Personnel Manual should be consulted when soliciting SSNs for use in systems of records controlled by the Office of Personnel Management.

(c) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about the individual directly from the individual, such as when:

(1) Verifying information through other sources for security or employment suitability determinations.

(2) Seeking other opinions, such as a supervisor's comments on past performance or other evaluations.

(3) Obtaining the necessary information directly from the individual will be exceptionally difficult or will result in unreasonable costs or delays; or

(4) The individual requests or consents to contacting another person to obtain the information.

(d) *Privacy Act statement.* (1) When an individual is requested to furnish information about himself or herself for a system of records, a Privacy Act statement must be provided to the individual, regardless of the method used to collect the information (forms, personal interviews, telephonic interviews, etc.). If the information requested will not be included in a system of records, a Privacy Act statement is not required.

(2) The Privacy Act statement shall include the following:

(i) The Federal law or Executive Order of the President that authorizes collecting the information.

(ii) Whether it is voluntary or mandatory for the individual to provide the requested information.

(iii) The principal purposes for which the information will be used.

(iv) The routine uses that will be made of the information (to whom and why it will be disclosed outside the Department of Defense); and

(v) The effects, if any, on the individual if all or part of the information is not provided.

(3) The Privacy Act statement must appear on the form used to collect the information or on a separate form that can be retained by the individual requesting it. If the information is collected other than by the individual completing a form, such as when the information is solicited by telephone, the Privacy Act statement should be read to the individual and a copy sent to him or her on request.

(4) It is mandatory for an individual to furnish information about himself or herself for a system of records only

when a Federal law or Executive Order of the President specifically imposes a duty to furnish the information and provides a penalty, e.g., criminal sanctions, for failure to do so. If furnishing the information is only a condition for granting a benefit or privilege voluntarily sought by the individual (such as a request for annual leave), it is voluntary for the individual to give the information. However, the denial of the benefit or privilege must be listed in the Privacy Act statement as one of the effects of not providing the information, i.e., the effects on the individual if the information is not provided.

**§ 317.21 Forms.**

(a) *DCAA forms.* (1) DCAA Regulation 5015.3 [8], "DCAA Forms Management Program," provides guidance for preparing the Privacy Act statement for use with DCAA forms.

(2) When forms are used to collect information about individuals for a system of records, the Privacy Act statement shall appear as follows (listed in the order of preference):

(i) Immediately below the title of the form.

(ii) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act statement).

(iii) On the back of the form with a notation of its location below the title of the form, or

(iv) On a separate form which the individual may keep.

(b) *Non-DCAA forms.* Forms subject to 5 U.S.C. 552a issued by other DoD components or Federal agencies might contain a Privacy Act statement; however, the statement might not reflect accurately the authority, purposes, and routine uses applicable within the agency. If so, the activity using the form shall prepare a statement or supplement to the one provided with the form.

## Subpart D-Access to Records

**§ 317.30 Individual access to records.**

(a) *Right of access* (1) The access provisions of this part are for individuals who are subjects of records maintained in DCAA systems of records.

(2) All information that can be released consistent with applicable laws and regulations should be made available to the subject of record.

(b) *Notification of record's existence.* Record managers of system of records shall establish procedures for notifying an individual, in response to a request, if the system of records contains a record pertaining to him or her.

(c) *Individual requests for access.* (1) Individuals shall address requests for access to records in systems of records to the responsible system manager or the regional Privacy Act officer.

(2) Requests for access may be oral or written; however, only written requests are to be maintained in the Privacy Act case file and counted when compiling the annual Privacy Act report.

(d) *Verifying identity.* (1) An individual shall provide reasonable verification of identity before obtaining access to records.

(2) Procedures for verifying identity shall not be complicated merely to discourage individuals from seeking access to records.

(3) When an individual seeks access in person, identification can be verified by documents normally carried by the individual, such as an identification card, driver's license, or other license, permit or pass normally used for identification purposes.

(4) When access is requested other than in person, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required.

(5) The individual may be accompanied by a person of his or her choice when viewing the record; however, the individual may be required to provide written authorization to have the record discussed in front of the other person.

(6) An individual shall not be denied access to a record solely for refusing to divulge the SSN, unless it is the only means of retrieving the record or verifying identity.

(7) An individual shall not be required to explain why he or she is seeking access to a record.

(8) Only a designated denial authority may deny access. The denial must be in writing.

(9) If notarization of requests is required for access, procedures shall be established for an alternate method of verification for individuals who do not have access to notary services, such as military members overseas. The following formats may be used as prescribed by 28 U.S.C. 1746:

(i) If executed outside of the United States: *"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."*

(ii) If executed within the United States, its territories, possessions, or commonwealths: *"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."*

(e) *Granting individual access to records.* (1) The individual should be granted access to the original record (or exact copy) without any changes or deletions. A record that has been amended is considered the original.

(2) The individual's request should be granted for an exact copy of the record, and, upon the signed authorization of the individual, a copy should be provided to anyone designated by the individual. In either case, the copying fees may be assessed to the individual.

(3) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(f) *Illegible, incomplete, or exempt records.* (1) Illegible or incomplete records. Individual access should not be denied solely because the physical condition or format of the record does not make it readily available, such as when the record is in a deteriorated state or on magnetic tape. In this case, the document should be recopied exactly or an extract can be prepared.

(2) Exempt records. A request for a record that is wholly or partially exempt from access shall also be processed under the Freedom of Information Act (FOIA). The requester shall be granted access to all information that is releasable under either this part or the FOIA. The agency may provide this information in the form of an extract or summary of the record. The provisions of this rule or the FOIA under which access was granted should be cited.

(g) *Access to medical and psychological records.* (1) Individual access to medical and psychological records should be provided, even if the individual is a minor, unless it is determined that access could have an adverse effect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner.

(2) If it is medically indicated that access could have an adverse mental or physical effect on the individual, the record should be provided to a medical practitioner named by the individual, along with an explanation why access without medical supervision could be harmful to the individual.

[8] Copies may be obtained, at cost, from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station, Alexandria, VA 22304-6178.

(3) The named medical practitioner should not be required to request the record for the individual.

(4) If the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(h) *Access by parents and legal guardians.* (1) The parent of any minor, an individual under 18 years of age who is neither a member of a Military Service nor married, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf of the minor or incompetent (i.e., for the benefit of the minor or incompetent). However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, observe the following procedures:

(i) In the United States, the laws of the state where the records are located might afford special protection to certain medical records such as drug and alcohol abuse treatment records and psychiatric records. The state statutes might apply even if the records are maintained by a military medical facility.

(ii) For installations located outside the United States, the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(A) The minor at the time of the treatment or consultation was 15, 16, or 17 years old.

(B) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor.

(C) The minor specifically indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian, and

(D) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(2) A minor or incompetent has the same right of access as any other individual. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(i) Access to information compiled in anticipation of a civil proceeding.

(1) An individual is not entitled to access information compiled in reasonable anticipation of a civil action or proceeding.

(2) The term "civil action or proceeding" includes quasi-judicial and pretrial judicial proceedings as well as formal litigation.

(3) Paragraphs (i)(1) and (2) of this section do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(4) Attorney work products prepared in conjunction with the paragraphs (i)(1) and (2) of this section are also protected.

(j) *Non-agency records.* (1) Certain documents under the control of DCAA personnel and used to assist them in performing official functions may not be considered agency records within the meaning of this part. Such documents, if maintained in accordance with the following subparagraph, are not systems of records that are subject to this part. Examples are personal telephone lists and personal notes kept to refresh the memory of the author.

(2) To be considered non-agency records, the documents must:

(i) Be maintained and discarded solely at the discretion of the author.

(ii) Be created only for the author's personal convenience.

(iii) Not be the result of official direction or encouragement, whether oral or written; and

(iv) Not be shown to other persons for any reason.

(k) *Relationship between the Privacy Act and the Freedom of Information Act (FOIA).* (1) Access requests that specifically state or reasonably imply that they are made under the Freedom of Information Act (5 U.S.C. 552), are processed pursuant to DCAA Regulation 5410.10 (32 CFR part 290).

(2) Access requests that specifically state or reasonably imply that they are made under the Privacy Act of 1974 (5 U.S.C. 552a) are processed pursuant to this part.

(3) Access requests that cite both the FOIA and the Privacy Act are processed under the Act that provides the greater degree of access. The requester should be informed which Act was used in granting or denying access.

(4) Individual access should not be denied to records otherwise releasable under the Privacy Act or the Freedom of Information Act solely because the request does not cite the appropriate statute.

(l) *Time limits.* Access requests should be acknowledged within 10 working days after receipt, and access should be granted or denied within 30 working days, excluding Federal holidays.

**§ 317.31 Reproduction fees.**

(a) *Fee schedules.* The fees charged requesters shall include only the direct cost of reproduction and shall not include costs of:

(1) Time or effort devoted by agency personnel to searching for or reviewing the record.

(2) Fees not associated with the actual cost of reproduction.

(3) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law.

(4) Normal postage.

(5) Transportation of records or personnel, or

(6) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and

(i) The only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access), or

(ii) The agency does not wish to surrender temporarily the original record for the individual to review.

(7) Compute fees using the appropriate portions of the fee schedule in 32 CFR part 286, Subpart F.

(b) *Fee waivers.* (1) Fees shall be waived automatically if the direct cost of reproduction is less than $30, unless the individual is requesting an obvious extension or duplication of a previous request for which he or she was granted a waiver.

(2) Decisions to waive or reduce fees that exceed $30 may be made on a case-by-case basis.

**§ 317.32 Denying individual access.**

(a) *Denying individual access.* The subject of record may be denied access only if it:

(1) Was compiled in reasonable anticipation of a civil action or proceeding; or

(2) Is in a system of records that has been exempted from the access provisions of this part.

(3) The individual should be denied access only to those portions of the record for which the denial will serve a legitimate governmental purpose.

(4) An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(b) *Notifying the individual.* Written denial of access must be given to the individual and must be documented in a Privacy Act case file. The denial shall include:

(1) The name, title, and signature of a designated denial authority.

(2) The date of the denial.

(3) The specific reason for the denial, citing the appropriate sections of the Privacy Act or this part authorizing the denial.

(4) Notice of the individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the appeal official.

(c) *Appeal procedures.* Appeal procedures provide for the following:

(1) Review by the Assistant Director, Resources, DCAA Headquarters, or his or her designee, of any appeal by an individual.

(2) Written notification to the individual by the Assistant Director, Resources shall:

(i) If the denial is sustained totally or in part, include:

(A) The reason for denying the appeal, citing the provision of the Privacy Act or this part upon which the denial is based.

(B) The date of the appeal determination.

(C) The name, title, and signature of the appeal authority; and

(D) A statement informing the applicant of the right to seek judicial relief in Federal District Court.

(ii) If the appeal is granted, advise the individual and provide access to the record sought.

(d) *Final action, time limits, and documentation.* (1) The written appeal notification granting or denying access is the final agency action on the initial request for access.

(2) All appeals shall be processed within 30 working days, excluding Federal holidays, of receipt, unless the appeal authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(3) All actions on appeals must be documented in the Privacy Act case file.

(e) *Denial of appeal by the agency's failure to act.* An individual may consider his or her appeal denied if the appeal authority fails:

(1) To take final action on the appeal within 30 working days, excluding Federal holidays, of receipt when no extension of time notice was given; or

(2) To take final action within the period established by the extension of time notice.

(f) *Denying access to Office of Personnel Management (OPM) records held by the agency.* (1) The records in all systems of records maintained in accordance with the OPM Government-wide system notices are only in the temporary custody of the agency.

(2) All requests for access to these records must be processed in accordance with the OPM Federal Personnel Manual as well as DCAA Manual 1400.1 [9], "DCAA Personnel Management Manual."

(3) When DCAA initially denies access to a record in an OPM Government-wide system, the agency shall instruct the individual to direct any appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415–0001.

**§ 317.33 Privacy Act case files.**

(a) Documents used in processing notification, access, and amendment requests made under the Privacy Act or this part shall be filed in a Privacy Act case file established for each request, not in the record to which they pertain.

(b) Privacy Act case files should contain the following information:

(1) The request to be notified if a system of records contains a record pertaining to the individual and the request for access and amendment.

(2) Approval, denial, request for appeal, action on appeal, coordination action, and other documents relating to the request; and

(3) Documentation of reasons for exceeding the established time limits for processing the request.

(c) The Privacy Act case file shall not contain a copy of the record and shall not be used to make any determination about the individual, other than determinations about the Privacy Act request.

(d) The case file shall be used only to process requests and provide statistics such as for the annual report required by the Privacy Act.

## Subpart E–Amendment of Records

**§ 317.40 Individual review and amendment.**

Individuals are encouraged to review periodically the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this part.

**§ 317.41 Amending records**

(a) *Right to request amendment.* An individual may request the amendment of any record retrieved by his or her personal identifier from a system of records, unless the system has been exempted from the amendment procedures. See § 317.133. Amendments are limited to correcting factual matters, not matters of opinion such as those contained in evaluations of promotion potential and performance appraisals.

(b) *Written amendment request.* The agency may require that amendment requests be in writing; however, this requirement shall not be used merely to discourage individuals from requesting valid amendments or to burden needlessly the amendment process. Only written amendment requests must be documented in the Privacy Act case file.

(c) *Content of amendment request.* An amendment request must include:

(1) A description of the information to be amended.

(2) The reason for the amendment.

(3) The type of amendment action sought (deletion, correction, or addition); and

(4) Copies of available documentary evidence supporting the request.

**§ 317.42 Burden of proof.**

The individual must provide adequate support for the request.

**§ 317.43 Verifying identity.**

The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record.

**§ 317.44 Limits on amending judicial and quasi-judicial evidence and findings.**

This part does not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This part does not permit a collateral attack on a judicial or quasi-judicial finding; however, it may be used to challenge the accuracy of recording the finding in a system of records.

**§ 317.45 Standards for amendment request determinations.**

The record which the individual requests to be amended must meet agency recordkeeping standards. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, the amendment request shall be granted to the extent necessary to meet them.

**§ 317.46 Time limits.**

Within 10 working days, excluding Federal holidays, of receiving an amendment request, provide the individual a written acknowledgment of

[9] See footnote 1 to § 317.1(a).

the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances shall more than 30 working days, excluding Federal holidays, be required to complete the action on an amendment request. If a completed action takes longer than 30 working days, the delay must be explained fully in the Privacy Act case file.

**§ 317.47 Granting an amendment request in whole or in part.**

(a) *Notify the requester.* To the extent the amendment request is granted, the individual shall be notified and make the appropriate amendment.

(b) *Notify previous recipients.* All previous recipients of the information (as reflected in the disclosure accounting records) should be notified that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other DoD components or other Federal Agencies have been provided the information that was amended, or if the individual requests that other DoD components or other Federal agencies be notified, provide the notification even if those components or agencies are not listed in the disclosure accounting.

(c) *Documentation.* The action should be documented in the Privacy Act case file if the request for amendment was in writing.

**§ 317.48 Denying an amendment request in whole or in part.**

(a) If the amendment request is denied in whole or in part, the individual should be promptly notified in writing and document the action in the Privacy Act case file. The notification to the individual shall include:

(b) *Basis for denial.* Those sections of the Privacy Act or this part upon which the denial is based.

(c) *Right to appeal.* Advice that the individual may appeal to the Assistant Director, Resources, or his or her designee for an independent review of the initial denial.

(d) *Appeal procedures.* The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(e) *Appeal assistance.* Where the individual can receive assistance in filing the appeal.

**§ 6317.49 Appeal procedures.**

Procedures to ensure the prompt, complete, and independent review of each denial of an amendment request if the individual appeals must ensure:

(a) *Appeals are forwarded.* The appeal with all supporting documentation, including that furnished by the individual and that contained in agency records, is provided to the Assistant Director, Resources, or his or her designee.

(b) *Standards for review.* The standard for deciding the appeal is whether the unamended record is accurate, relevant, timely, complete, and necessary. If the unamended record does not meet each of these criteria, the amendment request shall be granted to the extent necessary to meet them.

(c) *Time limits.* The appeal is processed within 30 working days, excluding Federal holidays, unless the appeal official determines that an adequate review cannot be completed within that period and gives the individual a written explanation of the reason and when the review will be completed.

(d) *Denial notification.* If the appeal is denied completely or in part, the individual is provided written notification that:

(1) The appeal has been denied, citing the sections of the Privacy Act or this rule on which the denial was based.

(2) The individual may file a statement of disagreement. An explanation of the filing procedures will be included in the written notification.

(3) If properly filed, the statement of disagreement shall be included in the record and furnished to all future recipients of the record and to all prior recipients of the record as listed on the disclosure accounting, except those known to be no longer retaining the record; and

(4) The individual may seek judicial review of the decision not to amend the record.

(e) *Amendment notification.* If the record is amended:

(1) The individual is notified promptly of the decision.

(2) All previous recipients of the record, as listed in the disclosure accounting (except those known to be no longer retaining the record), are notified of the amendment and provided a copy; and

(3) Any previous recipient known to be holding a copy of the record (but not listed in the disclosure accounting), as well as any other DoD component or other Federal agency named by the individual, also should be informed of the amendment and provided a copy.

(f) *Documentation.* All actions on the appeal shall be documented in the Privacy Act case file.

**§ 317.50 Requests for amending OPM records.**

The records in an OPM Government-wide system of records are only temporarily in the custody of the agency. Requests for amendment of these records must be processed in accordance with the OPM Federal Personnel Manual. The agency denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–0001.

**§ 317.51 Individual's statement of disagreement.**

(a) *Right to submit.* If the appeal authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(b) *Filing the statement.* If possible, incorporate the statement of disagreement into the record. If that is not possible, the record should be annotated to reflect that the statement was filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed. For instance, automated record systems not programmed to accept statements of disagreement must be capable of having indicators entered to reflect the presence of statements on file and how to obtain them.

(c) *Inform previous recipients.* Copies of the statement of disagreement should be furnished to all individuals listed in the disclosure accounting of the record (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(d) *Disclosure.* Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

**§ 317.52 Agency's statement of reasons.**

(a) *Right to file.* If the individual files a statement of disagreement, the agency may file a statement of reasons containing a concise summary of the agency's reasons for denying the amendment request.

(b) *Content.* The statement of reasons shall contain only those reasons given to the individual by the appeal official and shall not contain any comments on the individual's statement of disagreement.

(c) *Disclosure.* At the discretion of the agency, the statement of reasons may be disclosed to those individuals, DoD components, and other Federal agencies that receive the statement of disagreement.

## Subpart F–Disclosure of Records

### § 317.60 Conditions of disclosure.

(a) *Disclosures to third persons.* (1) Under the Privacy Act, there are two terms describing how information from a record is provided:

(i) "Access" occurs when information from a record is provided or shown to the individual who is the subject of record or, if that individual is a minor or incompetent, to the parent or legal guardian.

(ii) "Disclosure" occurs when information from a record is provided or shown to anyone other than the subject of record, or the parent or legal guardian of a minor or incompetent.

(b) *When disclosures may be made.* Disclosures may be made only when:

(1) The subject of record gives written consent for the disclosure; or

(2) One of the twelve conditions specified in § 317.61.

(c) *Validation before disclosure.* Except for disclosures made under the FOIA or DCAA Regulation 5410.10 (32 CFR part 290), make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for agency purposes before disclosing any record from a system of records to any recipient other than a Federal agency. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(1) If validation cannot be obtained from the record itself, the agency may contact the subject of record (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(2) If validation cannot be obtained from the record and the subject of record is not reasonably available, the recipient should be advised that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

### § 317.61 Non-consensual disclosures.

The Privacy Act provides twelve instances when a record in a system of records may be disclosed without the written consent of the subject of the record:

(a) *Disclosures within the Department of Defense for official purposes.* For purposes of disclosing records among DoD components, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense who needs it in the performance of official duties. Rank or position alone does not authorize the disclosure; there must be a demonstrated official need.

(b) *Disclosures required by the Freedom of Information Act (FOIA).*(1) A record must be disclosed if required by the FOIA, which is implemented by DCAA Regulation 5410.10 (32 CFR part 290).

(2) The FOIA requires that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(3) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under FOIA Exemption number 6. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be "a clearly unwarranted invasion of personal privacy."

(4) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in FOIA Exemption number 7. This broader standard applies only to investigatory records.

(5) A disclosure under the FOIA about civilian employees must be in accordance with DCAA Regulation 5410.8 [10], but the following information normally may be disclosed from civilian employee records:

(i) Full name.

(ii) Present and past position titles and occupational series.

(iii) Present and past grades.

(iv) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials).

(v) Past duty stations.

(vi) Present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the agency to be sensitive, routinely deployable, or located in a foreign territory.

(vii) Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit agency effectiveness.

(6) Disclosure of home addresses and home telephone numbers:

(i) The disclosure under the FOIA of home addresses and telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if:

(A) The individual has consented, in writing, to the disclosure.

(B) The disclosure is required by the FOIA; or

(C) The disclosure is required by another Federal law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments.

(ii) When compiling home addresses and telephone numbers, the individual shall be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(iii) Before listing home addresses and home telephone numbers in telephone directories, the individual should be given the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, additional fees should not be assessed associated with maintaining an unlisted number for government-owned telephone services.

(iv) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law, but this does not prohibit the disclosure of names and addresses otherwise permitted to be made public, such as by DCAA Regulation 5410.10 (32 CFR part 290).

(c) *Disclosures for established routine uses.* (1) Records may be disclosed outside the agency if the disclosure is for an established routine use.

(2) A routine use shall:

(i) Be compatible with and related to the purpose for which the record was created.

[10] See footnote 1 to § 317.1(a).

(ii) Identify the persons or organizations to whom the record may be disclosed.

(iii) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(iv) Be contained in the system of records notice published previously in the **Federal Register**.

(3) A routine use shall be established for each user of the information outside the agency who needs the information for an official purpose.

(4) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(5) In addition to the routine uses established by the system notices published in the **Federal Register**, certain common "blanket routine uses" have been established for all systems of records maintained by the agency. These blanket routine uses are published in the **Federal Register** at the beginning of the listing of system notices for the agency. Unless a system notice specifically excludes a system of records from a blanket routine use, all blanket routine uses apply to that system. See Appendix A to this part.

(6) If the "routine user" recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register**, the written consent of the individual is required before the disclosure can be made.

(d) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activities under the provisions of 13 U.S.C. 8.

(e) *Disclosures for statistical research or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(1) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(2) The records are transferred in a form that does not identify individuals.

(f) *Disclosures to the National Archives and Records Administration.* (1) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient 22historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Records Administration, which becomes the official owner of the records.

(2) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law. Such disclosures are authorized by the National Archives and Records Act of 1984, Pub. L. 98–497.

(3) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the agency. The Federal Records Center is considered the custodian agent of the agency.

(g) *Disclosures when requested for law enforcement purposes.* (1) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(i) The civil or criminal law enforcement activity is authorized by law (Federal, State, or local); and

(ii) The head of the agency or instrumentality (or his or her designee) has made a written request to DCAA specifying the particular record or portion desired and the law enforcement activity for which it is sought.

(2) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency or instrumentality must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(3) This disclosure provision applies when the law enforcement agency or instrumentality requests the record. If DCAA discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be pursuant to an established routine use, such as the blanket routine use for law enforcement.

(h) *Disclosures to protect the health or safety of an individual.* (1) Records may be disclosed by any means and to any person pursuant to a showing of compelling circumstances affecting the health or safety of an individual. The affected individual need not be the subject of the record.

(2) Notification of the disclosure (date and what, why, and to whom disclosed) must be sent to the subject of the record. Sending the notification to the last known address is sufficient.

(i) *Disclosures to Congress.* (1) A record may be disclosed to either House of Congress on the initiative of the agency or at the request of either the Senate or House of Representatives as a whole.

(2) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(3) Individual members of Congress not acting on behalf of the entire house, a committee, subcommittee, or joint committee have no greater right to have records disclosed to them than any other individual. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a blanket routine use has been established to permit disclosures to individual members of Congress.

(i) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(ii) The oral statement of a congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(iii) If the constituent inquiry is made on behalf of an individual other than the subject of the record, provide the Member of Congress only that information releasable under the FOIA. The Member of Congress should be advised that the written consent of the subject of record is required before additional information may be disclosed. The subject of record should not be contacted to obtain consent for the disclosure to the Member of Congress unless the congressional office specifically requests that it be done.

(j) *Disclosures to the Comptroller General for the General Accounting Office.* Records may be disclosed to the Comptroller General, or his or her authorized representative, for the performance of the duties of the General Accounting Office.

(k) *Disclosures pursuant to court orders.* (1) Records may be disclosed pursuant to the order of a court of competent jurisdiction.

(2) The court order must bear the signature of a Federal, State, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of

a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority if the minimal requirements of DCAA Regulation 5410.11, "Release of Official Information in Litigation and Testimony by DCAA Personnel as Witness."

(3) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the subject of the record. Notification sent to the last known address of the individual is sufficient.

(l) *Disclosures to consumer reporting agencies.* (1) Certain information may be disclosed to consumer reporting agencies as defined by 31 U.S.C. 952d.

(2) Under these provisions, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual.

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose.

(3) 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

**§ 317.62 Disclosures to commercial enterprises.**

(a) *General policy.* (1) Records may be disclosed to commercial enterprises only under the criteria established by the FOIA.

(2) The relationship of commercial enterprises to their customers or clients and to the agency is not changed by this part.

(3) The policy on personal indebtedness for civilian employees, is contained in DCAA Manual 1400.1, DCAA Personnel Management Manual.

(b) *Disclosure of information.* (1) Any information required to be disclosed by the FOIA may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a concise statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure:

*I hereby authorize the Defense Contract Audit Agency to verify my Social Security Number or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).*

(3) When a consent statement as described in the preceding paragraph is presented, the information should be provided to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Requests should not be honored from commercial enterprises for official evaluations or personal characteristics such as personal financial habits.

**§ 317.63 Disclosing health care records to the public.**

This section applies to the disclosure of information to the news media and the public concerning individuals treated or hospitalized in DoD medical facilities and, when the cost of care is paid by the agency, in non-Federal facilities.

(a) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(1) Information required to be released by the FOIA, as well as the information listed for military personnel and for civilian employees; and

(2) The following general information concerning medical condition:

(i) Date of admission or disposition; and

(ii) Present medical assessment of the individual's condition in the following terms, if the medical practitioner has volunteered the information:

(A) The individual's condition presently is (stable) (good) (fair) (serious) (critical), and

(B) The patient is conscious, semiconscious, or unconscious.

(b) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent or the appointed legal guardian may give consent on behalf of the individual.

(c) *Disclosures to other government agencies.* This section does not limit otherwise lawful disclosures to other government agencies for use in determining eligibility for special assistance or other benefits provided there is a published routine use permitting the disclosure.

**§ 317.64 Accounting for disclosures.**

(a) *When to keep disclosure accountings.* An accurate record of all disclosures made from a record (including those made with the consent of the individual) should be kept except those made:

(1) To DCAA personnel for use in performing their official duties; and

(2) Pursuant to DCAA Regulation 5410.10 (32 CFR part 290).

(b) *Content of disclosure accountings.* Disclosure accountings shall contain:

(1) The date of the disclosure.

(2) A description of the information disclosed.

(3) The purpose of the disclosure; and

(4) The name and address of the person or agency to whom the disclosure was made.

(c) *Using disclosure accountings.* When an individual's request to amend the record is granted and when an individual files a statement of disagreement, all persons and agencies listed in the disclosure accounting, except those known to be no longer retaining the record, must be informed.

(d) *Individual access to disclosure accountings.* The record subject has the right of access to the disclosure accounting except when:

(1) The disclosure was made at the request of a civil or criminal law enforcement agency, or

(2) The system of records has been exempted from the requirement to provide access to the disclosure accounting.

(e) *Methods of disclosure accounting.* (1) The agency may use any method of disclosure accounting that will readily provide the necessary disclosure information required.

(2) When numerous similar records are disclosed (e.g., sending payroll checks to banks), identify the category of records disclosed and include the information in some form that can be used to construct a disclosure accounting.

(f) *Retaining disclosure accountings.* The disclosure accounting shall be retained for five years after the disclosure was made or the life of the record, whichever is longer.

## Subpart G–Publication Requirements

**§ 317.70 Federal Register publication.**

(a) *Documents that must be published in the* **Federal Register.** (1) Three types of documents relating to the Privacy Program must be published in the **Federal Register:**

(i) DCAA Privacy Program procedural rules (32 CFR part 317).

(ii) DCAA exemption rules (32 CFR part 317), and

(iii) Record system notices.

(2) DoD 5025.1-M, "DoD Directives System Procedures," and DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public" (32 CFR part 336), contain information on preparing documents for publication in the **Federal Register**.

(b) *Effect of publication in the* **Federal Register**. Publishing a document in the **Federal Register** constitutes official public notice of the existence and content of the document.

(c) *Formal rulemaking and notices.* (1) DCAA Privacy Program procedural and exemption rules are subject to the rulemaking procedures prescribed by 32 CFR part 336. These are incorporated automatically into the Code of Federal Regulations.

(2) Record system notices are published in the **Federal Register** as "notices." They are not subject to the rulemaking procedures or automatic incorporation into the Code of Federal Regulations.

(d) *Submitting Privacy Program procedural rules for publication.* (1) Procedural rules must be published in the **Federal Register** first as proposed rules to allow for public comment, then as final rules.

(2) The DCAA Privacy Advisor will submit to the Defense Privacy Office all proposed rules implementing this rule. The submission must conform to the **Federal Register** format.

(3) This part published as a final rule in the **Federal Register** shall be incorporated by regions as their own rules by reference rather than by republication. A region that simply implements this part as its own rule need not publish it as a final rule in the **Federal Register**.

(4) Amendments to agency rules are submitted in the same manner as the original rules.

(5) The Defense Privacy Office, DA&M, reviews and submits all DoD component rules, and amendments to rules to the **Federal Register** for publication.

(e) *Submitting exemption rules for publication.* (1) Exemption rules must be published in the **Federal Register** first as proposed rules to allow for public comment, then as final rules.

(2) No system of records shall be exempt from any provision of the Privacy Act until the exemption rule has been published in the **Federal Register** as a final rule.

(3) Proposed exemption rules should be submitted in proper format through the agency Privacy Advisor to the Defense Privacy Office, DA&M, for review and submittal to the **Federal Register** for publication.

(4) Amendments to exemption rules are submitted in the same manner as the original exemption rules.

(f) *Submitting record system notices for publication.* (1) Although system notices are not subject to formal rulemaking procedures, advance public notice must be given before the agency may begin to collect information for or maintain a new system of records. The notice procedures require that:

(i) The record system notice describe the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(ii) The public be given 30 days to comment on any proposed routine uses before the routine uses are implemented; and

(iii) The notice contain the date the system of records will become effective.

(2) System notices shall be submitted though the agency Privacy Advisor to the Defense Privacy Office, DA&M, for publication in the **Federal Register**.

**§ 317.71 Exemption rules.**

(a) *General procedures.* This section provides guidance for establishing exemptions for systems of records.

(b) *Content of exemption rules.* (1) Each proposed exemption rule submitted for publication in the **Federal Register** must contain:

(i) The agency identification and name of the record system for which an exemption will be established.

(ii) The subsection(s) of the Privacy Act which grants the agency authority to claim an exemption for the system (e.g., subsection (k)(2) or (k)(5) of the Privacy Act).

(iii) The particular subsection(s) of the Privacy Act which the system will be exempt from (e.g., subsections (c)(3), (d)(1)-(5) of the Privacy Act); and

(iv) The reasons why an exemption from the particular subsection identified in the preceding subparagraph is being claimed.

**§ 317.72 System of records notices.**

(a) *Contents of a record system notice.* The following data captions are prescribed by the Office of the **Federal Register** and must be included for each system notice:

(1) System identifier.

(2) System name.

(3) System location.

(4) Categories of individuals covered by the system.

(5) Categories of records in the system.

(6) Authority for maintenance of the system.

(7) Purpose(s).

(8) Routine uses of records maintained in the system, including categories of users and purposes of the uses.

(9) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

(10) System manager(s) and address.

(11) Notification procedures.

(12) Record access procedures.

(13) Contesting records procedures.

(14) Record source categories; and

(15) Exemptions claimed for the system.

(b) *System identification.* The system identifier must appear in all system notices. It is limited to 21 positions, including agency code, file number, symbols, punctuation, and spaces.

(c) *System name.* (1) The system name must indicate the general nature of the system of records and, if possible, the general category of individuals to whom it pertains.

(2) Acronyms should be established parenthetically following the first use of the name (e.g., "Field Audit Office Management Information System (FMIS)"). Acronyms shall not be used unless preceded by such an explanation.

(3) The system name may not exceed 55 character positions, including punctuation and spaces.

(d) *System location.* (1) For a system maintained in a single location, provide the exact office name, organizational identity, routing symbol, and full mailing address. Do not use acronyms in the location address.

(2) For a geographically or organizationally decentralized system, describe each level of organization or element that maintains a portion of the system of records.

(3) For an automated data system with a central computer facility and input or output terminals at geographically separate locations, list each location by category.

(4) If multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are published as an appendix to the agency's compilation of systems of records notices in the **Federal Register**. If no address directory is used, or if the addresses in the directory are incomplete, the address of each location where a portion of the record system is maintained must appear under the "system location" caption.

(5) Classified addresses shall not be listed, but the fact that they are classified shall be indicated.

(6) The U.S. Postal Service two-letter state abbreviation and the nine-digit zip code shall be used for all domestic addresses.

(e) *Categories of individuals covered by the system.* (1) Clear, nontechnical terms shall state the specific categories of individuals to whom records in the system pertain.

(2) Broad descriptions such as "all DCAA personnel" or "all employees," should be avoided unless the term actually reflects the category of individuals involved.

(f) *Categories of records in the system.* (1) Clear, nontechnical terms shall be used to describe the types of records maintained in the system.

(2) The description of documents should be limited to those actually retained in the system of records. Source documents should not be described that are used only to collect data and then are destroyed.

(g) *Authority for maintenance of the system.* (1) The system of records must be authorized by a Federal law or Executive Order of the President, and the specific provision must be cited.

(2) When citing federal laws, include the popular names (e.g.,"5 U.S.C. 552a, The Privacy Act of 1974") and for Executive Orders, the official titles (e.g., "Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons").

(3) The Directive establishing the agency, DoD Directive 5105.36 (32 CFR part 357), as well as the law that authorizes the Secretary of Defense to issue Directives, 10 U.S.C. 133 should be cited.

(h) *Purpose(s).* The specific purpose(s) for which the system of records was created and maintained; that is, the uses of the records within the agency and the rest of the Department of Defense should be listed.

(i) *Routine uses.* (1) All disclosures of the records outside the agency, including the recipient of the disclosed information and the uses the recipient will make of it should be listed.

(2) If possible, the specific activity or element to which the record may be disclosed (e.g., "to the Department of Veterans Affairs, Office of Disability Benefits") should be listed.

(3) General statements such as "to other Federal Agencies as required" or "to any other appropriate Federal agency" should not be used.

(4) The blanket routine uses, published at the beginning of the agency's compilation, applies to all system notices, unless the individual system notice states otherwise.

(j) *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records.* This section is divided into four parts.

(1) Storage: The method(s) used to store the information in the system (e.g., "automated, maintained in computers and computer output products" or "manual, maintained in paper files" or "hybrid, maintained in paper files and in computers") should be stated. Storage does not refer to the container or facility in which the records are kept.

(2) Retrievability: How records are retrieved from the system (e.g., "by name," "by SSN," or "by name and SSN") should be indicated.

(3) Safeguards: The categories of agency personnel who use the records and those responsible for protecting the records from unauthorized access should be stated. Generally the methods used to protect the records, such as safes, vaults, locked cabinets or rooms, guards, visitor registers, personnel screening, or computer "fail-safe" systems software should be identified. Safeguards should not be described in such detail as to compromise system security.

(4) Retention and disposal: Describe long records are maintained. When appropriate, the length of time records are maintained by the agency in an active status, when they are transferred to a Federal Records Center, how long they are kept at the Federal Records Center, and when they are transferred to the National Archives or destroyed should be stated. If records eventually are destroyed, the method of destruction (e.g., shredding, burning, pulping, etc), should be stated. If the agency rule is cited, the applicable disposition schedule shall also be identified.

(k) *System manager(s) and address.* (1) The title (not the name) and address of the official or officials responsible for managing the system of records should be listed.

(2) If the title of the specific official is unknown, such as with a local system, the local director or office head as the system manager should be indicated.

(3) For geographically separated or organizationally decentralized activities with which individuals may correspond directly when exercising their rights, the position or title of each category of officials responsible for the system or portion thereof should be listed.

(4) Addresses that already are listed in the agency address directory; or simply refer to the directory should not be included.

(l) *Notification procedures.* (1) Notification procedures describe how an individual can determine if a record in the system pertains to him or her.

(2) If the record system has been exempted from the notification requirements of subsection (f)(1) or subsection (e)(4)(G) of the Privacy Act, it should be so stated.

(3) If the system has not been exempted, the notice must provide sufficient information to enable an individual to request notification of whether a record in the system pertains to him or her. Merely referring to the agency's procedural rules is not sufficient.

(4) This section should also include:

(i) The title (not the name) and address of the official (usually the system manager) to whom the request must be directed;

(ii) Any specific information the individual must provide in order for the agency to respond to the request (e.g., name, SSN, date of birth, etc.); and

(iii) Any description of proof of identity for verification purposes required for personal visits by the requester.

(m) *Record access procedures.* (1) This section describes how an individual can review the record and obtain a copy of it.

(2) If the system has been exempted from access and publishing access procedures under subsections (d)(1) and (e)(4)(H), respectively, of the Privacy Act, it should be so indicated.

(3) If the system has not been exempted, describe the procedures an individual must follow in order to review the record and obtain a copy of it, including any requirements for identity verification.

(4) If appropriate, the individual may be referred to the system manager or another agency official who shall provide a detailed description of the access procedures. Any addresses already listed in the address directory should not be repeated.

(n) *Contesting record procedures.* (1) This section describes how an individual may challenge the denial of access or the contents of a record that pertains to him or her.

(2) If the record system has been exempted from allowing amendments to records or publishing amendment procedures under subsections (d)(2) and (e)(4)(H), respectively, of the Privacy Act, it should be so stated.

(3) If the system has not been exempted, the procedures an individual must follow should be described in order to challenge the content of a record pertaining to him or her, or explain how he or she can obtain a copy

of the procedures (e.g., by contacting the system manager or another agency official).

(o) *Record source categories.* (1) If the system has been exempted from publishing record source categories under subsection (e)(4)(I) of the Privacy Act, it should be so stated.

(2) If the system has not been exempted, this caption must describe where the agency obtained the information maintained in the system.

(3) Describing the record sources in general terms is sufficient; specific individuals, organizations, or institutions need not be identified.

(p) *Exemptions claimed for the system.* (1) If no exemption has been established for the system, indicate "None."

(2) If an exemption has been established, state under which provision of the Privacy Act it is established (e.g., "Parts of this system of records may be exempt under 5 U.S.C. 552a(k)(2)").

**§ 317.73 New and altered record systems.**

(a) *Criteria for a new record system.* (1) A new system of records is one for which no existing system notice has been published in the **Federal Register.**

(2) If a notice for a system of records has been canceled or deleted and the agency desires to reinstate or reuse the system, a new system notice must be published in the **Federal Register.**

(b) *Criteria for an altered record system.* A system is considered altered when any one of the following actions occurs or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained requires a change to the "categories of individuals covered by the system" caption in the system notice and might require changes to the "purpose(s)" caption.

(i) For example, a decision to expand a system of records that originally covered personnel assigned to only one location to cover personnel at several locations would constitute an altered system.

(ii) An increase in the number of individuals covered due to normal growth is not an alteration.

(iii) A decrease in the number of individuals covered is not an alteration, but it is an amendment.

(2) A change that expands the types or categories of information maintained requires a change in the "categories of records in the system" caption in the system notice.

(i) For example, a personnel file that has been expanded to include medical records would be an alteration.

(ii) Adding to a personnel file a new data element that is clearly within the scope of the categories of records described in the existing notice is not an alteration, but is an amendment.

(3) A change that alters the purpose for which the information is used requires changing the "purpose(s)" caption in the system notice. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system requires changing the "storage" caption in the system notice. For example, placing interactive computer terminals at regional offices to use a system formerly used only at the Headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved requires changing the "Retrievability" caption in the system notice.

(i) Combining record systems due to a reorganization within the agency would be an alteration.

(ii) Retrieving by SSNs records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs.

(c) *Reports of new and altered systems of records.* (1) Under subsection (o) of the Privacy Act, reports of new and altered systems of records must be submitted to Congress and the Office of Management and Budget.

(2) The agency shall submit reports of new or altered systems to the Defense Privacy Office, DA&M, before collecting information for new systems or altering an existing system.

(3) The Defense Privacy Office, DA&M, shall coordinate all reports of new or altered systems with the Office of the Assistant Secretary of Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense.

(4) The Defense Privacy Office, DA&M, shall prepare, for the approval and signature of the Director, Administration and Management, Office of the Secretary of Defense, transmittal letters to Congress and the Office of Management and Budget.

(d) *Time limits before implementing routine uses.* After publishing a system notice in the **Federal Register**, 30 days must elapse before routine uses may be employed.

**§ 317.74 Amendment and deletion of system notices.**

(a) *Criteria for an amended record system.* Minor changes to published system notices are considered amendments rather than alterations. Amendments must also be published in the **Federal Register**, but a new or altered system report does not have to be accomplished.

(b) *Amending a system notice.* In submitting an amendment to a system notice for publication in the **Federal Register**, the agency must include:

(1) The system identification and name.

(2) A description of the specific changes proposed; and

(3) The full text of the system notice as amended.

(c) *Deleting a system notice.* (1) When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this rule, a deletion notice must be published in the **Federal Register.**

(2) The deletion notice shall include:

(i) The system identification number and name.

(ii) The **Federal Register** citation of the latest publication of the system.

(iii) The reason for the deletion.

(3) If a system is deleted through combination or merger with another system, identify the successor system in the deletion notice.

(d) *Submitting amendments and deletions for publication.* (1) Amendments and deletions should be submitted through the agency Privacy Advisor to the Defense Privacy Office, DA&M, which will transmit them to the **Federal Register** for publication.

(2) At least one original in proper format should be included in the submission.

(3) Multiple amendments and deletions, and combinations of amendments and deletions, may be submitted together.

## Subpart H-Training Requirements

**§ 317.80 Statutory training requirements.**

(a) *Establishing rules of conduct.* Under subsection (e)(9) of the Privacy Act, the agency is required to establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record.

(b) *Training.* The agency shall train all personnel involved in the functions described in the preceding paragraph. The training shall include instruction in the rules of conduct and all requirements prescribed by the Privacy

Act, including the penalties for noncompliance.

**§ 317.81 DCAA training programs.**

(a) *Personnel to be trained.* (1) To conform with Office of Management and Budget guidance, compliance with the statutory training requirements requires informed and active support of all agency personnel. All personnel who in any way use or operate systems of records, or who are engaged in the development of procedures for handling records, must be taught the requirements of the Privacy Act and must be trained in the agency's procedures for the implementation of the Privacy Act.

(2) Personnel to be trained include, but are not limited to, those engaged in the following:

(i) Personnel management.

(ii) Personnel finance.

(iii) Medical care.

(iv) Investigations of personnel.

(v) Records management (reports, forms, records, and related functions).

(vi) Computer systems development and operation.

(vii) Communications.

(viii) Statistical data collection and analysis, and

(ix) Performing other functions subject to this rule.

(b) *Types of training.* The agency shall establish the following three levels of training for those persons who are involved with the design, development, operation, or maintenance of any system of records. The training shall be provided to persons before or shortly after assuming the duties associated with the level of involvement.

(1) *Orientation training.* Orientation training that provides a general understanding of the individual's rights under the Privacy Act.

(2) *Specialized training.* Training concerning the application of this part to specialized areas of job performance.

(3) *Management training.* Training concentrated on factors affecting decisions made by managers under the Privacy Program, such as system managers, denial authorities, and managers of the specific functions listed.

(c) *Methods of training.* The agency is responsible for developing training methods that will meet this criteria. Such methods may include formal and informal (on-the-job) programs, if those personnel giving the training have, themselves, been trained.

## Subpart I–Computer Matching Program Procedures

**§ 317.90 General.**

(a) *Scope.* The Privacy Act and this rule are applicable to certain types of computer matching--the computer comparison of automated systems of records.

(b) *Compliance.* Although the Privacy Act provides for specific procedures, the Act is not in itself authority for carrying out any matching activity. Compliance with this chapter does not relieve the agency of the obligation to comply with any other requirements of the Privacy Act and this part.

(c) *Matching programs covered by the Privacy Act.* There are two specific kinds of matching programs that are fully governed by the Privacy Act and this part. These are:

(1) Matches using records from Federal personnel or payroll systems of records. See also definitions of this part.

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(d) *Automated comparisons.* The record comparison must be a computerized comparison, manual comparisons are not covered, involving records from:

(1) Two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to the Privacy Act); or,

(2) An agency's automated system of records and automated records maintained by a non-Federal agency (i.e., state or local government or agent thereof).

(e) *Features of a matching program.* A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

**§ 317.91 Federal personnel or payroll record matches.**

(a) *Scope.* These computer matching programs include matches comparing records from agency automated Federal personnel or payroll systems of records with such automated like records of another Federal agency; or with a non-Federal agency. It also includes matches between DoD components or within the agency itself (internal matches).

(b) *Computerized comparisons.* The matching must be done using a computer. Manual comparisons are not covered.

(c) *Exclusion.* Matches must be done for other than "routine administrative purposes."

(d) *Internal matches.* In some instances, a covered match may take place within the agency or with another DoD component. For example, the agency may wish to determine whether any of its own personnel, participating in a benefit program administered by the Department of Defense, are not complying with the program's eligibility requirements. This internal match will certainly result in an adverse action if ineligibility is discovered. Therefore, it is covered by the requirements of the Privacy Act. The agency should not attempt to avoid the reach of the Act, for example, by improperly combining dissimilar systems into a single system, matching data within that system to make an eligibility determination, and arguing that the match is not covered because only one system of records is involved.

(e) *Categories of record subjects.* The categories of individuals whose records are used in this type of matching program must be carefully analyzed before making a determination whether a proposed match is covered. All information on subjects of record is maintained in the agency's system of records, but matching under the particular programs covered by this subsection is limited to "Federal personnel." For matching purposes, a Federal personnel system of records should not be confused with, or limited to, the commonly recognized personnel system of records maintained by a civilian personnel office or a military assignment branch. The agency may be maintaining within a single system of records several categories of records relating to Federal personnel and other categories on non-Federal personnel, e.g., contractor personnel, applicants, dependents, etc. Some categories may be covered while others may not. Unlike "Federal personnel," the subjects of record of payroll record systems are easily discerned.

(f) *Matching purpose.* The purpose of a Federal personnel or payroll records match must be to take some adverse action, financial, personnel, disciplinary,

or other adverse action against Federal personnel.

**§ 317.92 Federal benefit matches.**

(a) *Categories of subjects covered.* The Privacy Act provisions cover only the following categories of subjects of record for Federal benefit matches.

(1) Applicants for Federal benefit programs (i.e., individuals initially applying for benefits).

(2) Program beneficiaries (i.e., individuals currently receiving or formerly receiving benefits).

(3) Providers of services to support such programs (i.e., those deriving income from them such as health care providers).

(b) *Types of programs covered.* Only Federal benefit programs providing cash or in-kind assistance to individuals are covered by the Privacy Act. State programs are not covered. Programs using records about subjects who are not "individuals". See definitions of this part (§ 317.3).

(c) *Matching purpose.* A Federal benefit match must have as its purpose one or more of the following:

(1) Establishing or verifying initial or continuing eligibility for Federal benefit programs.

(2) Verifying compliance with the requirements, either statutory or regulatory, of such programs.

(3) Recouping payments or delinquent debts under such Federal benefit programs.

(d) *Summary of basic requirements.* Four basic elements:

(1) Computerized comparison.

(2) Categories of subjects.

(3) Federal benefit program, and

(4) Matching purpose, must all be present before a matching program is covered under the Privacy Act.

**§ 317.93 Matching program exclusions.**

The following are not included under the definition of a matching program. The agency is not required to comply with the computer matching provisions of the Privacy Act, although it may be required to comply with any other applicable provisions of the Act and this part.

(a) *Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.* This does not mean that the data bases used in the match must be stripped prior to the match, but only that the results of the match must not contain data identifying any individual. Implicit in this exception is that this kind of match is not done to take action against specific individuals.

(b) *Statistical matches whose purpose is in support of any research or statistical project.* The results of these matches need not be stripped of identifiers, but they must not be used to make decisions that affect the rights, benefits or privileges of specific individuals.

(c) *Pilot matches.* This exclusion covers small scale sampling matches whose purpose is to gather cost-benefit data on which to premise a decision about engaging in a full-fledged matching program. Pilot matches must be retained in a statistical information gathering channel. It is at this point that the component can decide whether to conduct a statistical data gathering match without consequences to the subjects of record or a full-fledged program where results will be used to take specific action against them. To avoid possible misuse of pilot matches and to ensure full compliance with the Privacy Act, these matches must be approved by the Defense Data Integrity Board.

(d) *Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.* (1) To be eligible for the exclusion the match must be performed by an activity of a component whose principal function involves enforcement of criminal laws, i.e., an activity that is authorized to exempt certain of its systems of records under subsection (j)(2) of the Privacy Act.

(2) The match must flow from an investigation already underway which focuses on a named person or persons. Subjects identified generically, e.g., "program beneficiaries," are not eligible.

(3) The investigation may be into either criminal or civil law violations.

(4) In the context of this exclusion only, person or persons could include subjects that are other than individuals as defined in the Privacy Act, such as corporations or other business entities. For example, a business entity could be named subject of the investigation and records matched could be those of customers or clients.

(5) The match must be for the purpose of gathering evidence against the named person or persons.

(e) *Tax administration matches.* (1) Matches involving disclosures of taxpayer return information to state or local tax officials pursuant to section 6103(d) of the Internal Revenue Code.

(2) Tax refund offset matches accomplished pursuant to the Deficit Reduction Act of 1984.

(3) Matches done for tax administration pursuant to section 6103(b)(4) of the Internal Revenue Code.

(4) Tax refund offset matches conducted pursuant to other statutes provided approval of the Office of Management and Budget is obtained.

(f) *Routine administrative matches using Federal personnel records.* These are matches between the agency and other Federal agencies or between the agency and non-Federal agencies for administrative purposes that use data bases that contain records predominantly relating to Federal personnel. The term "predominantly" means that the percentage of records in the system that are about Federal employees must be greater than of any other category contained therein. For the purpose of disclosing records subject to the Privacy Act, the Department of Defense is considered a single agency.

(1) The purpose of the match must not be intended to result in an adverse action. Matches whose purpose is to take any adverse financial, personnel, disciplinary or other adverse action against Federal personnel whose records are involved in the match, are not excluded from the Act's coverage.

(2) An example of a match that is excluded is an agency's disclosure of time and attendance information on all agency employees to the Department of the Treasury in order to prepare the agency's payroll.

(3) This exclusion does not bring under the Act's coverage matches that may ultimately result in an adverse action. It only requires that their purpose not be intended to result in an adverse action.

(g) *Internal matches using only records from DoD systems of records.* (1) Internal matches (conducted within the Department of Defense) are excluded on the same basis as Federal personnel record matching provided no adverse intent as to a Federal employee motivates the match.

(2) This exclusionary provision does not disturb subsection (b)(1) of the Act permitting disclosure to DoD employees on an official need-to-know basis.

(3) The purpose of the internal match must not be to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel.

(h) *Background investigation and foreign counterintelligence matches.* Matches done in the course of performing a background check for security clearances of Federal personnel or Federal contractor personnel are not covered. Matches done for the purpose

of foreign counterintelligence are also not covered.

**§ 317.94 Conducting matching programs.**

(a) *Source and recipient agencies.* The agency, if undertaking a matching program, should consider if it will be a "source agency" or a "recipient agency" for the match and be prepared to meet the following requirements:

(1) The recipient agency does the matching. It receives the data from system of records of other Federal agencies or data from state and local governments and actually performs the match by computer.

(2) The recipient agency is responsible for publishing a notice in the **Federal Register** of the matching program. Where a state or local agency is the recipient, the Federal source agency is responsible for publishing the notice.

(3) A Federal source agency discloses the data from a system of records for the match. A non-Federal agency may also be a source, but the record data will not be from a system of records. The "system of records" concept under the Privacy Act does not apply to the recordkeeping practices of state or local governmental agencies.

(4) The recipient Federal agency, or the Federal source agency in a match performed by a non-Federal agency, is responsible for reporting the match. This agency must contact the other participants to gather the information necessary to make a unified report as required by § 317.100.

(5) In some circumstances, a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match; or when as a practical matter, an agency may not wish to release and disclose its data base to another agency as a source because of privacy safeguard considerations.

(b) *Compliance with the system of records and disclosure provisions.* (1) The agency must ensure that it identifies the system(s) of records involved in the matching program and has published the necessary notice(s) in the **Federal Register**.

(2) The Privacy Act does not itself authorize disclosures from system of records for the purpose of conducting a matching program. The agency must justify any disclosures outside the Department of Defense under subsection (b) of the Act. This means obtaining the written consent of the subjects of record for the disclosure or relying on one of the 12 non-consensual disclosures exceptions to the written consent rule. To rely on the routine use exception (b)(3), the agency must have already established the routine use (published in the **Federal Register**), or in the alternative, must comply with subsections (e)(4)(d) and (e)(11) of the Act which means amending the record system notice to add an appropriate routine use for the match. An amendment requires publication in the **Federal Register** with a 30 day waiting period for public comment.

(3) The routine use permitting disclosure for the match must be compatible with and related to the purpose for which the record was initially compiled.

(4) The routine use for the match in a record system notice shall clearly indicate that it entails a computer matching program with a specific agency for an established purpose and intended objective. For purposes of matching, a routine use must state that a disclosure may be made for a matching program. The agency may not rely on an existing established routine use to meet the requirements of the Act unless it expressly permits disclosure for matching purposes.

(c) *Prior notice to record subjects.* Subjects of record must receive prior notice that their records may be matched. This may be done by direct and/or constructive notice.

(1) Direct notice may be given when there is some form of contact between the government and the subject. Information can be furnished to individuals on the application form when they apply for a benefit, in a notice that arrives with a benefit, or in correspondence they receive in the mail. Use of the advisory Privacy Act Statement is an acceptable manner to provide direct notice to subjects of record at the time of application. The agency shall provide direct notice for front-end eligibility verification matching programs whose purpose is to validate an applicant's initial eligibility for a benefit and later to determine continued eligibility using the Privacy Act Statement on the application form. Providers of services should be given notice (Privacy Act Statement) on the form on which they apply for reimbursement for services provided. Providing notice of matching programs using the Privacy Act Statement shall be part of the normal process of implementing a Federal benefits program. The agency shall insure records contain appropriate revisions.

(2) Constructive notice can only be given by an appropriate routine use disclosure provision of the affected system of records to be used in the match. For purely internal matching program uses, amend the "Purpose(s)" element of the record system notice to specifically reflect those internal computer matches performed. The constructive notice method requires publication in the **Federal Register**. Examples of when constructive notice may be used:

(i) For matching programs whose purpose is to locate individuals in order to recoup payments improperly granted to former beneficiaries, direct notice may well be impossible and constructive notice may have to suffice.

(ii) The agency that discloses records to a state or local government in support of a non-Federal matching program is not obligated to provide direct notice to each subject of record. **Federal Register** publication in this instance is sufficient.

(iii) Investigative matches where direct notice immediately prior to a match would provide the subject an opportunity to alter behavior.

(3) The agency shall also provide periodic notice whenever an application is renewed, or at the least during the period the match is authorized to take place by providing notice accompanying the benefit as approved by the Defense Data Integrity Board.

(d) *Publication of the matching notice.* (1) The matching agency is required to publish in the **Federal Register** a notice of any proposed matching program or alteration of an established program at least 30 days prior to conducting the match for any public comment. Only one notice is required. When a non-Federal agency is the matching agency, the source agency shall be responsible for the publication. The proposed matching notice for publication shall be submitted in **Federal Register** format and included in the agency report. The notice shall contain the customary preamble and contain the required information in sufficient detail describing the match so that the reader will easily understand the nature and purpose of the match, including any adverse consequences.

(2) The preamble to the notice shall be prepared by the Defense Privacy Office, DA&M, and shall contain:

(i) The date the transmittal letters to OMB and Congress are signed.

(ii) A statement that the matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

(iii) A statement that a copy of the agreement shall be available upon request to the public.

(3) The agency shall provide:

(i) Name of participating agency or agencies.

(ii) Identity of the source agency and the recipient agency, or in the case of an internal DoD matching, the Component(s) involved.

(iii) Purpose of the match being conducted to include a description of the matching program and whether the program is a one-time or a continuing program.

(iv) Legal authority for conducting the matching program. Do not cite the Privacy Act as it provides no independent authority for carrying out any matching activity. If at all possible, use the U.S. Code citations rather than the Public Law as access to the Public Laws is more difficult. Avoid citing housekeeping statutes such as 5 U.S.C. 301, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information even if it results in citing the Code of Federal Regulations or a DoD directive or regulation. Whenever possible, the popular name or subject of the authority should be given, as well as a statute, public law, U.S. Code, or Executive Order number; for example: The Debt Collection Act of 1982 (Pub. L. 97-365) 5 U.S.C. 5514, Installment deduction of indebtedness.

(v) A complete description of the system(s) of records that will be used in the match. Include the system identification, name, and the official **Federal Register** citation, date published, including any published amendments thereto. Provide a positive statement that the system(s) contains an appropriate routine use provision authorizing the disclosure of the records for the purpose of conducting the computer matching program. (Note: In the case of internal DoD matches, the "purpose(s)" element of the system(s) involved.) If non-Federal records are involved, a complete description to include the specific source, address, and category of records to be used, e.g., Human Resources Administration Medicaid File, City of New York, Human Resources Administration, 250 Church Street, New York, NY 10013.

(vi) A complete description of the category of records and individuals covered from the record system(s) to be used, the specific data elements to be matched, and the approximate number of records that will be matched.

(vii) The projected start and ending dates for a one-time match or the inclusive dates for a continuing match.

(viii) The address for receipt of any public comment or inquiries concerning the notice shall indicate: Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884.

**§ 317.95 Providing due process to matching subjects.**

(a) *Independent verification and notice.* Subjects of record of matching programs shall be afforded certain due process procedures when a match uncovers any disqualifying or adverse information about them. No recipient agency, non-Federal agency, or source agency shall take any adverse action against an individual until such agency has independently verified such information and the individual has received a notice from the agency containing a statement of its findings and gives the individual the opportunity to contest the findings before making a final determination. The agency shall not take any adverse action based on the raw results of a computer matching program. Adverse information developed by a match must be investigated and verified prior to any action being taken.

(b) *Waiver of independent verification procedures.* Program officials may request the Data Integrity Board waive the independent verification requirement after they have identified the type of matching data eligible for a waiver and conducted a thorough determination of the data's accuracy. The only data eligible for waiver is that which identifies the individual and the amount of benefits paid under a federal benefit program. The data must not be ambiguous. After the Data Integrity Board determines that the data qualifies for the waiver procedure, the program official must present convincing evidence to the Data Integrity Board of the recipient agency to permit the Board to assert a high degree of confidence in the accuracy of the data. The following elements are examples of evidence which will assist a Board in making such a determination: A description of the databases involved including how the information is acquired and maintained; the system manager's overall assessment of the reliability of the systems and the accuracy of the data they contain; the results of any assessments or audits conducted; any material or significant weaknesses under various statutes; security controls in place; previous security assessments; any historical data relating to program error rates; and any information relating to the currency of the data. If the Board approves the waiver, it will notify the source agency and the program officials.

(c) *Independent investigation.* Conservation of resources dictates that the procedures for affording due process be flexible and suited to the data being verified and the consequences to the individual of making a mistake. If the source agency has established a high degree of confidence in the quality of its data and it can demonstrate that its quality control processes are rigorous, the recipient agency may choose to expend fewer resources in independently verifying the data. Absolute confirmation is not required. The agency should bring some degree of reasonableness to the process of verifying data. Some methods to consider are:

(1) The individual subject of record who is the best source where practical, and

(2) Researching source documents.

(d) *Notice and opportunity to contest.* The agency is required to notify matching subjects of adverse information uncovered during a matching program and give them an opportunity to contest and explain before the agency makes a final determination. Recipients already receiving benefits may not have them suspended or reduced pending expiration of the contest period. Individuals have 30 days to respond to a notice of adverse action, unless a statute or regulation grants a longer period. The period runs from the date of the notice until 30 calendar days. The agency shall allow an additional five days for mailing time before ending the notice period. If an individual contacts the agency within the notice period (35 days) and indicates his or her acceptance of the validity of the adverse information, the agency may take immediate action to deny or terminate. The agency may also take action if the period expires without a response.

(e) *Combining verification and notice requirements.* It may be appropriate to combine the verification and notice requirements into a single step, especially if the subject of record is the best source for verification. In this manner, the adverse finding and notice of the opportunity to contest are compressed into a single action. This method is dependent upon the confidence, reliability and quality of the data. Careful thought should be given as to when to apply this method. It may be applicable in special cases, but should not be considered as a routine process. To ensure that this consideration takes place, it shall be the responsibility of the Defense Data Integrity Board to make a formal determination as to when it is appropriate to compress the verification and notice into a single period.

(f) *Individual status pending due process.* The agency may not make a final determination as to applicants for

Federal benefit programs whose eligibility is being verified through a matching program until they have completed the due process steps the Act requires. This does not require placing an applicant on the rolls pending a determination, but only that the agency not make a final determination. However, if a subject is already receiving benefits, the benefits shall not be suspended or reduced until due process steps have been completed. If the specific Federal benefit program involved in the match has its own due process requirements, those requirements may suffice for the purposes of the Privacy Act, provided the Defense Data Integrity Board determines that they are at least as strong as the Privacy Act's provisions.

(g) *Exclusion.* (1) If the agency determines a potentially significant effect on public health or safety is likely, it may take appropriate action, notwithstanding these due process requirements.

(2) In such cases, the agency shall include the possibility of suspension of due process for this reason in its matching program agreement.

**§ 317.96 Matching program agreement.**

(a) *Requirements.* The agency should allow sufficient lead time to ensure that a matching agreement between the participants can be negotiated and signed in time to secure the Defense Data Integrity Board decision before the match begins. The agency, if receiving records from or disclosing records to a non-Federal agency for use in a matching program, is responsible for preparing the matching agreement and should solicit relevant data from the non-Federal agency where necessary. Both Federal source and recipient agencies must have the matching agreement approved by their respective Data Integrity Boards. In cases where matching takes place entirely within the Department of Defense, the agency may satisfy the matching agreement requirements by preparing a Memorandum of Understanding (MOU) between the systems of records managers involved. Before the agency may participate in a matching program the Defense Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement or MOU.

(b) *Agreements or MOUs must contain the following elements*--(1) *Purpose and legal authority.* Citation of the Federal or state statutory or regulatory authority for undertaking the matching program. Do not cite the Privacy Act.

(2) *Justification and expected results.* A full explanation of why a computer matching program, as opposed to some other form of activity, is being proposed and what the expected results will be, including a specific estimate of any savings.

(3) *Records description.* A full identification of the system of records (**Federal Register** citations) or non-Federal records, number of subjects of record, and what data elements will be included in the match.

(4) Dates. An indication of whether the match is a one-time or continuing program (not to exceed 18 months) and the projected starting and completion dates for the match.

(5) *Prior notice to subjects of record.* A description of the direct and constructive notice procedures afforded the subjects of record. Copies of the published applicable record system notices involved and all applicable forms containing the appropriate Privacy Act Statement being used by the participants of the proposed match should be provided.

(6) *Verification procedures.* A full description of the methods the agency will use to independently verify the information obtained through the matching program.

(7) *Disposition of matched items.* A statement that the information generated as a result of the matching program will be destroyed as soon as it has served the matching program's purpose and any legal retention requirements the agency establishes in conjunction with the National Archives and Records Administration or other cognizant authority.

(8) *Security procedures.* A description of the administrative, technical and physical safeguards to be used in protecting the information. They should be commensurate with the level of sensitivity of the data.

(9) *Records usage, duplication and disclosure restrictions.* A description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. Recipient agencies may not use the records obtained for a matching program under a matching agreement for any other purpose unless there is a specific statutory authority or there is a direct essential connection to the conduct of the matching program. Agreements shall specify how long the recipient agency may keep records provided for a matching program and when they will be returned to the source agency or destroyed.

(10) *Records accuracy assessments.* A description of any information relating to the quality of the records to be used in the matching program such as the error rate percentage of the data entry for the affected records. The worse the quality of the data, the less likely the matching program will have a cost-beneficial result.

(11) *Disclosure Accounting.* A certification by the agency participating in a matching program as a source agency for disclosures outside the Department of Defense that a disclosure accounting shall be maintained on the subjects of record as required by the Privacy Act.

(12) *Access by the Comptroller General.* A statement that the Comptroller General may have access to all records of a recipient DoD component or non-Federal agency necessary to monitor or verify compliance with the agreement. In this instance, the Comptroller General may inspect state or local government records used in matching programs.

(c) *Non-Federal agencies.* Non-Federal agencies intending to participate in covered matching programs are required to do the following:

(1) Execute matching agreements prepared by a Federal agency or agencies involved in the matching program.

(2) Provide data to Federal agencies on the costs and benefits of matching programs.

(3) Certify that they will not take adverse action against an individual as a result of any information developed in a matching program unless the information has been independently verified and until the applicable number of days after the individual has been notified of the findings and given an opportunity to contest them has elapsed.

(4) For renewals of matching programs, certify that the terms of the agreement have been followed.

(d) *Duration of matching programs.* Matching agreements will remain in force only as long as necessary to fulfill their specific purposes. They will automatically expire 18 months after their approval unless the Defense Data Integrity Board grants an extension of up to one year at least three months prior to the actual expiration date. The program must remain unchanged if an extension is to be granted. Each party to the agreement must certify that the program has been conducted in compliance with the matching agreement. Requests for extensions shall be submitted through channels to the Board.

(e) *Altered matching program.* (1) An altered matching program is one that is already established, but with such a significant change proposed that it requires revision of the matching notice and approval of the Defense Data Integrity Board, OMB and Congress. A significant change is one which does one or more of the following:

(i) Changes the purpose for which the program was established.

(ii) Changes the matching population either by including new categories of subjects of record, or by greatly increasing the numbers of records matched.

(iii) Changes the legal authority under which the match was being conducted.

(iv) Changes the records (data elements) that will be used in the match.

(2) A proposal to alter an established matching program shall be submitted through channels to the Defense Data Integrity Board for review and approval.

(f) *Non compliance sanctions.* (1) The agency shall not disclose any record for use in a matching program as a source agency to any recipient agency (within or outside the Department of Defense) if there is reason to believe that the terms of the matching agreement/MOU or the due process requirements are not being met by the recipient agency. The Defense Privacy Office, DA&M, shall be informed immediately, through channels, should any such incident occur. Normally consulting with the recipient agency should resolve the problem, but the responsibility rests with the source.

(2) No source agency shall renew a matching agreement/MOU unless the recipient agency (within or outside the Department of Defense) has certified that it has complied with the provisions of the agreement/MOU and the agency has no reason to believe otherwise.

(3) A willful disclosure of records from a system of records for any unauthorized computer matching program may subject the responsible officer or employee to criminal penalties. Civil remedies are also available to matching program subjects who can show they were harmed by an agency's violation of the Act as set forth in Subpart J of this part.

**§ 317.97 Cost-benefit analysis.**

(a) *Purpose.* The requirement for a cost-benefit analysis by the Act is to assist the agency in determining whether or not to conduct or participate in a matching program. Its application is required in two places: As an agency conclusion in the matching agreement containing the justification and specific estimate of savings; and in the Data Integrity Board review process where it is forwarded as part of the matching proposal. The intent of this requirement is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail. Rather, it is to ensure that sound management practices are followed when agencies use records from Privacy Act systems in matching programs. It is not in the government's interest to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the cost-benefit requirement as an opportunity to re-examine programs and weed out those that produce only marginal results.

(b) *Cost-benefit analysis.* The agency, when proposing matching programs, must provide the Board with all information which is relevant and necessary to allow the Board to make an informed decision including a cost-benefit analysis. The Defense Data Integrity Board shall not approve any matching agreement unless the Board finds the cost-benefit analysis demonstrates the program is likely to be cost effective.

(1) The Board may waive the cost-benefit analysis requirement if it determines in writing that submission of such an analysis is not required.

(2) If a matching program is required by a specific statute, then a cost-benefit analysis is not required. However, any renegotiation of such a matching agreement shall be accompanied by a cost-benefit analysis. The finding need not be favorable. The intent, in this case, is to provide Congress with information to help it evaluate the effectiveness of statutory matching requirements.

(3) The Board must find that agreements conform to the provisions of the Act and appropriate guidelines, regulations, and statutes.

**§ 317.98 Appeals of denials of matching agreements.**

(a) *Disapproval by the Board.* If the Defense Data Integrity Board disapproves a matching agreement, a party to the agreement may appeal the disapproval to the Director of the Office of Management and Budget, Washington, DC 20503. Appeals must be made within 30 days after the Defense Data Integrity Board's written disapproval. The appealing party shall submit with its appeal the following:

(1) Copies of all documentation accompanying the initial matching agreement proposal.

(2) A copy of the Defense Data Integrity Board's disapproval and reasons.

(3) Evidence supporting the cost-benefit effectiveness of the match.

(4) Any other relevant information, e.g., timing considerations, public interest served by the match, etc.

(b) *OMB approval.* If the Director of the Office of Management and Budget approves a matching program it will not become effective until 30 days after the Director reports his decision to Congress.

(c) *Recourse by the Inspector General.* If the Defense Data Integrity Board and the Director of the Office of Management and Budget both disapprove a matching program proposed by the Inspector General of the denial agency, the Inspector General may report that disapproval to the head of Department of Defense and to the Congress.

**§ 317.99 Proposals for matching programs.**

(a) *Who initiates the action.* The recipient DoD component (or the DoD component source agency in a match conducted by a non-Federal agency); or the recipient activity within the DoD component for internal matches, is responsible for reporting the match for Board approval. The responsible official should contact the other participants to gather the information necessary to make a unified report.

(b) *New or altered matching programs.* Determine if the match is a new program or an existing one. A new match is one for which no public notice has been published in the **Federal Register**. An altered matching program is an established (published public notice) match with such a significant change that it requires amendment. An altered matching program should not be confused with a request for an unchanged extension of an established program.

(c) *Contents of report (original and one copy).* (1) A proposed new matching program report shall consist of an agency letter of transmittal with the following attached documents:

(i) Completed agreement between the participants.

(ii) Benefit/cost analysis.

(iii) Proposed **Federal Register** matching notice for public review and comment.

(iv) Copies of all the appropriate forms (e.g., applications) of the participating parties providing direct notice to the individual or any other means of communication used.

(v) Copy or copies of the appropriate **Federal Register** system(s) of record notice(s) containing an appropriate

routine use providing constructive notice to the individual.

(2) A report on a proposed alteration to an established matching program shall consist of an agency letter of transmittal with the following attached documents:

(i) A report containing the significant change(s) and the following additional information:

(A) What alternatives to matching the agencies considered and why a matching program was chosen.

(B) The date the match was approved by each participating Federal agency's Data Integrity Board.

(C) Whether a cost-benefit analysis was required and, if so, whether it projected a favorable ratio.

(ii) Proposed **Federal Register** matching notice for public review and comment.

(3) A report requesting an extension beyond 18 months of an established unchanged matching program must be received by the Defense Privacy Office, DA&M, at least four months prior to the actual expiration date and consist of an agency letter of transmittal with the following attached:

(i) Justification for the extension (not to exceed one year).

(ii) Certification by the participants that the program has been conducted in compliance with the matching agreement.

(d) *Who receives the reports.* All reports shall be submitted to, and reviewed by, the agency Privacy Advisor and forwarded to the Defense Privacy Office, DA&M, for consideration by the Defense Data Integrity Board.

(e) *Action by the Defense Privacy Office.* The Defense Privacy Office, DA&M, shall present proposals before the Defense Data Integrity Board which shall either approve or disapprove proposals on their merits. Any inaction based on insufficient data, justification, or supporting documentation shall be returned for any further corrective action deemed necessary. Any disapproved proposals are returned with the stated reasons. Board approved proposals are coordinated with the Office of the Assistant Secretary of Defense (Legislative Affairs) and the Office of the General Counsel, Department of Defense. The Defense Privacy Office prepares for the signature of the Chairman of the Board (Director of Administration and Management (DA&M)), transmittal letters sent to Congress and OMB and concurrently submits the proposed **Federal Register** matching notice for publication.

(f) *Time restrictions on the initiation of new or altered matching programs.* (1) All time periods begin from the date the Chairman of the Board signs the transmittal letters.

(2) At least 30 days must elapse before the matching program may become operational.

(3) The 30 day period for OMB and Congressional review and the 30 day notice and comment period for the Matching Notice may run concurrently.

(g) *Requests for waivers.* The agency may seek waivers of certain matching program requirements including the 30 day review period by OMB and Congress. Requests for waivers shall be included in the letter of transmittal to the report. Such requests shall cite the specific provision for which a waiver is being requested with full justification showing the reasons and the adverse consequences if a waiver is not granted.

(h) *Outside review and activity.* The agency may presume OMB and Congressional concurrence if the review period has run without comment from any reviewer outside the Department of Defense. Under no circumstances shall the matching program be implemented before 30 days have elapsed after publication of the matching notice in the **Federal Register**. This period cannot be waived.

## Subpart J–Enforcement Actions

### § 317.110 Administrative remedies.

An individual who alleges he or she has been affected adversely by a violation of the Privacy Act shall be permitted to seek relief from the Assistant Director, Resources, through proper administrative channels.

### § 317.111 Civil court actions.

After exhausting all administrative remedies, an individual may file suit (5 U.S.C 552a(y)) in the Federal court against the agency for any of the following acts:

(a) *Denial of an amendment request.* The Assistant Director, Resources, or designee refuses the individual's request for review of the initial denial of an amendment or, after review, refuses to amend the record.

(b) *Denial of access.* The agency refuses to allow the individual to review the record or denies his or her request for a copy of the record.

(c) *Failure to meet recordkeeping standards.* The agency fails to maintain the individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record.

(d) *Failure to comply with the Privacy Act.* The agency fails to comply with any other provision of the Privacy Act or any rule or regulation promulgated under the Privacy Act and thereby causes the individual to be adversely affected.

### § 317.112 Criminal penalties.

The Privacy Act (5 U.S.C. 552a(i)) authorizes three criminal penalties against individuals. All three are misdemeanors punishable by fines of $5,000.

(a) *Wrongful disclosure.* Any member or employee of the agency who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure to anyone not entitled to receive the information.

(b) *Maintaining unauthorized records.* Any member or employee of the agency who willfully maintains a system of records for which a notice has not been published.

(c) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains a record concerning an individual from the agency under false pretenses.

### § 317.113 Litigation status report.

Whenever a civil complaint citing the Privacy Act is filed against the agency in Federal court or whenever criminal charges are brought against an individual in Federal court (including referral to a court-martial) for any offense, the agency shall notify the Defense Privacy Office, DA&M. The litigation status report included in Appendix C to this part provides a format for this notification. An initial litigation status report shall be forwarded providing, as a minimum, the information specified. An updated litigation status report shall be sent at each stage of litigation. When the court renders a formal disposition of the case, copies of the court's action, along with the litigation status report reporting the action, shall be sent to the Defense Privacy Office, DA&M.

### § 317.114 Annual review of enforcement actions.

(a) *Annual review.* The agency shall review annually the actions of its personnel that have resulted in either the agency being found civilly liable or an agency member being found criminally liable under the Privacy Act.

(b) *Reporting results.* The agency shall be prepared to report the results of the annual review to the Defense Privacy Office, DA&M.

## Subpart K-Reports

### § 317.120 Report requirements.

(a) *Statutory requirements.* Subsection (p) of the Privacy Act requires a report and assigns to the Office of Management and Budget the responsibility for compiling the report.

(b) *OMB requirements.* (1) In addition to the report, the Office of Management and Budget requires that all agencies be prepared to report the results of the reviews.

(2) All reports of the agency concerning implementation of the Privacy Act shall be submitted to the Defense Privacy Office, DA&M, which shall prescribe the contents and suspense for such reports.

### § 317.121 Reports.

(a) *Submission to the Defense Privacy Office.* The agency shall prepare statistics and other documentation for the preceding calendar year concerning those items prescribed for the annual report and any reports of the reviews required, and when directed, send them to the Defense Privacy Office, DA&M.

(b) *Report Control Symbol.* Unless otherwise directed, any report concerning implementation of the Privacy Program shall be assigned Report Control Symbol DD-DA&M(A)1379.

(c) *Content of annual report.* The Defense Privacy Office, DA&M, shall prescribe the content of the annual report but, at a minimum, the annual report shall contain the following:

(1) Name and address of reporting agency.

(2) Name and telephone number of agency official who can best answer questions about this report.

(3) Agency Privacy Act Officials.

(i) Senior Agency Official.

(ii) Privacy Act Officer.

(4) If your agency was involved in any litigation involving the Privacy Act.

(i) Provide a citation to the case and a brief description of the background, issues and results.

(ii) If the cases required your agency to change its practices, describe how.

(5) Systems of Records Inventory:

(i) Total number of systems of records as of December 31, 19XX.

(ii) Number of exempt systems.

(iii) Number of automated systems (either in whole or part).

(iv) Number of systems deleted.

(v) Number of systems added.

(vi) Number of routine uses added.

(vii) Number of routine uses deleted.

(viii) Number of existing systems to which an exemption(s) was added, and

(ix) Number of new systems to which an exemption(s) was added.

(6) If your agency received any public comments on any of its systems of other Privacy Act implementing activities, briefly describe:

(7) Access requests (first party requests which cited the Privacy Act):

(i) Number of requests.

(ii) Number granted in whole or in part.

(iii) Number denied in whole.

(iv) Number for which no record was found.

(8) Amendment requests (first party requests which cited the Privacy Act):

(i) Number of requests.

(ii) Number granted in whole or part.

(iii) Number denied in whole.

(9) Appeals of denial:

(i) Number of access denials appealed.

(ii) Number in which denial was upheld.

(iii) Number of amendment denials appealed.

(iv) Number in which denial was upheld.

(10) Suggestions:

## Subpart L-Agency Exemption Rules

### § 317.130 Establishing and using exemptions.

(a) *Types of exemptions.* (1) There are two types of exemptions permitted by the Privacy Act:

(i) General exemptions that authorize the exemption of a system of records from all but specifically identified provisions of the Privacy Act, and

(ii) Specific exemptions that allow a system of records to be exempted from only a few designated provisions of the Privacy Act.

(2) Neither the Privacy Act nor this part permits exemption of a system of records from all provisions of the Privacy Act.

(b) *Establishing exemptions.* (1) Neither general nor specific exemptions are established automatically for a system of records. Only the Director of DCAA or his/her designee shall make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within the agency shall be considered exempted until the Assistant Director, Resources, DCAA has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register** for this part.

(2) Only the Assistant Director, Resources, or his or her designee, may establish an exemption for a system of records.

(3) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register** describing the system.

(4) A system of records is exempt from only those provisions of the Privacy Act that are identified specifically in the agency exemption rule for the system.

(c) *Provisions to which exemptions may be applied.* After, or along with, establishing the system of records, the Assistant Director, Resources, may establish an exemption rule that shall exempt the system of records from any provision of the Privacy Act for which an exemption is allowed.

(d) *Using exemptions.* (1) Exemptions should be used only for the specific purposes stated in the exemption rules and only when in the best interest of the Government. Exemptions should be applied to only the specific portions of the records that require protection.

(2) An exemption should not be used to deny an individual access to information that he or she can obtain under the FOIA.

(e) *Exempt records maintained in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempted system is incorporated intentionally into a system that has not been exempted, the published notice and rules for the non-exempted system will apply to the record and it will not be exempt from any provisions of the Privacy Act.

(2) A record from one DoD component's exempted system that is temporarily in the possession of another DoD component remains subject to the published system notice and rules of the originating DoD component. However, if the non-originating DoD component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of the Privacy Act.

(3) Care should be exercised that exempt records are not accidentally misfiled into a system of records that are not exempted

### § 317.131 General exemptions.

(a) *Using general exemptions.* (1) DCAA is not authorized to establish the exemption for records maintained by the Central Intelligence agency under subsection (j)(1) of the Privacy Act.

(2) The general exemption provided by subsection (j)(2) of the Privacy Act may be established to protect criminal

law enforcement records maintained by the agency.

(3) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws.

(4) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(5) Information that may be protected under the (j)(2) exemption includes:

(i) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status.

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(iii) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(6) The (j)(2) exemption does not apply to:

(i) Investigative records maintained by an element having no criminal law enforcement activity as one of its principal functions, or

(ii) Investigative records compiled by any element concerning individuals' suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principal functions of the DoD component that compiled them.

(7) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement element cannot protect law enforcement records incorporated into a non-exempted system of records or any system of records maintained by an element not principally tasked with enforcing criminal laws. Agency system managers are prohibited to incorporate criminal law enforcement records into systems other than those maintained by criminal law enforcement elements.

(b) *Access to records under a (j)(2) exemption.* Requests for access to criminal law enforcement records maintained in a system for which a (j)(2) exemption has been established shall be processed as if also made under the FOIA.

**§ 317.132 Specific exemptions.**

(a) *Using specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific provisions of the Privacy Act. Subsections (k)(1–7) of the Privacy Act permits claiming exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

(1) (k)(1) exemption: Information properly classified under DoD 5200.1-R [11] (32 CFR part 159) in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source. The (k)(2) exemption, when established, allows limited protection of investigative records normally maintained in a (j)(2) exempt system for use in personnel and administrative actions.

(3) (k)(3) exemption: Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) (k)(4) exemption: Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) (k)(5) exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) (k)(6) exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

[11] See footnote 3 to § 317.1(b).

(7) (k)(7) exemption: Evaluation material used to determine potential for promotion in the military services, but only to the extent that disclosure would reveal the identity of a confidential source.

(b) *Confidential source.* (1) A "confidential source" is defined under the Privacy Act as a person or organization that has furnished information to the Federal Government under an express promise or, before September 27, 1975, under an implied promise that the identity of the person or organization would be held in confidence.

(2) Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Appropriate procedures should be established for granting confidentiality and designate those categories of individuals authorized to make such promises.

(c) *Access to records under specific exemptions.* Requests for access to records maintained in systems of records for which specific exemptions have been established shall be processed as if also made under the FOIA.

**§ 317.133 DCAA exempt record systems.**

(a) *Exempt systems of records.* The Director, DCAA has made a determination and claims an exemption for the following agency systems of records by publication of an appropriate exemption rule for the record system and therefore allowing the agency to invoke, at its discretion, the particular exemption permitted by the Privacy Act from certain subsections of the Privacy Act.

(b) *Classified material.* The Director, DCAA has made a determination that all systems of records maintained by the agency shall be exempt from 5 U.S.C. 552a(d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) to the extent that the record system contains any information properly classified under Executive Order 12356 and required by the executive order to be withheld in the interest of national defense or foreign policy. This blanket exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(c) *General exemption rules.* [Reserved]

(d) *Specific exemption rules.* [Reserved]

## Appendix A to part 317 - DCAA Blanket Routine Uses

### A. LAW ENFORCEMENT ROUTINE USE

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

### B. DISCLOSURE WHEN REQUESTING INFORMATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, or other pertinent information, such as current licenses, if necessary to obtain information relevant to a agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

### C. DISCLOSURE OF REQUESTED INFORMATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed to a Federal Agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

### D. CONGRESSIONAL INQUIRIES ROUTINE USE

Disclosure from a system of records maintained by this agency may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

### E. PRIVATE RELIEF LEGISLATION ROUTINE USE

Relevant information contained in all systems of records of the agency published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

### F. DISCLOSURES REQUIRED BY INTERNATIONAL AGREEMENTS ROUTINE USE

A record from a system of records maintained by this agency may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements, including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

### G. DISCLOSURE TO STATE AND LOCAL TAXING AUTHORITIES ROUTINE USE

Any information normally contained in IRS Form W-2 that is maintained in a record from a system of records maintained by this agency may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5 U.S.C. Sections 5516, 5517, 5520, and only to those State and local taxing authorities for which an employee or military member is or was subject to tax, regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76-07.

### H. DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT ROUTINE USE

A record from a system of records subject to the Privacy Act and maintained by this agency may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement reductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

### I. DISCLOSURE TO THE DEPARTMENT OF JUSTICE FOR LITIGATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the agency, or any officer, employee or member of the agency in pending or potential litigation to which the record is pertinent.

### J. DISCLOSURE TO MILITARY BANKING FACILITIES OVERSEAS ROUTINE USE

Information as to current military addresses and assignments may be provided to military banking facilities that provide banking services overseas and that are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

### K. DISCLOSURE OF INFORMATION TO THE GENERAL SERVICES ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. Sections 2904 and 2906.

### L. DISCLOSURE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. Sections 2904 and 2906.

### M. DISCLOSURE TO THE MERIT SYSTEMS PROTECTION BOARD ROUTINE USE

A record from a system of records maintained by this agency may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel, for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or agency rules and regulations, investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of a DoD investigation, and such other functions promulgated in 5 U.S.C. Section 1205 or as may be authorized by law.

**N. COUNTERINTELLIGENCE PURPOSES ROUTINE USE**

A record from a system of records maintained by this agency may be disclosed as a routine use outside the Department of Defense for the purpose of counterintelligence activities authorized by U.S. law or executive order or for the purpose of enforcing laws that protect the national security of the United States.

Appendix B to part 317- Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed

| Exemption | | Section of the Privacy Act |
|---|---|---|
| (j)(2) | (k)(1-7) | |
| No | No | (b)(1) Disclosure within the Department of Defense |
| No | No | (b)(2) Disclosure to the public |
| No | No | (b)(3) Disclosure for a routine use |
| No | No | (b)(4) Disclosure to Bureau of Census |
| No | No | (b)(5) Disclosure for statistical research and reporting |
| No | No | (b)(6) Disclosure to National Archives |
| No | No | (b)(7) Disclosure for law enforcement purposes |
| No | No | (b)(8) Disclosure under emergency circumstances |
| No | No | (b)(9) Disclosure to Congress |
| No | No | (b)(10) Disclosure to General Accounting Office |
| No | No | (b)(11) Disclosure pursuant to court orders |
| No | No | (b)(12) Disclosure to consumer reporting agency |
| No | No | (c)(1) Making disclosure accountings |
| No | No | (c)(2) Retaining disclosure accountings |
| Yes | Yes | (c)(3) Making disclosure accounting available to the individual |
| Yes | No | (c)(4) Informing prior recipients of corrections |
| Yes | Yes | (d)(1) Individual access to records |
| Yes | Yes | (d)(2) Amending records |
| Yes | Yes | (d)(3) Review of the Component's refusal to amend a record |
| Yes | Yes | (d)(4) Disclosure of disputed information |
| Yes | Yes | (d)(5) Access to information compiled in anticipation of civil action |
| Yes | Yes | (e)(1) Restrictions on collecting information |
| Yes | No | (e)(2) Collecting directly from the individual |
| Yes | No | (e)(3) Informing individuals from whom information is requested |
| No | No | (e)(4)(A) Describing the name and location of the system |
| No | No | (e)(4)(B) Describe categories of individuals |
| No | No | (e)(4)(C) Describing categories of records |
| No | No | (e)(4)(D) Describing routine uses |
| No | No | (e)(4)(E) Describing records management policies and practices |

Appendix B to part 317- Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed—Continued

| Exemption | | Section of the Privacy Act |
|---|---|---|
| (j)(2) | (k)(1-7) | |
| No | No | (e)(4)(F) Identifying responsible officials |
| Yes | Yes | (e)(4)(G) Procedures for determining if a system contains a record on an individual |
| Yes | Yes | (e)(4)(H) Procedures for gaining access |
| Yes | Yes | (e)(4)(I) Describing categories of information sources |
| Yes | No | (e)(5) Standards of accuracy |
| No | No | (e)(6) Validating records before disclosure |
| No | No | (e)(7) Records of First Amendment activities |
| Yes | No | (e)(8) Notification of disclosures under compulsory legal process |
| No | No | (e)(9) Rules of conduct |
| No | No | (e)(10) Administrative, technical and physical safeguards |
| No | No | (e)(11) Notice of new and revised routine uses |
| Yes | Yes | (f)(1) Rules for determining if an individual is subject of a record |
| Yes | Yes | (f)(2) Rules for handling access requests |
| Yes | Yes | (f)(3) Rules for granting access |
| Yes | Yes | (f)(4) Rules for amending records |
| Yes | Yes | (f)(5) Rules regarding fees |
| Yes | No | (g)(1) Basis for civil action |
| Yes | No | (g)(2) Basis for judicial review and remedies for refusal to amend |
| Yes | No | (g)(3) Basis for judicial review and remedies for denial of access |
| Yes | No | (g)(4) Basis for judicial review and remedies for other failure to comply |
| Yes | No | (g)(5) Jurisdiction and time limits |
| Yes | No | (h) Rights legal guardians |
| No | No | (i)(1) Criminal penalties for unauthorized disclosure |
| No | No | (i)(2) Criminal penalties for failure to publish |
| No | No | (i)(3) Criminal penalties for obtaining records under false pretenses |
| Yes | No | (j) Rulemaking requirement |
| N/A | No | (j)(1) Federal exemption for the Central Intelligence Agency |
| N/A | No | (j)(2) General exemption for criminal law enforcement records |
| Yes | N/A | (k)(1) Exemption for classified material |
| N/A | N/A | (k)(2) Exemption for law enforcement material |
| Yes | Yes | (k)(3) Exemption for records pertaining to Presidential protection |
| Yes | N/A | (k)(4) Exemption for statistical record |
| Yes | N/A | (k)(5) Exemption for investigatory material compiled for determining suitability for employment or service |
| Yes | N/A | (k)(6) Exemption for testing or examination material |

Appendix B to part 317- Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed—Continued

| Exemption | | Section of the Privacy Act |
|---|---|---|
| (j)(2) | (k)(1-7) | |
| Yes | N/A | (k)(7) Exemption for promotion evaluation materials used by the Armed Forces |
| Yes | No | (l)(1) Records stored in GSA records centers |
| Yes | No | (l)(2) Records archived before September 27, 1975 |
| Yes | No | (l)(3) Records archived on or after September 27, 1975 |
| Yes | No | (m) Applicability to government contractors |
| Yes | No | (n) Mailing lists |
| Yes | No | (o) Reports on new systems |
| Yes | No | (p) Biennial report (Note: Department of Defense requires an annual report) |

**Appendix C to part 317 - Litigation Status Report**

(a) Case Name and number:

(b) Plaintiff(s):

(c) Defendant(s):

(d) Basis for Court Action:

(e) Initial Litigation:

(1) Date Complaint or Charges Filed:

(2) Court:

(3) Court Action:

(6) Appeal (if any):

(1) Date Appeal Filed:

(2) Court:

(3) Case Number:

(4) Court Ruling:

(g) Remarks:

Dated: October 21, 1992.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 92-26062 Filed 10-28-92; 8:45 am]

BILLING CODE 3810-01-F

## FEDERAL MARITIME COMMISSION

## 46 CFR Parts 514 and 581

**[Docket No. 92-21]**

## Amendments to Service Contracts; Correction

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final Rule; correction.

**SUMMARY:** This document contains a correction to the final regulations which were published Thursday, October 8, 1992 (57 FR 46318). The regulations relate to amendments to service contracts under the Shipping Act of 1984.

**EFFECTIVE DATE:** October 8, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** The final regulations include provisions both in § 514.7(f)(1) and § 581.6(b)(1) of 46 CFR pertaining to the availability of terms of amended service contracts to similarly situated shippers. This correction implements the Commission's intent by revising certain language in § 581.6(b)(1) so that it corresponds to the similar provision in § 514.7(f)(1).

Accordingly, the publication on October 8, 1992, of the regulations which were the subject of FR Doc. 92-24439 is corrected as follows:

On page 46324 in the third column the "*provided that*" clause in § 581.6(b)(1) is corrected to read: "*Provided that,* where a shipper or shippers' association not a party to the original contract accesses an amended service contract, the minimum volume obligation for the accessing shipper or shippers' association shall be pro-rated according to the relation between the duration of the original (now amended) contract and the duration of the access contract."

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 92-26189 Filed 10-28-92; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 21, 22, and 94

**[ET Docket No. 92-9; FCC 92-437]**

### Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopted Rules amending the Table of Frequency Allocations to provide spectrum for new emerging technologies and a transition framework designed to prevent disruption to incumbent 2 GHz fixed microwave licensees. This action is necessary to provide spectrum for future communications services that employ emerging technologies. This action will make possible the operation of a broad range of new communications services that employ emerging technologies.

**EFFECTIVE DATE:** January 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Fred Lee Thomas, Office of Engineering and Technology, Frequency Allocation Branch, (202) 653-6204.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's First Report and Order adopted September 17, 1992, and released October 16, 1992. This action will not add or decrease the public reporting burden. The full text of Commission decisions are available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

**Summary of First Report and Order**

1. The Order allocates the 1850-1990, 2110-2150, and 2160-2200 MHz bands for emerging technologies. It provides a transition framework for the fixed microwave operations currently using these bands that facilitates their reaccommodation in higher frequency common carrier and private operational fixed microwave bands or on alternative media. The transition period would be of fixed duration, during which the only method for relocation would be pursuant to voluntary relocation arrangements negotiated by emerging technology service providers and incumbent fixed microwave licensees. Upon expiration of the transition period, incumbent fixed microwave licensees would retain co-primary status unless their frequencies were requested by an emerging technology service provider. Upon such a request, the parties are encouraged to conclude a voluntary agreement. If a voluntary agreement is not reached, the emerging technology service provider could request involuntary relocation of the incumbent. In such a case, the emerging technology service provider must guarantee payment of all relocation expenses, build the new microwave facilities at the relocation frequencies, test the new facilities for comparability to the old, and remedy any defect found within one year of the transition. Two gigahertz fixed microwave operations licensed to public safety entities are exempt from involuntary relocation but are permitted to conclude voluntary reaccommodation agreements.

2. The Order also dismisses or denies a number of petitions filed in this proceeding.

3. *Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rule Making in ET Docket No. 92-9 (57 FR 5993, February 19, 1992). Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

4. *Need for and Objective of Rules.* Our objective is to provide spectrum for the development and implementation of new innovative technologies and services, while preventing disruption to current users of that spectrum. Providing spectrum for emerging technologies is necessary in order to bring new services to the public, and to foster U.S. competitiveness in the global telecommunications marketplace.

5. *Issues Raised by the Public in Response to the Initial Analysis.* Many parties supported reallocating spectrum to accommodate emerging technologies. Although most suggested modifications to specific proposals set forth in the Notice, they did not suggest modifications specifically to the initial regulatory flexibility analysis. As a result, we have modified our proposals as appropriate. For example, in the Notice we had proposed to grant applications for new facilities on a secondary basis; we now feel that it would be less disruptive to existing 2 GHz fixed microwave licensees if applications for new facilities that modify or expand existing facilities in some instances are granted on a primary basis.

6. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives.* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Secretary shall send a copy of this First Report and Order to the Chief Counsel for Advocacy of the Small Business Administration.

7. Accordingly, *it is ordered,* that the petitions filed by Century Telephone Enterprises, Inc. on March 20, 1992, Association of American Railroads on March 23, 1992, Utilities

Telecommunications Council on May 1, 1992, and Association of American Railroads, Large Public Power Council, and American Petroleum Institute on April 10, 1992, are dismissed; and the petitions filed by Metropolitan Water District of Southern California and Questar Service Corporation on June 24, 1992, Commonwealth Edison Company, Montana Power Company, and Public Service Electric and Gas Company on June 29, 1992, Seattle City Light on August 17, 1992, and Takoma Public Utilities (*sic*) on August 19, 1992, are denied.

8. Also, *it is ordered*, that parts 2, 21, 22, and 94 of the Commission's Rules and Regulations are amended as specified below, effective 90 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 7(a), 303(c), (g), and (r), of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), (g), and (r).

**List of Subjects**

*47 CFR Parts 2, 21, 22, and 94*

Radio.

**Amendatory Text**

I. Parts 2, 21, 22 and 94 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

**§ 2.106 [Amended]**

2. Section 2.106, the Table of Frequency Allocations is amended by adding in the 1850–1990, 2110–2150, and 2160–2200 MHz bands in column 5 footnote designator NG153 and in column 7 "EMERGING TECHNOLOGIES" and by adding the text of footnote NG153 at the end of the table to read as follows:

* * * * *

NG153—The 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands are reserved for future emerging technologies on a coprimary basis with the fixed and mobile services. Allocations to specific services will be made in future proceedings.

* * * * *

## PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

**Authority:** Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

47. Subpart B of part 21 is amended by adding § 21.50 to read as follows:

**§ 21.50 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from Domestic Public Fixed Radio Services to emerging technologies.**

(a) Licensees proposing to implement services using emerging technologies may negotiate with Domestic Public Fixed Radio licensees in these bands for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Domestic Public Fixed Radio licensees will maintain primary status in these bands until [Date: end of transition period to be determined in the Second Report and Order which will be published in the **Federal Register** and will amend this section]. After [Date] Domestic Public Fixed Radio licensees will maintain primary status in these bands unless and until an emerging technology service licensee requests mandatory relocation of the fixed microwave licensee's operations in these banks. The Commission will amend the operating license or the fixed microwave operator to secondary status if the following requirements are met:

(1) The Service licensee using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service licensee completes all activities necessary for implementing the new microwave facilities, including identifying and obtaining, on the incumbents' behalf, new microwave frequencies, engineering, frequency coordination, and cost analysis of the complete relocation procedure;

(3) The emerging technology service licensee builds the new microwave system and tests it for comparability with the existing 2 GHz system;

(4) The 2 GHz microwave licensee is not required to relocate until the comparable alternative facilities are available to it for a reasonable time to make adjustments and ensure a seamless handoff; and

(5) If within one year after the transition to new facilities the 2 GHz microwave licensee demonstrates that they are not comparable to the former facilities, the emerging technology service provider must remedy the defects or pay to relocate the microwave licensee back to its former 2 GHz frequencies.

(c) (Reserved.)

(d) Domestic Public Fixed Radio operations that are relocated to other fixed microwave bands will be subject to the applicable rules for those bands.

## PART 22—PUBLIC MOBILE SERVICES

57. The authority citation for part 22 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, unless otherwise noted, and 307, unless otherwise noted.

67. Subpart B of part 22 is amended by adding § 22.50 to read as follows:

**§ 22.50 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from Public Mobile Service to emerging technologies.**

(a) Licensees proposing to implement services using emerging technologies may negotiate with Public Mobile Service licensees in this band for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Public Mobile Service licensees will maintain primary status in these bands until [Date: end of transition period to be determined in the Second Report and Order]. After [Date] Public Mobile Service licensees will maintain primary status in these bands unless and until an emerging technology service licensee requests mandatory relocation of the fixed microwave licensee's operations in these bands. The Commission will amend the operating license of the fixed microwave operator to secondary status if the following requirements are met:

(1) The service licensee using an emerging technology guarantees

payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service licensee completes all activities necessary for implementing the new microwave facilities, including identifying and obtaining, on the incumbents' behalf, new microwave frequencies, engineering, frequency coordination, and cost analysis of the complete relocation procedure;

(3) The emerging technology service licensee builds the new microwave system and tests it for comparability with the existing 2 GHz system;

(4) The 2 GHz microwave licensee is not required to relocate until the comparable alternative facilities are available to it for a reasonable time to make adjustments and ensure a seamless handoff; and

(5) If within one year after the transition to new facilities the 2 GHz microwave licensee demonstrates that they are not comparable to the former facilities, the emerging technology service provider must remedy the defects or pay to relocate the microwave licensee back to its former 2 GHz frequencies.

(c) (Reserved.)

(d) Public Mobile Service operations that are relocated to other fixed microwave bands will be subject to the applicable rules for those bands.

## PART 94—PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

7. The authority citation for part 94 continues to read as follows:

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

8. Part 94, subpart B is amended by adding § 94.59 to read as follows:

**§ 94.59 Transition of the 1.85–1.99, 2.13–2.15, and 2.18–2.20 GHz bands from Private Operational-Fixed Microwave Service to emerging technologies.**

(a) Licensees proposing to implement services using emerging technologies may negotiate with Private Operational-Fixed Microwave Service licensees in these bands for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Private Operational-Fixed Microwave Service licensees will maintain primary status in these bands until [Date: end of transition period to be determined in the Second Report and Order]. After [Date] Private Operational-Fixed Microwave Service licensees will maintain primary status in these bands unless and until an emerging technology service licensee requests mandatory relocation of the fixed microwave licensee's operations in these bands; however, public safety licensees will be exempt from any mandatory relocation. The Commission will amend the operating license of the fixed microwave licensee to secondary status if the following requirements are met:

(1) The service licensee using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service licensee completes all activities necessary for implementing the new microwave facilities, including identifying and obtaining, on the incumbents' behalf, new microwave frequencies, engineering, frequency coordination, and cost analysis of the complete relocation procedure;

(3) The emerging technology service licensee builds the new microwave system and tests it for comparability with the existing 2 GHz system;

(4) The 2 GHz microwave licensee is not required to relocate until the comparable alternative facilities are available to it for a reasonable time to make adjustments and ensure a seamless handoff; and

(5) If within one year after the transition to new facilities the 2 GHz microwave licensee demonstrates that they are not comparable to the former facilities, the emerging technology service provider must remedy the defects or pay to relocate the microwave licensee back to its former 2 GHz frequencies.

(c) (Reserved.)

(d) Private Operational-Fixed Microwave Service operations that are relocated to other fixed microwave bands will be subject to the applicable rules for those bands.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-26100 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 57, No. 210
Thursday, October 29, 1992

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

### Agricultural Marketing Service

### 7 CFR Part 910

[Docket No. FV92-910-2]

### Lemons Grown in California and Arizona; Proposed Weekly Volume Regulations

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

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule invites comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets for the ten week period from the week ending November 14 through the week ending January 16, 1993.

Consistent with program objectives, volume regulations for these weeks may be needed to establish and maintain orderly marketing conditions for fresh California-Arizona lemons. The Committee locally administers the marketing order covering lemons grown in California and Arizona.

**DATES:** Comments on the volume regulation proposed for the week ending November 14 must be received by the Department and the Committee by November 2; for the week ending November 21 by November 9; for the week ending November 28 by November 16; for the week ending December 5 by November 23; for the week ending December 12 by December 1; for the week ending December 19 by December 7; for the week ending December 26 by December 14; for the week ending January 2, 1993, by December 21; for the week ending January 9 by December 28; and for the week ending January 16 by January 4. See the Supplementary Information section for committee meeting dates.

**ADDRESSES:** Interested persons are invited to submit written comments concerning the proposed weekly levels of volume regulation.

Comments on the weekly levels of volume regulation must be received by the Department of Agriculture (Department) by 12 Noon Eastern Standard Time and by the Lemon Administrative Committee (Committee) by 12 Noon Pacific Standard Time on the day prior to the Committee meeting associated with the week of regulation being addressed in the comment.

Comments must be sent in triplicate to the Docket Clerk, room 2525-S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456, or by faxogram at (202) 720-5698; and to the Lemon Administrative Committee, 25129 The Old Road, suite 304, Newhall, California 91381, or by faxogram at (805) 253-2764. Such comments should reference the docket number, date, and page number of this issue of the **Federal Register**, and the dates of the regulatory week or weeks being addressed. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary. Such comments will be made available for public inspection in the Office of the Docket Clerk and the Committee office during regular business hours. See the Supplementary Information section for the locations of committee meetings.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agriculture Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3670; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487-5901.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed 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. A 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 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 70 handlers of lemons who are subject to regulation under the marketing order and approximately 2,000 producers of lemons in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service

firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona lemons may be classified as small entities.

The Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The order authorizes volume regulations applicable to fresh shipments of California-Arizona lemons to the domestic market, which is defined by the order to include Canada. The marketing order does not limit the volume of export shipments of lemons, lemons consumed by charitable institutions, or lemons utilized in the production of processed lemon products. Exemptions are also provided for lemons used for livestock feed; lemons which are distributed in gift packages; the marketing and distribution of organic lemons to organic or health food wholesalers or retailers; and lemons sold directly by producers to consumers.

The declaration of policy in the Act includes provisions concerning establishing and maintaining such orderly marketing conditions as will protect producer prices and as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona lemons that each handler may handle on a weekly basis may contribute to the Act's objectives of orderly marketing and improving producers' returns.

Revised Committee estimates indicate the California-Arizona lemon crop at 44,170 cars compared to a previous estimate of 42,400 cars for the 1992–93 fiscal year. The revised estimates do not change the 17,750 cars estimated for fresh use as provided for in the Committee's recommended shipping schedule. The Committee's revised estimate for District 1, central California, is 1,500 cars, 200 cars less than previous estimates. In District 2, southern California, the crop estimate increased 2,270 cars for a total of 26,770 cars. In District 3, the California desert and Arizona, the revised crop estimate is 15,900 cars, up 154 cars from a previously revised estimate, but, overall, down 300 cars from the Committee's initial 1992–93 estimate.

Committee recommendations for volume regulations may vary from the estimated shipping projections in this proposed rule. Factors that may stimulate increased fresh lemon consumption and necessitate a Committee recommendation for volume regulation above the proposed level include: (1) Significant changes in weather patterns in major consuming areas; (2) a regional or national concern for health; or (3) promotional efforts by industry marketing organizations. Factors that could adversely affect lemon demand in the marketplace and necessitate a recommendation for volume regulation at a lower level than that proposed herein include: (1) Significant changes in weather conditions; (2) the size composition of existing supplies; (3) the condition of the fruit; (4) transportation problems; or (5) extreme supply fluctuations created by competitive imports.

Because the Department has determined that volume regulation may be recommended and adopted, it is issuing this proposed rule covering the ten week period from the week ending on November 14, 1992, through the week ending on January 16, 1993. Should the Committee recommend, and the Department adopt, regulation for any or all weeks during the ten week period, the Department would issue final rules establishing such regulations. Similar proposed rules may be issued and subsequently finalized throughout the season.

The Department invites comments on the proposed weekly levels of volume regulation for the week ending November 14 through the week ending January 16, 1993. The Committee meets on a weekly basis to consider current and prospective marketing conditions and interested persons may orally present their position at such meetings. Interested persons are also invited to submit written comments to the Committee and the Department regarding the proposed levels of regulation for any or all weeks of the ten week period specified in this rule. Interested persons who wish to comment in writing must submit copies to both the Department and the Committee. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary.

Comments proposing alternative levels of shipments, including no regulation, during this ten week period should provide as much information as possible in support of the suggested alternatives. Interested persons are also invited to comment on the possible regulatory and informational impact of the proposed volume regulations on small businesses.

The Committee will consider comments received in response to this proposed rule when deliberating on its recommendations for volume regulation. The Department will also consider comments received in its evaluation of Committee recommendations for volume regulation. If warranted, the Department will issue volume regulations on a weekly basis.

Comments on the weekly levels of volume regulation must be received by the Department by 12 Noon Eastern Standard Time and by the Committee by 12 Noon Pacific Standard Time the day prior to the Committee meeting associated with the week of regulation being addressed in the comment. Following is a list of the Committee's meeting dates, times, and locations, the regulatory week to be addressed at each meeting, and the proposed level of volume regulation for each regulatory week.

**Committee Meetings and Dates**

1. Committee Meeting Date: November 3, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: November 8–November 14, 1992. Proposed Level: 310 cars.
2. Committee Meeting Date: November 10, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: November 15–November 21, 1992. Proposed Level: 300 cars.
3. Committee Meeting Date: November 17, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: November 22–November 28, 1992. Proposed Level: 275 cars.
4. Committee Meeting Date: November 24, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: November 29–December 5, 1992. Proposed Level: 320 cars.
5. Committee Meeting Date: December 2, 1992. Time: 11 a.m. Location: Shilo Inn, 11550 South Castle Dome Road, Yuma, Arizona 85365. Regulatory Week to be Addressed: December 6–December 12, 1992. Proposed Level: 360 cars.
6. Committee Meeting Date: December 8, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: December 13–December 19, 1992. Proposed Level: 355 cars.
7. Committee Meeting Date: December 15, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: December 20–

December 26, 1992. Proposed Level: 275 cars.

8. Committee Meeting Date: December 22, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: December 27, 1992–January 2, 1993. Proposed Level: 275 cars.
9. Committee Meeting Date: December 29, 1992. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: January 3–January 9, 1993. Proposed Level: 290 cars.
10. Committee Meeting Date: January 5, 1993. Time: 11 a.m. Location: 25129 The Old Road, suite 304, Newhall, California 91381. Regulatory Week to be Addressed: January 10–January 16, 1993. Proposed Level: 290 cars.

Comments received will be analyzed and considered as part of the rulemaking process.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 910 is proposed to be amended as follows:

Note: These sections will not appear in the annual Code of Federal Regulations.

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910, continues to read as follows:

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

2. A new § 910.1060 is added to read as follows:

**§ 910.1060 Lemon Regulation 760.**

The quantity of lemons grown in California and Arizona which may be handled during the period from November 8 through November 14, 1992, is 310,000 cartons.

3. A new § 910.1061 is added to read as follows:

**§ 910.1061 Lemon Regulations 761.**

The quantity of lemons grown in California and Arizona which may be handled during the period from November 15 through November 21, 1992, is 300,000 cartons.

4. A new § 910.1062 is added to read as follows:

**§ 910.1062 Lemon Regulation 762.**

The quantity of lemons grown in California and Arizona which may be handled during the period from November 22 through November 28, 1992, is 275,000 cartons.

5. A new § 910.1063 is added to read as follows:

**910.1063 Lemon Regulations 763.**

The quantity of lemons grown in California and Arizona which may be handled during the period from November 29 through December 5, 1992, is 320,000 cartons.

6. A new § 910.1064 is added to read as follows:

**§ 910.1064 Lemon Regulation 764.**

The quantity of lemons grown in California and Arizona which may be handled during the period from December 6 through December 12, 1992, is 360,000 cartons.

7. A new § 910.1065 is added to read as follows:

**§ 910.1065 Lemon Regulation 765.**

The quantity of lemons grown in California and Arizona which may be handled during the period from December 13 through December 19, 1992, is 355,000 cartons.

8. A new § 910.1066 is added to read as follows:

**§ 910.1066 Lemon Regulation 766.**

The quantity of lemons grown in California and Arizona which may be handled during the period from December 20 through December 26, 1992, is 275,000 cartons.

9. A new § 910.1067 is added to read as follows:

**§ 910.1067 Lemon Regulation 767.**

The quantity of lemons grown in California and Arizona which may be handled during the period from December 27, 1992, through January 2, 1993, is 275,000 cartons.

10. A new § 910.1068 is added to read as follows:

**§ 910.1068 Lemon Regulation 768.**

The quantity of lemons grown in California and Arizona which may be handled during the period from January 3 through January 9, 1993, is 290,000 cartons.

11. A new § 910.1069 is added to read as follows:

**§ 910.1069 Lemon Regulation 769.**

The quantity of lemons grown in California and Arizona which may be handled during the period from January 10 through January 16, 1993, is 290,000 cartons.

Dated: October 26, 1992.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 92–26270 Filed 10–27–92; 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 1108**

**[DA-92-36]**

## Milk in the Central Arkansas Marketing Area; Proposed Termination of Certain Provision of the Order

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

**ACTION:** Proposed termination of rule.

**SUMMARY:** This notice invites written comments on a proposal to terminate certain provisions of the Central Arkansas order effective November 1, 1992. The proposed action would terminate the base-excess plan which is part of an interorder plan designed to encourage a leveling of seasonal production. The termination was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a majority of producers who supply milk for the market. The cooperative contents that the base-excess plan in the Central Arkansas order should be terminated since the other orders included in the plan either have been or will be terminated.

**DATES:** Comments are due no later than November 5, 1992.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

**SUPPLEMENTARY INFORMATION:** 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 action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers who would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not

intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before the 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 law and request 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the termination of the following provisions of the order regulating the handling of milk in the Central Arkansas marketing area is being considered:

1. In § 1108.32(b)(1)(ii), the words "including, for the months of March through July the pounds of base milk".
2. In the heading of § 1108.61, the words "and uniform prices for the base and excess milk".
3. In § 1108.61(a), the words "for each month"; "of the"; the "s" from the word months; and "of August through February".
4. In § 1108.61(a)(6), the words "of August through February".
5. In § 1108.61, paragraph (b) in its entirety.
6. In § 1108.73(a)(2), the words "or base milk and excess milk,".
7. In § 1108.73(c)(2), paragraph (ii) in its entirety.
8. In § 1108.75(a), the words "and uniform price for base milk".
9. Sections 1108.90 through 1108.96.

All persons who want to submit written data, views or arguments about the proposed termination should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include November 1992 in the termination period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The proposal would terminate on November 1, 1992, the base-excess plan for paying producers for their milk. The base-excess provisions of the Central Arkansas order are part of an interorder base-excess plan which included the Fort Smith, Arkansas, order which was merged into the Southwest Plains order May 1, 1987, and the Memphis, Tennessee, order which is scheduled to be terminated December 1, 1992.

The plan provides for the formation of bases by producers during the months of September through January, and the payment of a higher price on all base milk during the months of March through July and a lower price on all milk produced in excess of their base production. The base-excess plan has no direct effect on handler costs for milk as it is a method of dividing returns among producers in a way that is intended to encourage a leveling of seasonal production.

The termination of the base-excess plan was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association which represents approximately 78 percent of the producers who supply the Central Arkansas milk market. AMPI indicated that the base-excess plan was a joint plan for both the Memphis, Tennessee, and the Central Arkansas orders. With the termination of the Memphis, Tennessee, order scheduled to be effective December 1, 1992, which was also requested by AMPI, there will be no additional orders included in the Central Arkansas base-excess plan. Therefore, comments are sought to determine whether the aforementioned provisions should be terminated.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

**List of Subjects in 7 CFR Part 1108**

Milk marketing orders.

**PART 1108—[AMENDED]**

The authority citation for 7 CFR part 1108 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–675.

Dated: October 26, 1992.

**Kenneth C. Clayton,**

*Acting Administrator.*

[FR Doc. 92–26276 Filed 10–28–92; 8:45 am]

BILLING CODE 3410–02–M

---

## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 330

**RIN 3064-AB01**

## Deposit Insurance Coverage

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

**ACTION:** Proposed rule.

**SUMMARY:** The FDIC is proposing to amend its deposit insurance regulations which specify the extent of insurance coverage provided by the FDIC for deposit accounts in FDIC-insured institutions. Most of the proposed amendments are required by section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which amended various provisions of the Federal Deposit Insurance Act (FDI Act) governing deposit insurance coverage. The FDIC is also proposing other amendments to its deposit insurance regulations that the FDIC believes are necessary to further

clarify the extent of deposit insurance provided by the FDI Act and the FDIC's regulations.

**DATES:** Comments on the proposal must be received by December 28, 1992.

**ADDRESSES:** All comments should be submitted to Hoyle L. Robinson, Executive Secretary, Attention: Room F-400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F-400, 1776 F Street, NW., Washington DC, between the hours of 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 898-3838]. Comments will be available for inspection and photocopying during normal business hours at the 1776 F Street address.

**FOR FURTHER INFORMATION CONTACT:** Claude A. Rollin, Counsel, Legal Division (202-898-3985).

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

## Background

On December 19, 1991, President Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102-242, 105 Stat. 2236. Section 311 of FDICIA, among other things, amended certain provisions of sections 3, 7, and 11 of the Federal Deposit Insurance Act (the FDI Act), 12 U.S.C. 1813, 1817, 1821, which govern the extent of insurance coverage provided by the FDIC for deposits in FDIC-insured institutions. These proposed regulatory amendments are primarily intended to implement the statutory changes made by FDICIA.

### *Rights and Capacities*

Under the amended statutory provisions, deposit insurance is still based upon the ownership "rights and capacities" in which deposit accounts are maintained in FDIC-insured institutions. Although section 311 of FDICIA deleted the "rights and capacities" provision from section 3(m) of the FDI Act, 12 U.S.C. 1813(m), it added a similar provision to section 11(a)(1) of the FDI Act, 12 U.S.C. 1821(a)(1). The revised section 11(a)(1) requires the FDIC to aggregate all deposits in a single insured institution that are maintained by the depositor "in the same capacity and the same right." Since this language is virtually identical to the language that was deleted from section 3(m) of the FDI Act, the FDIC is proposing to continue to aggregate deposits maintained in the same right and capacity and, conversely, separately insure deposits maintained in different rights and capacities. This means there will be no change in the basic rules which provide that accounts owned in different manners are insured separately (provided that certain requirements are satisfied) and accounts owned in the same way are added together and insured up to $100,000.

For instance, if an individual has two single ownership accounts at the same insured depository institution those accounts are added together and insured up to $100,000 in the aggregate. But individual accounts are insured separately from joint accounts and also from some revocable and irrevocable trust accounts provided that certain regulatory requirements are satisfied.

### *Authority and Purpose*

The FDIC is proposing to amend § 330.2 of its deposit insurance regulations, 12 CFR 330.2, to revise the description of the FDIC's authority to prescribe deposit insurance regulations. The only statutory provisions which speak to the amount of deposit insurance that must be provided by the FDIC for various types of accounts are in sections 3, 7, 8, 11 and 12 of the FDI Act, 12 U.S.C. 1813, 1817, 1818, 1821, 1822. Section 311 of the FDICIA deleted the provision in section 3 of the FDI Act, 12 U.S.C. 1813, which expressly authorized the FDIC to clarify and define, by regulation, the extent of deposit insurance coverage resulting from subsections 3(m)(1), 3(p), 7(i) and 11(a) of the FDI Act, 12 U.S.C. 1813(m)(1), 1813(p), 1817(i) and 1821(a), and to define the terms used in those sections. The FDIC does not believe, however, that by deleting this provision, Congress intended to specifically eliminate the FDIC's authority to prescribe deposit insurance regulations. Neither the language nor the legislative history of FDICIA evidences any intent on the part of Congress to drastically reduce the amount of deposit insurance coverage which would be the practical result of revoking the FDIC's deposit insurance regulations. In addition, Congress did not define the vast majority of terms in sections 3, 7, and 11 of the FDI Act, 12 U.S.C. 1813, 1817, and 1821, which govern the amount of deposit insurance coverage provided by the FDIC, including the "rights and capacities" language upon which all of the deposit insurance rules are based. Therefore, the FDIC must continue to define those terms and to provide more specificity concerning the extent of insurance coverage through regulations.

We note that FDICIA did not change the FDIC's authority, in section 9(a) [Tenth] of the FDIC Act, to prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency). 12 U.S.C. 1819(a).

Moreover, in section 302(d) of FDICIA, Congress added a new subsection (f) [1] to section 10 of the FDI Act, 12 U.S.C. 1820(f), which provides: Except to the extent that authority under this Act is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may prescribe regulations to carry out this Act and by regulation define terms as necessary to carry out this Act.

The FDIC continues to believe that it is absolutely necessary to promulgate deposit insurance regulations in order to fulfill its deposit insurance obligations under the FDI Act. The FDIC further believes that the adoption of regulations, after public notice and comment, is the most appropriate way to clarify the rules and define the terms employed in affording deposit insurance coverage under the FDI Act and provide rules for the recognition of deposit ownership in various circumstances. Since the authority to prescribe deposit insurance regulations has not been expressly and exclusively granted to any other regulatory agency, the FDIC does have the authority to continue to prescribe such regulations. Accordingly, the FDIC is proposing to amend § 330.2 of its deposit insurance regulations to modify the description of its authority to prescribe deposit insurance regulations.

### *"Pass-Through" Deposit Insurance Coverage for Retirement and Other Employee Benefit Plan Accounts*

The FDIC is proposing to substantially revise § 330.12 of its deposit insurance regulations, 12 CFR 330.12, which concerns employee benefit plan accounts, since section 311 of FDICIA made numerous statutory amendments which affect the deposit insurance

[1] Section 302(d) erroneously designates this new subsection as "subsection (f)." FDICIA section 113(a)(1) already redesignated subsection (e) of section 10 of the FDI Act as subsection (f). The FDIC drafted, and submitted to Congress, a technical amendment to take care of this problem but that amendment has not been adopted by the Congress as of this date.

provided for employee benefit plan accounts.

The proposed revised § 330.12(a) states the general rule that "pass-through" deposit insurance, in the amount of up to $100,000 per plan participant, shall be provided for the deposits of any employee benefit plan or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986, provided that the FDIC's recordkeeping requirements, as outlined in § 330.4, are satisfied. The term "employee benefit plan" is defined in the proposed § 330.12(g)(1) so as to include all employee benefit plans for which FDICIA mandates that the FDIC provide "pass-through" insurance coverage except for "457 Plans" (which are separately referenced in § 330.12(a)). The term "employee benefit plan" is defined as any plan which is described in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA), including any plan described in sections 401(d) of the Internal Revenue Code of 1986.

This definition is broader than the current definition in that it includes plans that have not previously been accorded "pass-through" coverage. For instance, section 3(3) of ERISA includes not only defined contribution and defined benefit plans but also certain employee welfare benefit plans. The deposits of employee welfare benefit plans have traditionally been entitled to deposit insurance only in the amount of up to $100,000 per-plan. Under FDICIA, such plans may be entitled to insurance in the amount of up to $100,000 per-participant.

Whether or not a particular plan will actually be entitled to coverage on a per-participant basis will depend on whether the interests of the participants are ascertainable. This is because the FDIC is proposing to retain its current requirement that the interest of each plan participant be a "non-contingent interest" in order to be recognized for deposit insurance purposes. That term is defined in proposed § 330.12(g)(3) to mean an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service. This definition is identical to the one in the existing regulations.

*Brokered Deposit Exception to "Pass-Through" Insurance Coverage*

Proposed § 330.12(b) indicates the exception, as mandated by FDICIA, to the general rule that employee benefit plans can be entitled to "pass-through" deposit insurance. Section 11(a)(1)(D) of the FDI Act, as amended by section 311 of FDICIA, only permits "pass-through" insurance coverage for employee benefit plan deposits (including "457 Plan" deposits) that are in insured institutions that could accept brokered deposits (pursuant to section 29 of the FDI Act) at the time they accepted the employee benefit plan deposits. See 57 FR 23933–23944 (June 5, 1992), amending 12 CFR 337.6. This would exclude undercapitalized institutions and institutions that are "adequately capitalized" but have not obtained a waiver from the FDIC to accept brokered deposits at the time they accepted the employee benefit plan deposits.

There is an exception to this exception which provides that "pass-through" insurance can still be accorded to employee benefit plan deposits in an institution that could not accept brokered deposits if, at the time the deposits are accepted, the institution meets each applicable capital standard. This would apply to "adequately capitalized" institutions that have not applied to the FDIC for permission to receive brokered deposits and those that have applied and been denied a waiver. In addition, the exception only applies if the depositor has received written notification that such deposits at the institution are entitled to insurance coverage on a pass-through basis. These restrictions on pass-through coverage for employee benefit plan deposits have a one-year delayed effective date and thus the proposed § 330.12(b) would become effective on December 19, 1992.

It should be noted, however, that the relevant time period for determining whether or not a particular insured depository institution can accept brokered deposits is the time at which the institution accepts the employee benefit plan deposit. Therefore, if an institution can accept brokered deposits at the time it accepts an employee benefit plan deposit because it is "well-capitalized" but is subsequently unable to accept brokered deposits because it becomes "undercapitalized," the employee benefit plan would not lose its "pass-through" insurance coverage. This is because the only relevant time period is the time at which it accepted the employee benefit plan deposit.

The FDIC does, however, intend to construe the term "acceptance" to include any rollover or renewal of a time deposit. Therefore, the ability of an insured institution to accept brokered deposits at the time any employee benefit plan deposit is rolled over or renewed would determine whether or not that deposit was henceforth entitled to "pass-through" coverage. The FDIC specifically requests comment on this proposed interpretation of the term "acceptance."

The FDIC recognizes that the application of this statutory provision may result in hardship for some employee benefit plans. This is because an employee benefit plan that makes deposits at an insured institution on a day in which the institution is "well capitalized," and thus can accept brokered deposits, would be entitled to "pass-through" deposit insurance but if several weeks later the same institution is "undercapitalized," and thus cannot accept brokered deposits, the employee benefit plan would not be entitled to "pass-through" insurance for any funds deposited at that time. Since benefits may be paid from the deposits in the interim, it may be difficult for the FDIC to determine which of the employee benefits plan's deposits are entitled to "pass-through" deposit insurance. The FDIC specifically requests comment on how deposit insurance should be determined for such funds.

In addition, the statute directs the FDIC not to provide "pass-through" insurance, as of December 19, 1992, for any employee benefit plan deposits in an insured depository institution that, at the time the deposits were accepted, could not accept brokered deposits under section 29 of the FDI Act. Although the final regulations implementing section 29 became effective on June 16, 1992, the FDIC is proposing to apply this prohibition only to deposits accepted by insured depository institutions on or after December 19, 1992.

As noted above, even if an institution cannot accept brokered deposits, it can provide "pass-through" insurance for employee benefit plan deposits if, at the time the deposit is accepted, it "meets each applicable capital standard" and "the depositor receives a written statement from the institution that such deposits are eligible for insurance coverage on a pro-rata or 'pass-through' basis." One issue is whether the term "each applicable capital standard" includes not only the minimum leverage and risk-based capital standards established for all insured institutions but also any higher standards established for a particular institution in an order, capital directive, written

agreement, or as a condition for approval of an application for deposit insurance. The FDIC is inclined to interpret the term "each applicable capital standard" in a narrow sense so as to mean only the leverage and risk-based capital standards established by regulation and/or policy statement of the institution's primary Federal regulator. The FDIC has not found nor been made aware of any legislative history which suggests that Congress intended a broader meaning of the term. Moreover, capital directives, orders and agreements requiring institutions to raise additional capital often require institutions to use their "best effort" to rise capital. With that type of language, it would be extremely difficult (if not impossible) for depositors (*i.e.*, pension plan administrators) to determine whether or not a particular institution was complying with a "best efforts" requirement. In addition, under the brokered deposit rule, an institution that satisfies its minimum regulatory capital requirements is deemed to be "adequately capitalized" regardless of whether or not the institution is required to meet some higher level of capital pursuant to an order, directive or written agreement. The final prompt corrective action regulations (57 FR 29662, July 6, 1992) also define an "adequate capitalized" institution to be one that meets its minimum regulatory capital requirements regardless of whether or not the institution is required to meet some higher level of capital pursuant to an order, directive or written agreement. The FDIC specifically requests comments on this interpretation.

*Aggregation of Multiple Plans*

The FDIC is proposing to continue to aggregate, for insurance purposes, the non-contingent interests of an employee in all deposit accounts for employee benefit plans (including "457 Plans") established by the same employer or employee organization. This proposed rule, which is stated in proposed § 330.12(c)(1) of the deposit insurance regulations, simply reiterates the existing rule. The term "employee organization" would continue to be defined, as it is defined in the current regulations, to mean

> any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

*Aggregation of Self-Directed Retirement Accounts*

Section 311(b)(2) of the FDICIA amended section 11(a)(3) of the FDI Act, 12 U.S.C. 1821(a)(3), to require the FDIC to aggregate an individual's interests in all deposits made in connection with the following types of retirement plans and insure the total up to $100,000:

(1) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986;

(2) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986; and

(3) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) and any plan described in section 401(d) of the Internal Revenue Code of 1986, to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

To implement this statutory requirement, the FDIC is proposing paragraph (c)(2) of § 330.12 which closely tracks the language in FDICIA. This proposed paragraph is in sharp contrast to the existing rules, which provide separate insurance coverage for an individual's interests in each of those types of retirement plan accounts. In terms of dollars, this means that if an individual participated in all four types of retirement plans, and each of the plans maintained an account at the same insured depository institution, the total maximum deposit insurance coverage available for the interests of that individual in all of those retirement accounts will decrease from $400,000 to $100,000.

The FDIC notes that section 11(a)(3)(A) of the FDI Act, 12 U.S.C. 1821(a)(3)(A), as amended by section 311(b)(2) of FDICIA, which requires the FDIC to aggregate and insure the above-noted retirement plan accounts in the amount of up to $100,000 per-participant, begins with the following words: Notwithstanding any limitation in this Act relating to the amount of deposit insurance available for the account of any 1 depositor. The FDIC is proposing to interpret this language to mean that, for employee benefit plan accounts described in section 11(a)(3)(A) of the FDI Act (except for "457 Plan" accounts), pass-through insurance coverage must be provided regardless of whether or not the insured institution could accept brokered deposits at the time it accepted the employee benefit plan deposit.

With respect to "457 Plan" accounts, clause (ii) of section 11(a)(3)(A) of the FDI Act, 12 U.S.C. 1821(a)(3)(A)(ii), as amended by section 311(b)(2) of FDICIA, specifically references the brokered deposit exception to "pass-through" deposit insurance. Accordingly, the FDIC is proposing not to provide "pass-through" deposit insurance nor to aggregate interests in "457 Plan" deposits if the deposit is in an insured institution that, at the time it accepted the deposit, could not accept brokered deposits under section 29 of the FDI Act. Such deposits would be aggregated and insured in the amount of $100,000 per plan.

The FDIC is proposing to no longer address the deposit insurance provided for IRA and Keogh deposits in a separate section of the FDIC's regulations (those rules are currently enumerated in § 330.13 of our regulations). Since those accounts will no longer be separately insured from each other or from certain other retirement accounts, the FDIC does not believe that a separate section in its regulations for IRA and Keogh accounts is warranted. Accordingly, the rules governing IRA and Keogh accounts are included within the general retirement account provisions of § 330.12 of the proposed regulations, 12 CFR 330.12.

*Determination of Interests*

The FDIC is proposing to retain the existing provisions which explain the methods by which an employee's interest in the deposits of a defined contribution or defined benefit plan are determined for insurance purposes. The FDIC is, however, seeking to clarify the existing rules by substituting the word "employee" for "beneficiary." There have been some questions raised about the extent to which a spouse or other person may have an interest in an employee benefit plan deposit upon the failure of an insured institution. Although such persons may be entitled to benefits under an employee benefit plan upon the death or divorce of a plan participant, the FDIC has not recognized that such persons have an insurable interest in the deposits of the plan while the plan participant is still alive and married. Accordingly, the FDIC is proposing to clarify this point by changing the existing references to the "beneficiary's account balance," in §§ 330.12(b) (1) and (2), 12 CFR 330.12(b) (1) and (2), so that they will refer to the "employee's account balance." This proposed change in language does not represent any change in the FDIC's existing policy.

*Vested Interests*

In aggregating participants' interests in certain retirement plan accounts, Congress directed the FDIC to consider only the present vested and ascertainable interest of each participant under an employee benefit plan excluding any remainder interest created by, or as a result of, the plan. See, section 11(a)(3)(B) of the FDI Act as amended by section 311(b)(2) of FDICIA. Under the FDIC's existing rules the interest of each employee in an employee benefit plan, whether vested or unvested, has been insured up to $100,000. By directing the FDIC to recognize only vested interests in employee benefit plan accounts, the total amount of insurance coverage available for the accounts of an employee benefit plan will be reduced.

The FDIC is proposing to apply this limitation to all employee benefit plan accounts that will be, under the amended regulations, entitled to "pass-through" deposit insurance coverage. The FDIC believes that it would be fairer to apply this rule to all employee benefit plan accounts rather than just to those that are to be aggregated. To do otherwise would be to recognize both vested and unvested interests of participants in defined benefit plan accounts (which are not subject to aggregation) but only vested interests in self-directed defined contribution plan accounts. The FDIC believes that there is no reason to treat these plans differently but specifically requests comments on this issue. In addition, the FDIC is particularly interested in receiving any financial data or statistics indicating the amounts or percentages of unvested funds deposited in insured institutions which would be affected by this proposed rule change.

*"457 Plan" Accounts*

"457 Plans" are deferred compensation plans provided by State and local governments, as well as not-for-profit organizations, that qualify under section 457 of the Internal Revenue Code of 1986. Before enactment of the last major banking reform bill (the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)), 457 Plan accounts in FSLIC-insured savings and loan institutions were insured on a "pass-through" basis, up to $100,000 per-participant, but in FDIC-insured banks they were insured only up to $100,000 per plan. As a result of FIRREA, the FDIC enacted uniform deposit insurance regulations which eliminated the "pass-through" insurance coverage for 457 Plan deposits in S&Ls. Largely because of the tremendous protest against this substantial reduction in insurance coverage, the FDIC did provide what was, in essence, an 18-month delayed effective date for this provision. Consequently, under the FDIC's rules, all 457 Plan deposits in S&Ls were entitled to "pass-through" insurance until January 29, 1992, or the first maturity date of any certificate of deposit after that date. One of the stated purposes of this delayed effective date or "grandfather" provision was to give Congress time to change the law so as to continue to provide "pass-through" insurance for 457 Plan deposits if it so desired.

Congress ultimately opted to change the law by providing, in section 311(b)(1) of FDICIA, that 457 Plan deposits must be insured on a "pass-through" basis. But Congress did more than just preserve the status quo, since, under section 11(a)(1)(D) of the FDI Act, as amended by section 311(b)(1) of FDICIA, 457 Plan deposits in not only insured savings and loan institutions, but also in insured banks, are required to be insured in the amount of up to $100,000 per-participant. This level of deposit insurance coverage had never been provided for 457 Plan deposits in commercial banks and represents a substantial increase in coverage from the $100,000 per-plan which was previously available at such institutions. As noted above, however, 457 Plan deposits will only be entitled to "pass-through" deposit insurance if they are in insured institutions that, at the time the deposits are accepted, can accept brokered deposits pursuant to section 29 of the FDI Act.

*Bank Investment Contracts (BICs) and Similar Contracts*

The FDIC is proposing to amend § 330.13 of its regulations, 12 CFR 330.13, so that it states the rules applicable to Bank Investment Contracts (BICs) and similar instruments. Under the existing deposit insurance regulations, BICs were treated like any other deposit instruments and were generally insured in the amount of $100,000 per employee benefit plan participant, provided that certain recordkeeping requirements were satisfied. FDICIA directs the FDIC not to assess, or provide any deposit insurance for, certain benefit-responsive BICs and similar instruments. However, investment contacts without the benefit responsive features and other types of deposit instruments, such as regular CDs, acquired by employee benefit plans could still be insured.

Section 311(a) of FDICIA provides that any insured depository investment contract between an employee benefit plan and an insured depository institution which expressly permits benefit-responsive withdrawals or transfers shall neither be entitled to deposit insurance nor subject to assessment. The term "benefit responsive withdrawals or transfers" is defined to mean "any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits under the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance." The proposed language of § 330.13 closely tracks the statutory language for the purpose of incorporating this statutory mandate in the deposit insurance regulations.

The FDIC is proposing to define the term "employee benefit plan" in exactly the same manner as FDICIA defines the term which is to say that it will be given the same meaning as the term is given in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) and it includes any plan described in section 401(d) of the Internal Revenue Code of 1986. This means that any Keogh plan would come within the definition of "employee benefit plan" even though some Keogh plans may not come within the meaning of that term as defined in section 3(3) of ERISA.

The FDIC does not have enough information about current industry forms or practices to distinguish between investment contracts typically acquired by employee benefit plans and regular certificates of deposit. The FDIC believes, however, that Congress intended only to address benefit-responsive investment contracts typically acquired by employee benefit plans. Therefore, the FDIC specifically requests comments on how it should define the term "investment contract" so as to exclude regular certificates of deposit if appropriate.

The FDIC is proposing to define the term "substantial penalty or adjustment" to mean, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months whichever is less, or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less. This definition was taken from a former provision of part 329 of the FDIC's regulations, 12 CFR part 329, which

required insured banks to impose a substantial penalty for early withdrawal of funds placed in time deposits. Although the requirement that banks impose a substantial penalty for early withdrawals was revoked in 1985, the FDIC believes that many banks still choose to assess such a penalty and that the amount of such penalty is determined in accordance with the rule that was revoked. The FDIC specifically welcomes comments on the manner in which the term "substantial penalty or adjustment" should be defined for this purpose.

The proposed amendments would also change the references to the Internal Revenue Code in our existing regulations so that such references are to the "Internal Revenue Code of 1986" rather than to the "Internal Revenue Code of 1954." These references are being changed in light of the official name change of the Code made by the Tax Reform Act of 1986.

*Accounts Held by Insured Institutions in a Fiduciary Capacity*

Section 311(b)(3) of FDICIA substantially reduces the level of insurance coverage available for accounts held by an insured institution in a fiduciary capacity. Under current FDIC rules, when an insured institution holds funds as an agent, nominee, guardian, custodian, conservator, trustee or in any other fiduciary capacity, those funds are insured in the amount of up to $100,000 for the interest of each principal or beneficiary and insurance is separate from the insurance provided for any other accounts maintained by the principals or beneficiaries at the same insured institution. Section 311(b)(3) of FDICIA amended section 7(i) of the FDI Act, 12 U.S.C. 1817(i), so as to eliminate that separate insurance coverage. In other words, a principal's or beneficiary's interest in such account will be aggregated with other accounts maintained by that person in the same right and capacity at the same insured institution. However, section 7(i) still provides separate insurance coverage, in the amount of up to $100,000 per-trust estate, whenever an insured institution is acting as trustee under an irrevocable trust established pursuant to a statute or written trust agreement. This separate insurance coverage is provided both for funds deposited within the fiduciary institution itself and for funds deposited by the fiduciary institution in another insured depository institution. The FDIC is proposing to amend § 330.10(a) of its regulations, 12 CFR 330.10(a), to reflect these statutory changes. The statutory changes have a two-year delayed effective date and thus the proposed regulatory changes would become effective on December 19, 1993.

The FDIC is also proposing to revise its description, in 12 CFR 330.10(b)(2), of how to determine the interest of a particular trust estate in the deposits of unallocated trust funds. The FDIC is not proposing to change the manner in which the calculation is performed, nor the amount of deposit insurance that is currently provided for such funds; we are only attempting to simplify the description of what is admittedly an extremely difficult concept.

The proposed revised regulatory language in § 330.10(b) is as follows:

> If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

The FDIC specifically welcomes any comments on how to further simplify the expression of this difficult concept.

*Notice Requirements*

The FDIC believes that some of the changes in insurance coverage made by section 311 of FDICIA are so substantial that it is necessary for insured depository institutions to notify their customers of those changes in insurance coverage. The most sweeping deposit insurance rule changes are those affecting employee benefit plan accounts. As noted above, FDICIA requires the FDIC to aggregate an individual's interests in all Individual Retirement Accounts (IRAs), Keogh Plan accounts, "457 Plan" accounts, and certain self-directed defined benefit plan accounts, insuring the total up to $100,000. This is in sharp contrast to the current rules which provide separate insurance for each of those types of retirement plan accounts which can lead to total insurance coverage of up to $400,000.

In addition, FDICIA eliminates the separate insurance coverage currently provided when a bank is acting in a fiduciary capacity (*e.g.*, as agent, nominee, custodian, conservator or guardian) on behalf of one or more individuals. As noted above, FDICIA did not, however, eliminate the separate insurance coverage provided when a bank is acting as trustee of an irrevocable trust established pursuant to statute or written trust agreement.

Since these are major changes in the insurance rules which will affect a substantial number of individuals, the FDIC believes it is necessary for all insured institutions to inform their customers of these changes. The FDIC recognizes, however, that any customer notification requirement imposes a substantial financial and administrative burden on insured institutions. In an effort to minimize that burden, we are proposing to require insured institutions to send, no later than June 30, 1993 (except as provided below), a notice to each of its depositors/accountholders, containing the following language:

> In December, 1993, some of the FDIC's deposit insurance rules will change. The rule changes will primarily affect the total amount of coverage which is provided for IRA, Keogh, self-directed employee benefit plan accounts, "457 Plan" accounts and accounts where an insured institution is acting in a fiduciary capacity. If the total of your interests in all accounts at this institution is less than $100,000, the rule changes will not affect you. For further information, contact [insert "your branch office" or some other contact point for the institution].

We are proposing that insured institutions send this notice to all of their depositors/accountholders without materially altering its language. The required notice may be included on account statements, included as a separate enclosure with account statements, or it may be sent to all depositors/accountholders in a separate mailing. With respect to any depositor/accountholder who maintains a time deposit and would not otherwise receive a regular monthly or quarterly account statement prior to June 30, 1993, the required notice may be sent to said depositor/accountholder at any time prior to the later of (1) the first maturity date of that time deposit; or (2) June 30, 1993.

The FDIC would welcome any suggestions concerning alternative means for notifying depositors of the pending rule changes. Specifically, the FDIC would appreciate any comments about the feasibility of institutions identifying and notifying only those customers who have deposit accounts which could potentially be affected by the rule changes. The FDIC would also appreciate comments on the desirability of institutions posting notices (for a limited time period) in all of their branches and main banking facilities, either on a voluntary or mandatory basis, informing depositors of the pending rule changes.

The FDIC is currently studying additional means by which the FDIC can inform the public about the deposit insurance rule changes and is committed to educating the public while being

careful not to unduly alarm depositors. The FDIC recognizes that, because of all the recent publicity concerning failures of insured institutions, some depositors are already quite concerned about the safety of their funds in general and, more specifically, the deposit insurance limits.

*Effective Dates*

Section 311(c) of FDICIA specifies the effective dates for the statutory changes section 311 makes to the deposit insurance provisions of the FDI Act. The amendments to section 11(a)(1)(B) of the FDI Act (made by section 311(b)(1) of FDICIA) which contain the basic $100,000 insurance limit, require the FDIC to add together all deposits maintained by a depositor in the same capacity and the same right, and which require the FDIC to provide "pass-through" deposit insurance for certain employee benefit plan deposits, became effective upon enactment of FDICIA on December 19, 1991. However, the exception (in section 11(A)(1)(d)(ii) of the FDI Act as amended by section 311(b)(1) of FDICIA) which prohibits the FDIC (subject to certain exceptions discussed above) from providing "pass-through" insurance coverage for employee benefit plan deposits made in insured depository institutions that, at the time the deposits are accepted, could not accepted brokered deposits, takes effect at the end of the one-year period after enactment of FDICIA (on December 19, 1992). [See above discussion].

The new paragraph (8) of section 11(a) of the FDI Act, as added by section 311(a)(1) of FDICIA, which concerns Bank Investment Contracts (BICs) and other similar instruments, becomes effective on December 19, 1993. Likewise, the amendments to section 11(a)(3)(A) of the FDI Act made by section 311(b)(2) of FDICIA which requires the FDIC to aggregate a depositor's interest in all IRA, Keogh Plan, 457 Plan and self-directed defined contribution plans generally becomes effective on December 19, 1993. Section 311(c)(3)(B) of FDICIA provides, however, that the aggregation provisions with respect to 457 Plan deposits shall become effective upon the date of FDICIA (December 19, 1991). Finally, the amendments to section 7(i) of the FDI Act made by section 311(b)(3) of FDICIA concerning funds deposited by insured institutions acting in a fiduciary capacity become effective on December 19, 1993.

Pursuant to section 311(c)(2) of FDICIA, any time deposit made before December 19, 1991 (the date of enactment) which matures after December 19, 1992 will not be subject to the new rules (with certain limited exceptions) until the first maturity date after December 19, 1993. Any rollover or renewal of a time deposit before December 19, 1993 is deemed to be a new deposit which would not be "grandfathered" (it would be subject to the rules then in effect for new deposits).

The FDIC is also proposing that, with respect to any time deposit made after December 19, 1991 but before December 19, 1993, the rules in effect at the time the deposit is made would govern the amount of insurance available until the first maturity date after December 19, 1993. Any rollover or renewal of a time deposit during that period would be deemed a new deposit which would be subject to the rules then in effect for new deposits.

*Rights and Capacities Study*

FDICIA requires the FDIC to review, within one year of the legislation's enactment (no later than December 19, 1992), the rights and capacities in which deposits are maintained and for which deposit insurance coverage is provided by the FDIC. The FDIC is currently conducting that review and has published a request for comment in connection with that study (See 57 FR 17866, April 28, 1992). Following the one-year review period, the FDIC is authorized to issue regulations providing separate insurance coverage for the different rights and capacities in which deposits are maintained. Separate insurance coverage can be provided only if it is consistent with the purpose of protecting small depositors and limiting the undue expansion of deposit insurance coverage and is consistent with the insurance provisions of the FDI Act. The regulations cannot take effect until at least two years from the date of the legislation's enactment (no earlier than December 19, 1993). Under these provisions, the FDIC could decide to insure other types of accounts separately or limit insurance coverage. The FDIC is planning to issue a report of the study's conclusions in the next few months.

*Regulatory Flexibility Act Statement*

The Board of Directors of the FDIC hereby certifies that these amendments to part 330 will not have a significant economic impact on a substantial number of small business entities within the meaning of the regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

**List of Subjects in 12 CFR Part 330**

Banks, banking, Bank deposit insurance, Trusts and trustees, Savings and loan associations.

The Board of Directors of the Federal Deposit Insurance Corporations hereby proposes to amend part 330 of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 330 is revised to read as follows:

**Authority:** 12 U.S.C. 1813(1), 1813(m), 1817(i), 1818(q), 1819 [Tenth], 1820(f), 1821(a) 1822(c).

2. Section 330.1(j) is revised to read as follows:

**§ 330.1 Definitions.**

* * * * *

(j) *Trust Funds* means funds held by an insured depository institution as trustee, pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.

* * * * *

3. Section 330.2 is revised to read as follows:

**§ 330.2 Authority and purpose.**

Section 311 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102–242, 105 Stat. 2236, amended sections 3, 7 and 11 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1813, 1817 and 1821, which govern the amount of deposit insurance provided by the FDIC. Section 311 of FDICIA deleted the provision in section 3 of the Federal Deposit Insurance Act which authorized the FDIC to clarify and define, by regulation, the extent of deposit insurance coverage resulting from subsections 3(m)(1), 3(p), 7(i) and 11(a) of the FDI Act, 12 U.S.C. 1813(m)(1), 1813(p), 1817(i) and 1821(a) and to define the terms used in those sections. However, FDICIA did not change the FDIC's authority, in section 9 [Tenth] of the FDI Act, to prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency). Moreover, in section 302(d) of FDICIA, Congress added a new subsection to section 10 of the FDI Act which provides that, except to the extent that authority under the FDI Act is conferred on any of the federal banking agencies other than the Corporation, the Corporation may prescribe regulations to carry out the

FDI Act and by regulation define terms as necessary to carry out the FDI Act. The purpose of the regulations in this part is to clarify the rules and define the terms employed in affording deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

**§ 330.10 [Amended]**

4. Section 330.10 is amended as follows:

a. In paragraph (b) introductory text, by removing "in a fiduciary capacity" and adding in lieu thereof "in its capacity as trustee of an irrevocable trust"; and

b. By revising paragraphs (a) and (b)(2) to read as follows:

**§ 330.10 Accounts held by depository institutions in fiduciary capacities.**

(a) *Separate insurance coverage.* Trust funds held by an insured depository institution in its capacity as trustee of an irrevocable trust, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to $100,000 for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) * * *

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depository institution as fiduciary, without allocation of specific amounts from a particular trust estate to an account in such institution(s), the percentage interest of that trust estate in the unallocated deposits in any institution in default is the same as that trust estate's percentage interest in the entire commingled investment pool.

* * * * *

5. Section 330.12 is revised to read as follows:

**§ 330.12 Retirement and other employee benefit plan accounts.**

(a) *"Pass-through" insurance.* Except as provided in paragraph (b) of this section, any deposits of an employee benefit plan or of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a "pass-through" basis, in the amount of up to $100,000 for the non-contingent interest of each plan participant, provided that the FDIC's recordkeeping requirements, as outlined in § 330.4, are satisfied.

(b) *Exception.* (1) "Pass-through" insurance shall not be provided pursuant to paragraph (a) of this section with respect to any deposits accepted by an insured depository institution which, at the time the deposits are accepted, may not accept brokered deposits pursuant to section 29 of the Act unless, at the time the deposit is accepted:

(i) The institution meets each applicable capital standard; and

(ii) The depositor receives a written statement from the institution indicating that such deposits are eligible for insurance coverage on a "pass-through" basis.

(2) This paragraph (b) shall not apply with respect to any employee benefit plan account entitled to "pass-through" insurance pursuant to paragraph (c)(2) of this section.

(c) *Aggregation*—(1) *Multiple plans.* Funds representing the non-contingent interests of a beneficiary in an employee benefit plan or eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 which are deposited in one or more deposit accounts shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans or eligible deferred compensation plans described in section 457 of the Internal Revenue Code of 1986 established by the same employer or employee organization.

(2) *Certain retirement accounts.* (i) Deposits in an insured depository institution made in connection with the following types of retirement plans shall be aggregated and insured in the amount of up to $100,000 per participant:

(A) Any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986 (26 U.S.C. 408(a));

(B) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986; and

(C) Any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1002) and any plan described in section 401(d) of the Internal Revenue Code of 1986, (26 U.S.C. 401(d)), to the extent that participants and beneficiaries under such plans have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.

(ii) The provisions of this paragraph (c) shall not apply with respect to the deposits of any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 which is not entitled to "pass-through" insurance pursuant to paragraph (b) of this section. Such deposits shall be aggregated and insured in the amount of $100,000 per-plan.

(d) *Determination of interests*—(1) *Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the employee's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Amounts taken into account.* For the purposes of this section, only the present vested and ascertainable interests of each participant in an employee benefit plan, excluding any remainder interest created by, or as a result of, the plan, shall be taken into account in determining the amount of deposit insurance accorded to the deposits of the plan.

(e) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the rules contained in this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed $100,000 in the aggregate.

(f) *Overfunded pension plan deposits.* Any portion(s) of an employee benefit plan's deposits which are not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to $100,000, separately from any other deposits.

(g) *Definitions of "employee benefit plan", "employee organization" and "non-contingent interest".* For purposes of this section:

(1) The term *employee benefit plan* has the same meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974

(ERISA) (29 U.S.C. 1002) and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(2) The term *employee organization* means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(3) The term *non-contingent interest* means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

6. Section 330.13 is revised to read as follows:

**§ 330.13 Bank investment contracts.**

(a) *General rule.* Any liability arising under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals of transfers shall not be treated as an "insured deposit" and thus shall not be entitled to deposit insurance.

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) *Benefit-responsive withdrawals or transfers* means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(2) *Employee benefit plan:*

(i) Has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1002); and

(ii) Includes any plan described in section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d)).

(3) *Substantial penalty or adjustment* means, in the case of a deposit having an original term which exceeds one year, all interest earned on the amount withdrawn from the date of deposit or for six months, whichever is less; or, in the case of a deposit having an original term of one year or less, all interest earned on the amount withdrawn from the date of deposit or three months, whichever is less.

7. Section 330.15 is revised to read as follows:

**§ 330.15 Notice to depositors.**

(a) Each insured depository institution shall send, no later than June 30, 1993 (except as provided in paragraph (b) of this section), a notice to each of its depositors/accountholders, containing the following language:

In December 1993, some of the FDIC's deposit insurance rules will change. The rule changes will primarily affect the total amount of coverage which is provided for IRA, Keogh, self-directed employee benefit plan accounts, "457 Plan" accounts and accounts where an insured institution is acting in a fiduciary capacity. If the total of your interests in all accounts at this institution is less than $100,000, the rule changes will not affect you. For further information, contact [insert "your branch office" or some other contact point for the institution].

(b) The language of the notice in paragraph (a) of this section may not be materially altered in any way. The required notice may be included on account statements, included as a separate enclosure with account statements or it may be sent to all depositors/accountholders in a separate mailing. With respect to any depositor/accountholder who maintains a time deposit and would not otherwise receive a regular monthly or quarterly account statement prior to June 30, 1993, the required notice may be sent to said depositor/accountholder at any time prior to the later of:

(1) The first maturity date of that time deposit; or

(2) June 30, 1993.

8. Section 330.16 is amended by revising paragraphs (b), (c) and (d) and removing paragraph (e) to read as follows:

**§ 330.16 Effective dates.**

* * * * *

(b) *One-year delayed effective date.* Section 330.12(b) shall become effective on December 19, 1992.

(c) *Two-year delayed effective date.* Sections 330.1(j), 330.10(a), 330.12(c), 330.12(d)(3) and 330.13 shall become effective on December 19, 1993.

(d) *Time deposits.* Except with respect to the provisions in § 330.12(a), (b) and (c), any time deposits made before December 19, 1991 that do not mature until after December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any time deposits made after December 19, 1991 but before December 19, 1993, shall be subject to the rules as they existed on the date the deposits were made. Any rollover or renewal of such time deposits prior to December 19, 1993 shall subject those deposits to the rules in effect on the date of such rollover or renewal. With respect to time deposits which mature only after a prescribed notice period, the provisions of this part shall be effective on the earliest possible maturity date after [insert effective date of the final amendments] assuming (solely for purposes of this section) that notice had been given on that date.

By order of the Board of Directors.

Dated at Washington DC, this 13th day of October, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 92–25873 Filed 10–28–92; 8:45]

BILLING CODE 6714–01–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 33

**[Docket No. 92–ANE–29; Notice No. SC–92–01–NE]**

## Special Conditions; Turbomeca Makila 1A2 Turboshaft Engine

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This document proposes special conditions for the Turbomeca Model Makila 1A2 turboshaft engine. This engine will have novel or unique engine ratings that are not defined by the applicable airworthiness regulations. This document proposes the safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations.

**DATES:** Comments must be received on or before November 30, 1992.

**ADDRESSES:** Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–29, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; or deliver in triplicate to room 311, at the above address.

Comments may be inspected at the above location in room 311, between the

hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chung Hsieh, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5229; (617) 273-7077; fax (617) 270-2412.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed special conditions. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made "Comments to Docket No. 92-ANE-29." The postcard will be date/time stamped and returned to the commenter.

## Background

On July 31, 1991, Turbomeca, applied for an amendment to Type Certificate No. E12-NE to include a new Model Makila 1A2 turboshaft engine. The Makila 1A2 turboshaft engine, a derivative of the Makila 1A turboshaft engine, is rated at 30-Second one engine inoperative (OEI), 2-Minute OEI, 30-Minute OEI, continuous OEI, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI, and 2-Minute OEI, rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

## Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations, Turbomeca must show that the Model Makila 1A2 turboshaft engine meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. E12-NE or the applicable regulations in effect on the date of application. The Federal Aviation Regulations incorporated by reference in Type Certificate No. E12-NE are: Section 21.29 and part 33, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model Makila 1A2 turboshaft engine because of the new and unique engine ratings, therefore, the Administrator prescribes special conditions under the provisions of § 21.16 to establish a level safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

*Conclusion:* This action affects only certain novel or unusual design features on one model engine. It is not a rule of general applicability, and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

## List of Subjects in 14 CFR Parts 21 and 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g).

## The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following Special Conditions for the Turbomeca Model Makila 1A2 turboshaft engine:

(a) In addition to the requirements of Federal Aviation Regulations (FAR) part 33, § 33.7, the following ratings are defined:

(1) Rated 30-Second One-Engine-Inoperative (OEI) Power: The brake horsepower developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use no greater than 30 seconds each at rotor shaft rotation speed and gas temperature established for this rating by FAR 33 or this special condition.

(2) Rated 2-Minute OEI Power: The brake horsepower, developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after failure of one engine in multi-engine rotorcraft, limited to three periods of use of up to 2 minutes each at rotor shaft rotation speed and gas temperature established for this rating by FAR 33 or this special condition.

(b) In addition to the requirements of FAR part 33, § 33.4, mandatory inspection and maintenance actions required following use of the 30-Second or 2-Minute OEI rating must be included in the airworthiness limitations section of the appropriate engine manuals.

(c) In addition to the requirements of FAR part 33, § 33.27, the following tests must be conducted for the most critically stressed rotor component of each turbine and compressor, including integral drum rotors, and centrifugal compressors. For 30-Second and 2-Minute OEI conditions, test for a period of 2½ minutes.

(1) At its maximum operation temperature, except as provided in FAR part 33, § 33.27, paragraph (c)(2)(iv), and

(2) at the highest speed determined in accordance with FAR part 33, § 33.27, paragraphs (c)(2)(i) through (c)(2)(vi).

(3) This test may be performed using a separate test vehicle if desired.

(4) Following the test based on the 30-Second OEI rating, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

(d) In addition to the requirements of FAR part 33, § 33.29, the engine must provide for a means to indicate when the engine is at either 30-Second or 2-Minute OEI rated power level, and to determine the elapsed time of operation at 2-Minute OEI and 30-Second OEI rated power levels.

(e) In addition to the requirements of FAR part 33, § 33.67, the engine must provide for a means for automatic availability of the 30-second OEI power, and engine test runs must be performed to demonstrate automatic switching to a 30-Second OEI rating condition.

(f) In addition to the requirements of FAR part 33, § 33.85, tests performed at the 30-Second and 2-Minute OEI ratings during the applicable endurance test prescribed in FAR part 33, § 33.87, may be used in showing compliance with the requirements of § 33.85 for these OEI ratings.

(g) In addition to the requirements of FAR part 33, § 33.87, an engine test must be conducted four times using the following test sequence for a total of not less than 120 minutes:

(1) Takeoff Power—three minutes at rated takeoff power.

(2) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(3) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(4) 30-Minute OEI, Continuous OEI, or Maximum Continuous OEI power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum Continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes.

(5) Minimum flight power—one minute at minimum flight power.

(6) 30-second OEI power—thirty seconds at rated 30-Second OEI power.

(7) 2-minute OEI power—two minutes at rated 2-Minute OEI power.

(8) Idle power—one minute at Idle power.

(h) In addition to the requirements of FAR part 33, § 33.88, the following must be performed:

(1) For engines that do not provide a means for temperature limiting, conduct a test for a period of five minutes at the maximum permissible power-on RPM with the gas temperature at least 75 degrees Fahrenheit higher than the 30-Second OEI rating operating limit.

(2) For engines that provide a means for temperature limiting, conduct a test for a period of four minutes at the maximum permissible power-on RPM with the gas temperature at least 35 degrees Fahrenheit higher than the maximum operating temperature limit.

(3) Following the test, rotor assembly growth and distress beyond serviceable limits for an overtemperature condition is permitted provided that the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

(i) In addition to the requirements of FAR part 33, § 33.93, the engine must be completely disassembled after completing the additional testing of FAR part 33, § 33.87, required under this special condition. The engine may exhibit deterioration in excess of that permitted in FAR 33, § 33.93, paragraph (b), and may include some engine parts and components that may be unsuitable for further use. It must be shown by procedures approved by the Administrator that the structural integrity of the engine including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on October 16, 1992.

**Mark C. Fulmer,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 92-26213 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

**14 CFR Part 39**

**[Docket No. 92-NM-167-AD]**

## Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 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 all Dassault Aviation Model Mystere-Falcon 900 series airplanes. This proposal would require repetitive inspections of the water system until modification of the underfloor heating at frame 25 is accomplished. This proposal is prompted by a report of accidental seepage of water into the heated compartment under the center aisle floor forward of frame 25. The actions specified by the proposed AD are intended to prevent water seepage that could accumulate and freeze in the underfloor zone, resulting in interference with the operation of the engine controls and the flight controls.

**DATES:** Comments must be received by December 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-167-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

**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 92-NM-167-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. 92-NM-167-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion:

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Dassault Aviation Model Mystere-Falcon 900 series airplanes. The DGAC advises that there has been a report of accidental seepage of water into the heated compartment under the center aisle floor forward of frame 25 on a Model Mystere-Falcon 900 series airplane. Water seeping into this area could accumulate and freeze in the underfloor zone. This condition, if not corrected, could result in interference with the operation of the engine controls and the flight controls.

Dassault Aviation previously issued several service bulletins that describe procedures for inspections and modifications of the fuselage drainage system in order to minimize possible water accumulation under the engine controls and the flight controls. The accomplishment of the procedures described in these service bulletins are currently required by AD 92-04-02, Amendment 39-8171 (57 FR 4845, February 10, 1992).

Since the issuance of that AD, Dassault Aviation has issued Service Bulletin F900-113 (F900-38-4), dated March 25, 1992, which describes procedures to reinforce the sealing of the collector under the washbasin on airplanes equipped with a Dassault Aviation type interior (no water system pressure accumulator is installed at frame 25).

In addition, Dassault Aviation has issued Service Bulletin F900-115 (F900-30-9), dated May 6, 1992, which describes procedures for modification of the underfloor heating at frame 25 for airplanes equipped with either a Dassault Aviation type interior or a Falcon Jet Corporation type interior (a water system pressure accumulator is installed on the left-hand side of frame 25). This modification involves installing piping to carry hot air from the passenger and crew air conditioning injector ducts at frame 25, thereby increasing the flow of heating air and preventing any water that may have seeped under the floor panels from freezing in extreme temperature conditions.

The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 92-067-010(B), dated March 18, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections of the water system until modification of the underfloor heating at frame 25 is accomplished. Additionally, for airplanes equipped with Dassault Aviation type interiors, the proposed AD would require reinforcement of the sealing of the collector under the washbasin, an inspection of a certain heating element, and replacement of that heating element, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously and the airplane maintenance manual.

The FAA estimates that 54 airplanes of U.S. registry would be affected by this proposed AD. The FAA has confirmed that, to date, the required actions already have been accomplished on all of the 54 affected airplanes. However, should additional affected airplanes be imported and placed on the U.S. register, it would take approximately 36 work hours per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $106,920, or $1,980 per airplane.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under 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 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [AMENDED]

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

**Dassault Aviation:** Docket 92-NM-167-AD.

*Applicability:* All Model Mystere-Falcon 900 series airplanes, certificated in any category.

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

To prevent interference with the operation of the engine controls and the flight controls accomplish the following:

(a) Within 50 hours time-in-service or 30 days after the effective date of this AD, whichever occurs first, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes equipped with a Falcon Jet Corporation type interior (a water system pressure accumulator is installed on the left-hand side of frame 25): Perform a complete inspection of the water system in accordance with paragraph 13 of the Supplemental Maintenance Manual, Temporary Revision, dated February 1992; and install a placard, part number FGFB 825 003 760, in a visible location in the aft toilet compartment.

(2) For airplanes equipped with a Dassault Aviation type interior (no water system pressure accumulator is installed at frame 25): Accomplish paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Perform a complete inspection of the water system, in accordance with procedure 38-102 of the Maintenance Manual.

(ii) Reinforce the sealing of the collector under the washbasin, in accordance with Dassault Aviation Service Bulletin F900-113 (F900-38-4), dated March 25, 1992.

(iii) Perform an inspection of heating element 43 HR of pipe item 320, Illustrated Parts Catalog (IPC) 38-30-20, figure 10, in accordance with procedure 30-701 of the Maintenance Manual; and, if a discrepancy is found, replace the heating element within 50 hours time-in-service after performing the inspection required by this paragraph.

(b) Prior to each flight of more than 4 hours time-in-service in duration that occurs after accomplishing the requirements of paragraph (a) of this AD, accomplish the following, as applicable: Inspect the water system, in accordance with the paragraph entitled "Maintenance of Pressurized Central Water System" (page 19), of Revision 4 of the Supplemental Maintenance Manual (for Model Mystere-Falcon 900 series airplanes equipped with a Falcon Jet Corporation type interior); or in accordance with procedure 05-100 (temporary revision No. 59) of the Maintenance Manual (for Model Mystere Falcon 900 series airplanes equipped with a Dassault Aviation type interior).

(c) Within the next 300 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first, repeat the inspection required by paragraph (a)(1) or (a)(2)(i) of this AD, as applicable. Thereafter, repeat the applicable inspection at intervals not to exceed 300 hours time-in-service or 6 months after the immediately preceding inspection, whichever occurs first.

(d) Within 2 years after the effective date of this AD, modify the underfloor heating at frame 25, in accordance with Dassault Aviation Service Bulletin F900-115 (F900-30-9), dated May 6, 1992.

(e) Modification of the underfloor heating in accordance with Dassault Aviation Service Bulletin F900-115 (F900-30-9), dated May 6, 1992, terminates the inspections required by paragraphs (b) and (c) of this AD.

(f) 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, Standardization Branch, ANM-113, 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, Standardization Branch.

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

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

Issued in Renton, Washington, on October 23, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26196 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

---

## 14 CFR Part 39

**[Docket No. 92-NM-190-AD]**

## Airworthiness Directives; Fokker Model F27 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 Fokker Model F27 series airplanes. This proposal would require replacement of certain nuts in the wing spar attachment brackets and certain pins at the rear spar attachment bracket with improved parts. This proposal is prompted by reports of loose bolts and Hi-shear pins found on the front and rear spar. The actions specified by the proposed AD are intended to prevent reduced structural capability of the wings.

**DATES:** Comments must be received by December 24, 1992.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-190-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**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 92-NM-190-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. 92-NM-190-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion:

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 series airplanes. The RLD advises that the manufacturer has received several reports of loose bolts and loose Hi-shear pins installed in the brackets on the front and rear wing spar on Fokker Model F27 series airplanes. The loose pins and bolts are the result of insufficient locking capability of the currently installed parts. Loose bolts and loose Hi-shear pins, if not detected and corrected, could lead to reduced structural capability of the wings.

Fokker has issued Fokker Service Bulletin F27/57-23, Revision 6, dated August 13, 1991, which describes procedures for replacing nuts having non-metallic locking inserts, installed at the wing spar attachment brackets on the front and rear spar station 1040, with all-metal self-locking nuts. This service bulletin also describes procedures for replacing the lower 14 Hi-shear pins at the rear spar attachment bracket with Hi-lok fasteners. The Hi-lok fasteners will provide improved fastening capability over the currently installed Hi-shear pins. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 91-112, dated September 13, 1991, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United

States, the proposed AD would require the replacement of currently installed nuts having non-metallic locking inserts with all-metal self-locking nuts, and the replacement of the lower 14 Hi-shear pins at the rear spar attachment bracket with Hi-lok fasteners. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD. that it would take approximately 18.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $31,543, or $1,018 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under 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 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Fokker:** Docket 92-NM-190-AD

*Applicability:* Model F27 series airplanes; serial numbers 10102 through 10433, inclusive; 10435 through 10443, inclusive; and 10446 through 10450, inclusive; certificated in any category.

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

To prevent reduced structural capability of the wings, accomplish the following:

(a) Within 8,000 flight hours after the effective date of this AD, or within 60 months after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Replace currently installed nuts having non-metallic locking inserts, installed at the wing spar attachment brackets at wing station 1040, with all-metal self-locking nuts, in accordance with Fokker Service Bulletin F27/57-23, Revision 6, dated August 13, 1991.

(2) Replace the lower 14 Hi-shear pins at the rear spar attachment bracket with Hi-lok fasteners, in accordance with Fokker Service Bulletin F27/57-23, Revision 6, dated August 13, 1991.

(b) 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, Standardization Branch, ANM-113, 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, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on October 23, 1992.

**Darrell M. Pederson,**

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

[FR Doc. 92-26197 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34-31347; File No. S7-33-92]

RIN 3235-AF52

### Passive Market Making

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed temporary rulemaking.

**SUMMARY:** In response to a petition for rulemaking filed by the National Association of Securities Dealers, Inc., the Securities and Exchange Commission is proposing for public comment a new exception to Rule 10b-6 and a new companion rule, Rule 10b-6A(T), under the Securities Exchange Act of 1934 to permit "passive market making" in connection with certain distributions of securities quoted on NASDAQ during the period when Rule 10b-6 would otherwise prohibit such activity. The new provisions would apply to a firm commitment distribution of securities that qualify for the two business day "cooling-off" period of Rule 10b-6 and are designated as "national market system" securities. A passive market maker's bids would be limited by the level of bids of market makers who are not participating in the distribution. The Commission is proposing that the new rule be adopted on a temporary basis to give the Commission, the NASD, and market participants an opportunity to evaluate their operation and effectiveness.

**DATES:** Comments should be received on or before December 15, 1992.

**ADDRESSES:** Interested persons should submit three copies of their written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 6-9, Washington, DC 20549, and should refer to File No. S7-33-92. All submissions will be made available for public inspection and copying at the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Sanow, M. Blair Corkran, Elizabeth Pucciarelli Hensley, or Thomas N. McManus, Office of Trading, Automation, and International Markets, Division of Market Regulation, at (202) 272-2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-1, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On July 27, 1992, the National Association of Securities Dealers, Inc. ("NASD") filed an amended petition for rulemaking ("NASD Petition") [1] with the Securities and Exchange Commission ("SEC" or "Commission") requesting that the Commission amend Rule 10b-6 [2] ("Rule 10b-6" or "Rule") under the Securities Exchange Act of 1934 ("Exchange Act") [3] to permit "passive market making" during certain distributions of securities quoted on the NASD's Automated Quotation ("NASDAQ") system and designated as national market system ("NMS") securities ("NASDAQ/NMS" securities).[4] In general, a passive market maker's bids would be limited by the level of bids of market makers who are not participating in the distribution.

The NASD believes that passive market making will enhance the market depth and liquidity for qualifying NASDAQ/NMS securities. The NASD Petition states that special liquidity problems exist in the NASDAQ market during the Rule 10b-6 "cooling-off" period [5] prior to an offering, relative to prices and spreads for exchange-traded securities. The NASD Petition ascribes these liquidity concerns to the withdrawal from the market of NASDAQ market makers who must comply with the provisions of Rule 10b-6 when they or their affiliated purchasers participate in a distribution. In response to the NASD Petition, the Commission is proposing to amend Rule 10b-6 and adopt new rule 10b-6A(T) under the Exchange Act on a temporary basis.

This proposal is part of the Commission's effort to amend and update the federal securities regulations to reflect changes in the securities markets, and to facilitate capital raising by small businesses.[6] As part of these initiatives, the Commission recognized that a critical factor in the viability of small business is the ability to have securities traded in the public markets without undue regulatory complexity and cost.[7] Passive market making will ease the restrictions of Rule 10b-6 by permitting market makers to continue to maintain two-sided markets during the time period when Rule 10b-6 ordinarily would require that they withdraw from substantially all market activities, including market making. Furthermore, issuers, including small business issuers, market makers, and security holders should also benefit because the presence of passive market making may produce a more efficient market for an issuer's securities during the pre-offering period.

**II. Rule 10b-6**

*A. Rule 10b-6 in General*

Rule 10b-6 is an anti-manipulation rule that is intended to prevent participants in an offering of securities from artificially conditioning the market for the securities in order to facilitate the distribution, and to protect the integrity of the securities trading market as an independent pricing mechanism. The Rule applies to securities offerings that present a potential for manipulation, and covers those persons who may have an incentive to manipulate the market during the distribution. Adopted in 1955, the Rule was a codification of "principles which historically have been applied in considering questions relating to manipulative activity and stabilization in connection with a distribution." [8] Specifically, the Rule prohibits persons participating in a distribution of a security [9] and their "affiliated purchasers" [10] from bidding for or purchasing, or inducing others to purchase, such security or any related security [11] until they have completed their participation in the distribution.[12]

Rule 10b-6 contains several exceptions to its general prohibitions that are intended to permit an orderly distribution of securities or to limit disruptions in the market for the securities being distributed. In particular, paragraph (a)(4)(xi) [13] of Rule 10b-6 ("exception (xi)") allows an underwriter, prospective underwriter, or dealer, or their affiliated purchasers, to, among other things, effect solicited principal transactions [14] prior to a two or nine business day "cooling-off" period. The applicable period depends upon the characteristics of the security: In the case of stock with a minimum price of five dollars per share and a minimum public float of 400,000 shares, the two business day cooling-off period is applicable; for all other securities, the nine business day period applies. This exception reflects the desirability of maintaining depth and liquidity in the market for the issuer's securities consistent with the anti-manipulation objectives of the Rule.[15] Once the cooling-off period commences, the distribution participant and its affiliated purchasers must suspend solicited principal activities, including market making (unless otherwise excepted by the Rule), until the termination of the distribution ("Rule 10b-6 restricted period").[16]

---

[1] The NASD filed the original petition on June 28, 1991, pursuant to Section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), and Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a). The original submission, supplementary material, and the July 27, 1992 amendment are available in the Commission's Public Reference Section at the address noted above in File No. S7-33-92.

[2] 17 CFR 240.10b-6.

[3] 15 U.S.C. 78a *et seq.*

[4] NASDAQ/NMS securities are securities that are quoted on NASDAQ and are subject to real-time reporting pursuant to a transaction reporting plan filed by the NASD under section 11A of the Act, 15 U.S.C. 78k-1. See also Schedule D of the NASD By-laws, Part XIII, NASD Manual (CCH) ¶¶ 1867A-1867C.

[5] The "cooling-off" period refers to the time when Rule 10b-6 requires persons participating in a distribution to withdraw from substantially all market activities, including market making. See 17 CFR 240.10b-6(a)(4)(xi).

[6] See Securities Act Release No. 6949 (July 30, 1992), 57 FR 36442 (adoption of small business proposals).

[7] See Securities Act Release No. 6924 (March 11, 1992), 57 FR 9768.

[8] Securities Exchange Act Release No. 5040 (May 18, 1954), 19 FR at 2986. Accord, Securities Exchange Act Release No. 5159 (April 19, 1955), 20 FR at 2826 and Securities Exchange Act Release No. 5194 (July 5, 1955), 20 FR at 5076. See generally, Foshay, "Market Activities of Participants in Securities Distribution," 45 Va. L. Rev. 907, 907-920 (1959) (Foshay); Whitney, "Rule 10b-6: The Special Study's Rediscovered Rule," 62 Mich. L. Rev. 567, 570-571 (1964) (Whitney).

[9] Among others, the Rule applies to issuers, underwriters, prospective underwriters, dealers, brokers, and other persons who have agreed to participate or are participating in the distribution. With particular reference to the NASD Petition, the Rule covers market makers when they or their affiliated purchasers are involved in a distribution.

"Distribution" is defined in 17 CFR 240.10b-6(c)(5) as "an offering of securities, whether or not subject to registration under the Securities Act of 1933, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods."

[10] "Affiliated purchaser" is defined in 17 CFR 240.10b-6(c)(6).

[11] In this Release, "related security" refers to a security that is deemed to be in distribution because of the operation of Rule 10b-6(b), 17 CFR 240.10b-6(b), or that is a security of the same class and series or right to purchase the distribution security or a security deemed to be in distribution. Paragraph (b) provides that "the distribution of a security (1) which is immediately exchangeable for or convertible into another security, or (2) which entitles the holder thereof immediately to acquire another security, shall be deemed to include a distribution of such other security within the meaning of [Rule 10b-6]."

[12] See Securities Exchange Act Release No. 19565 (March 4, 1983), 48 FR 10628 ("Release 34-19565").

[13] 17 CFR 240.10b-6(a)(4)(xi).

[14] The publication of a market maker's bid quotation involves a solicitation for the security.

[15] See Securities Exchange Act Release No. 24003 (January 16, 1987), 52 FR 2994 ("Release 34-24003").

[16] See 17 CFR 240.10b-6(c)(3). Any transactions effected in accordance with exception (xi) may not be engaged in for the purpose of creating actual, or apparent, active trading in or raising the price of the covered securities. 17 CFR 240.10b-6(a)(4).

*B. 1983 Rule Amendments*

In 1981, the NASD requested that the Commission amend Rule 10b–6 to address perceived liquidity problems in the market for over-the-counter ("OTC") securities prior to the commencement of offers or sales, allegedly as a direct result of the operation of Rule 10b–6.[17] Specifically, the NASD urged the Commission to adopt a new exception to the Rule to permit market makers in a firm commitment underwriting to engage in limited market making during the two business days prior to the commencement of the distribution at a price no higher than the highest independent bid for the security at the close of business on the day before the start of that period.[18] At that time, exception (xi) of Rule 10b–6 contained a uniform cooling-off period of nine business days [19] for solicited principal purchases of OTC securities.

In 1983, the Commission adopted comprehensive amendments to Rule 10b–6.[20] Rather than incorporating the NASD's proposal, the Commission shortened the cooling-off period to two business days in the case of certain securities and retained the nine business day period for other securities.[21] Release 34–19565 stated the Commission's expectation that the two business day cooling-off period contained in amended exception (xi) would eliminate to a large extent the liquidity problems that previously may have occurred under the uniform nine business day period.[22] The Commission noted that the shortening of the cooling-off period might make it more practicable for participants to engage in pre-effective stabilization in compliance with Rule 10b–7 [23] under the Exchange Act, while the provisions of Rule 10b–7 would protect against the possibility of uncoordinated stabilizing activities occurring during the cooling-off period.[24] The Commission nonetheless stated that it would revisit the issue of whether the new amendments and the availability of pre-effective stabilization reduced the liquidity problems previously experienced under the Rule.[25]

*C. Recent Passive Market Making Contexts* [26]

Since 1987, the term "passive market making" has been used by the Commission in contexts where conditional exemptions from Rules 10b–6 and 10b–7 have been granted to allow non-U.S. distribution participants, and their affiliated purchasers, to continue market making in the security being distributed or in related securities.[27] The permitted market making transactions were limited by the actions of independent market makers, *i.e.*, the passive market maker could follow but not lead the market in either the size or level of its bids.

The exemptions permit certain market makers on foreign securities exchanges, when they or their affiliated purchasers are engaged in a distribution in the United States, to engage in passive market making transactions during periods in which Rule 10b–6 would normally prohibit such transactions.[28] These exemptions were issued in connection with multinational offerings of the securities of large, highly capitalized foreign issuers, and in part reflected considerations of international comity. In particular, the rules of some foreign securities exchanges prevent a market maker who has ceased to act as a market maker in a particular security from resuming market making activities in the security for a significant period.[29] This raised a conflict between the requirements of Rule 10b–6 and the requirements of the foreign market. The exemptions permit persons covered by Rule 10b–6 to continue market making on foreign exchanges, albeit on a passive basis, in instances where such activities were unlikely to have a manipulative impact on the U.S. market. Effective surveillance of the market making activities by foreign securities regulators, and the ability of the Commission readily to obtain transaction information, were essential conditions of the exemptions.[30]

## III. The NASD Petition

The NASD Petition sets forth two related concerns in support of its request for passive market making. The NASD believes that the provisions of Rule 10b–6 adversely affect the market for NASDAQ securities at the time of offerings, because the requirement that NASDAQ market makers withdraw from the market when they or their affiliated purchasers participate in a distribution of securities [31] causes the market for the security to suffer from a lack of depth and liquidity. Also, the NASD believes that the market prior to a public offering of a NASDAQ security is susceptible to abnormal price

[17] See Securities Exchange Act Release No. 18528 (March 3, 1982), 47 FR 11482 ("Release 34–18528"), citing letter from Frank J. Wilson, Executive Vice President, NASD, to Douglas Scarff, Director, Division of Market Regulation, SEC, dated November 19, 1981 (publicly available in File No. S7–921).

[18] Release 34–18528, 47 FR at 11486. This concept was also supported by other commenters. See Manning and Miller, "The SEC's Recent Revisions to Rule 10b–6," 11 Sec. Reg. L.J. 195, 213 (1983).

[19] The cooling-off period was expressed as permitting purchases ten or more business days prior to commencement of offers or sales in the distribution. However, as formulated and interpreted, the Rule permitted purchases up to and including the tenth business day before commencement of the offering. Thus, the cooling-off period actually was nine full business days. Release 34–19565, 48 FR at 10634 n.29. In 1987, the text of the Rule was changed to reflect this. See Release 34–24003, 52 FR at 3004.

[20] Release 34–19565.

[21] The distinction between distributions of securities traded in the OTC market and those traded on an exchange also was removed.

[22] Release 34–19565, 48 FR at 10635.

[23] 17 CFR 240.10b–7. Rule 10b–7 governs the placing of stabilizing bids or the effecting of stabilizing purchases to facilitate an offering. Rule 10b–7 stabilization does not encompass transactions that raise the price of the security or create actual, or apparent, active trading greater than that necessary to prevent or retard a decline in the price. The Commission indicated that similarities of purpose and effect exist between stabilization and the proposed limited and "passive" market activities. Release 34–19565, 48 FR at 10635.

[24] Release 34–19565, 48 FR at 10635. The revisions to exception (xi) did not affect the ability of an underwriter to engage in stabilization activities conducted in accordance with Rule 10b–7.

[25] Release 34–19565, 48 FR at 10635.

[26] Prior to the adoption of the Rule in 1955, it appears that the Commission permitted limited market trading by underwriters where the withdrawal of the underwriters would have disrupted the market for the distribution security. Foshay, at 911, 928–929. After 1955, the Commission took a "more guarded" position toward such trading. *Id.* at 930–933.

[27] See, e.g., Letter regarding the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (now the London Stock Exchange ("LSE") (September 29, 1987) ("LSE Letter I"), [1987] Fed. Sec. L. Rep. (CCH) ¶78,713, as modified in Letter regarding the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (October 14,1 988) ("LSE Letter II") (available on LEXIS) (exemptions from Rules 10b–6 and 10b–7 to permit LSE market makers to engage in "passive market making" transactions during the period that the provisions of Rule 10b–6 normally would prohibit such activities, subject to certain conditions).

[28] *Id.; Letter regarding Societe Nationale Elf Aquitaine (June 5, 1991) ("Elf Aquitaine"), [1992] Fed. Sec. L. Rep. (CCH) ¶79,734; Letter regarding TOTAL (October 18, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶76,077, Letter regarding TOTAL (June 23, 1992) (available on LEXIS); and Letter regarding Norsk Hydro a.s (May 5, 1988), [1988–89] Fed. Sec. L. Rep. (CCH) ¶78,804.*

[29] For example, LSE rules are designed to inhibit "fairweather" market making by effectively preventing a member firm from resuming market making activities in a security for a period of three months after the member firm ceases to make a market in that security. See, e.g., The Rules of the International Stock Exchange Amendment Service, Equity Market: Dealing and Reporting, Rules 356.2, 356.3, 360.5, and 360.6 (1989).

[30] See, e.g., LSE Letter I and Elf Aquitaine nn.27–28 *supra*.

[31] NASD rules permit market makers to withdraw their quotations based on legal or regulatory requirements. See Schedule D to the NASD By-Laws, Part VI, Section 8, NASD Manual (CCH) ¶1824. Such "excused withdrawals" are permitted where a market maker is required to comply with Rule 10b–6.

movements on low volume because the remaining market makers are less likely to price the security efficiently.[32]

Similarly, the NASD believes that its ability to attract initial listings and to retain companies that are contemplating a public offering is undermined because issuers perceive a disparate effect of Rule 10b–6 on public offerings for NASDAQ securities as compared with exchange-listed securities. The NASD does not believe that the provisions of Rule 10b–6 give rise to similar liquidity problems in markets for exchange-listed securities because the exchange specialist is present to offset excess supply or demand during the cooling-off period.[33]

Although the empirical evidence submitted by the NASD does not clearly establish that the provisions of Rule 10b–6 impair liquidity or affect security prices during a distribution,[34] the Commission believes that it is an appropriate stage in the development of the OTC markets to seek public comment on passive market making. The Commission believes that passive market making would give NASDAQ market makers the ability to continue to make relatively normal two-sided markets during the cooling-off period, while limiting their ability to substantially affect the security's price. This should provide the market with greater depth and liquidity. Moreover, the NASD has developed sophisticated and reliable surveillance mechanisms that are far superior to those existing at the time of the Rule's adoption in 1955, or at the time of the 1983 amendments, and has proffered a surveillance plan as an integral element of the proposal. Accordingly, the Commission is publishing for public comment the NASD Petition in the form of new exception (xiv) to Rule 10b–6 and new Rule 10b–6A(T).[35]

## IV. Passive Market Making

The NASD Petition requests that the Commission amend Rule 10b–6 by adopting a new exception to the Rule that would permit NASDAQ market makers to engage in passive market making transactions during the period beginning at the time that the restrictions would otherwise commence under paragraph (a)(4)(xi)(A) of Rule 10b–6 and ending at the time of the commencement of offers or sales of the securities to be distributed. Rather than incorporating the new exception into Rule 10b–6 as suggested by the NASD, the Commission is proposing a structure whereby transactions effected in compliance with new Rule 10b–6A(T) [36] would be deemed not to violate Rule 10b–6.[37] Specifically, the Commission is proposing to amend Rule 10b–6 to add an exception (xiv) permitting transactions by underwriters, prospective underwriters, or dealers, or their affiliated purchasers, that are effected in accordance with the provisions of new proposed Rule 10b–6A(T), which would set forth the passive market making conditions. These provisions are discussed below. The Commission asks for specific comment on each one of these provisions.

### *A. Eligibility Requirements*

1. Securities

A security eligible for passive market making must: (1) Be a NASDAQ/NMS security; [38] (2) have a minimum price of five dollars per share and a minimum public float of 400,000 shares, as computed in accordance with Rule 10b–6(c)(7); [39] and (3) have NASDAQ market makers who are underwriters or prospective underwriters,[40] or affiliated purchasers of underwriters or prospective underwriters, that, in the aggregate, account for at least 40 percent of the average daily trading volume ("ADTV") [41] in the security during the reference period [42] ("syndicate ADTV").[43]

This condition reflects the NASD's fundamental objective of permitting passive market making in those instances where Rule 10b–6 otherwise would require a withdrawal of substantial market making capacity in the offered security.[44] Conversely,

---

[32] The NASD observes that the market makers that are most familiar with the security generally are chosen as the underwriters of the offering and accordingly must withdraw from the market pursuant to Rule 10b–6. See also Foshay at 927.

[33] In the exchange markets, specialist maintain markets in securities that are the subject of a distribution after the broker-dealers participating in the distribution are required to cease bidding for an purchasing the subject securities. Exchange specialists that are affiliated with distribution participants, however, must cease specialist activities, and "pass the book," during the Rule 10b–6 restricted period. Certain securities exchanges, for instance, the New York Stock Exchange ("NYSE"), have in place organizational separations, or so-called "Chinese Walls," between specialist firms and their affiliates who participate in underwriting syndicates. See, e.g., Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183 (approval of NYSE Rule 98 establishing Chinese Wall procedures on the exchange).

The Commission recently granted an exemption to permit NYSE registered specialist organizations to continue to function as specialists in their respective specialty securities in connection with certain mergers or exchange offers that constituted a distribution in which an affiliated broker-dealer is participating, or when the affiliated broker-dealer is acting as dealer-manager of a tender or exchange offer, provided that certain issuer qualification and transaction qualification conditions were satisfied. See Letter regarding Application of Rules 10b–6 and 10b–13 to Specialists Affiliated with NYSE Member Firms (September 15, 1992). In granting this relief, the Commission considered that affiliated specialists must comply with NYSE rules regarding specialist obligations and Chinese Wall policies and procedures, and the role of heightened NYSE surveillance.

[34] The NASD submitted to the Commission a study ("NASD Study"), prepared by its Economic Research Department, comparing the performance of NASDAQ securities with exchange-listed securities during the two business day cooling-off period prior to offerings of such securities. The data included 202 public offerings by NASDAQ issuers and 189 public offerings by exchange-listed issuers during the period October 1988 to March 1991. The NASD Study concluded that NASDAQ securities, as compared to exchange securities, suffer wider inside spreads, increased volatility, and reduced market depth during the two business day cooling-off period prior to an offering. The Commission's Office of Economic Analysis ("OEA") has reviewed the NASD Study. It is OEA's view that the study presents valuable empirical data bearing on the effects of Rule 10b–6, but that the data do not provide a sufficient basis for the NASD Study's conclusions. The NASD Study is available in File S7–33–92.

[35] While the proposal incorporates the substance of the NASD Petition, the format has been significantly revised, and some features have been changed.

[36] The (T) designation for Rule 10b–6A(T) indicates that the rule is temporary and will be reviewed and reconsidered by the Commission at a later date. Section IV.J. *infra*.

[37] *Cf.* 17 CFR 240.10b–6(a)(4) (viii) and (ix) and associated Rules 10b–7 and 10b–8. 17 CFR 240.10b–7 and 240.10b–8.

[38] See n. 4 *supra*.

[39] 17 CFR 240.10b–6(c)(7). The criteria include those found in paragraph (a)(4)(xi)(A) of the Rule, which permit distribution participants to solicit purchases of the securities that are the subject of the distribution, or any related security up until two business days before the commencement of offers or sales of the securities to be distributed. 17 CFR 240.10b–6(a)(4)(xi)(A).

Of the 2,890 NASDAQ/NMS securities quoted on NASDAQ as of June 30, 1992, 2,127, or approximately 74 percent, would be eligible securities as described in Section IV.A.1 (1) and (2).

In order to be eligible for passive market making, a "related security" must satisfy the eligibility criteria set forth in this section. See n.11 *supra*.

[40] These terms are defined in 17 CFR 240.10b–6(c)(1) and (2).

[41] The ADTV is derived from the daily trading volume in an eligible security reported to the NASD by the market maker.

[42] See n. 52 *infra* and accompanying text.

[43] For example, assume that the overall ADTV of a security for the requisite time period is 150,000 shares. In connection with an offering of securities, four market makers (A, B, C, and D) in the security join the syndicate, and have the following individual ADTVs based on the two full consecutive calendar months prior to the date of filing of the registration statement:

Market Maker A: 30,000 shares;
Market Maker B: 20,000 shares;
Market Maker C: 10,000 shares; and
Market Maker D: 4,000 shares.

The syndicate ADTV (comprised of the ADTV of the four Market Makers) in the security is 64,000 shares. Because the 64,000 shares account for at least 40 percent of the total ADTV for the security, the offering satisfies the market share condition.

[44] See also Foshay at 927; Whitney at 585.

passive market making would not be available where the level of market maker withdrawal occasioned by the Rule would be unlikely to have a significant impact on the depth and liquidity of the market for the security.[45] The Commission requests comment on whether the 40 percent test is appropriate or whether some other level would be more appropriate, given the purpose of this requirement. The Commission also requests comment on whether this criterion would have an impact on syndicate formation, *e.g.*, would managers invite a greater number of market makers or their affiliates to participate as underwriters solely to satisfy the 40 percent threshold and thus qualify the distribution for passive market making? [46] The Commission also requests comment as to whether it would be appropriate to have a higher market maker withdrawal level above which passive market making would not be permitted.

The Commission specifically requests comment as to whether a standard based upon the dollar value of the average daily trading volume in a security is more indicative of market depth and liquidity and should be used in place of the $5 per share/400,000 share public float test.[47] If so, should the required value of the security's average daily trading volume be at least $100,000, or a lower or higher level, *e.g.*, $50,000, or $250,000, or $500,000? [48] Should the eligible security standard also require a minimum dollar value of public float? [49] If so, what should that requirement be, *e.g.*, $25 million as included in the original NASD Petition, $50 million, $75 million, or some other level? In view of the expanded universe of securities now subject to last-sale reporting, should all NASDAQ securities (including NASDAQ Small-Cap securities) [50] that satisfy the appropriate liquidity criteria be eligible for passive market making?

2. Distributions

Passive market making would be available only for distributions of securities registered pursuant to the Securities Act of 1933 [51] ("Securities Act") and underwritten on a firm commitment basis at a fixed price.

3. Market Makers

To be eligible to engage in passive market making, a market maker would be required to have been registered on NASDAQ in the securities that are the subject of the distribution: (1) During the two full consecutive calendar months immediately preceding the date of filing of the registration statement under the Securities Act pertaining to the eligible security to be distributed ("reference period"); [52] and (2) at the time the registration statement is filed. Any qualifying NASDAQ market maker (including a member of the selling group who is not an underwriter or prospective underwriter) would be permitted to engage in passive market making.

This condition is designed to ensure that those market makers who have established an extended market presence and have provided liquidity to the market for the security are permitted to engage in passive market making transactions. The Commission requests comment as to whether the reference period of this market maker eligibility standard is appropriate. Would some other time period be more appropriate?

4. Qualifying Period

Passive market making would be permitted from the time an eligible market maker would otherwise be prohibited from effecting transactions [53] in an eligible security under the terms of Rule 10b-6(a)(4)(xi)(A), until the earlier of the time of the commencement of offers or sales in the distribution or the time at which a stabilizing bid in such security is made pursuant to Rule 10b-7 ("qualifying period").[54] Once offers or sales have commenced, the syndicate is operating under its firm commitment underwriting arrangements and the syndicate members act jointly pursuant to the "agreement among underwriters." Prior to the commencement of offers or sales, stabilization pursuant to Rule 10b-7 is permitted, but is rarely undertaken, on behalf of the prospective syndicate ("pre-effective stabilization"). Under the proposal, if pre-effective stabilization occurs, passive market making must cease. This provision reflects the similarity between passive market making and stabilization, both of which provide market price support, and is consistent with prior approaches taken by the Commission.[55]

*B. Level of Market Maker Bids*

During the qualifying period, a passive market maker generally would be prohibited from entering a bid or

[45] Of the 197 offerings in 1991 of eligible NASDAQ/NMS securities (*i.e.*, the offered securities that satisfy the criteria of Section IV.A.1 (1) and (2) above), 95 (approximately 48 percent) also would have satisfied the 40 percent criterion.

[46] If so, should a minimum underwriting participation (*e.g.*, 5 percent) be required in order for a market maker's volume to be considered in determining whether the syndicate ADTV satisfies the 40 percent criterion? Do the other eligibility requirements for passive market makers sufficiently guard against this "nominal underwriter" concern?

[47] The Commission also seeks comment on whether dollar value of average daily trading volume should replace the $5/400,000 share criteria in Rule 10b-6 generally, as more reflective of market depth and liquidity. When the $5 price per share standard was adopted in 1983, the Commission stated that "a minimum price per share requirement is an appropriate criterion in light of the generally greater volatility of low-priced stocks." Release 34-19565, 48 FR at 10634. The $5 price per share requirement has not been adjusted for inflation since its adoption nearly a decade ago. *Cf.* Securities Exchange Act Release No. 18647 (April 15, 1982), 47 FR 17046 (raising the dollar amount of total assets that subject an issuer to the reporting requirements of Section 12(g) of the Exchange Act to account for the effects of inflation). Accordingly, the Commission requests specific comment on whether a $5 minimum price per share remains adequate to identify securities that have a market of sufficient depth and liquidity so that the impact of bids or purchases of such securities by distribution participants would likely be quickly dissipated.

[48] For the 197 NASDAQ/NMS issuers that conducted secondary offerings on NASDAQ in 1991, approximately 87 percent had a dollar value of average daily trading volume of at least $50,000 as of the end of 1990; approximately 75 percent had a level of at least $100,000; approximately 52 percent had at least $250,000; and approximately 30 percent had a level of at least $500,000.

[49] In adopting the 400,000 share minimum public float criterion for the two business day cooling-off period, the Commission noted that public float provides a reasonable indication of the depth and liquidity of the market for a security. See Release 34-19565, 48 FR at 10634 and n.47 *supra*.

[50] The Commission recently approved a proposed rule change by the NASD to amend Schedule D to the NASD By-Laws to add requirements for trade reporting for securities quoted on the NASD's "NASDAQ Small-Cap Market" that are similar to the trade reporting requirements for NASDAQ/NMS securities. All securities quoted on NASDAQ are now subject to real-time transaction reporting. Because the NASDAQ Small-Cap reporting system is not a national market system plan pursuant to Section 11A under the Exchange Act, 15 U.S.C. 78k-1, these securities are not NMS securities. See Securities Exchange Act Release No. 30589 (April 10, 1992), 57 FR 13396 (approving File No. SR-NASD-91-50).

[51] 15 U.S.C. 77a *et seq.*

[52] See proposed Rule 10b-6A(T)(b)(11). If the registration statement for the securities to be offered is filed on August 13, then a market maker would have to have been a registered market maker in those securities for the entire preceding months of June and July. This calculation of the time period is consistent with the availability of the NASDAQ Monthly Summary of Activity Report ("NASD Monthly Activity Report"), which tracks trading volume on a full-month basis, and is available from the NASD.

[53] "Transaction" is proposed to be defined as "a bid or a purchase." See Rule 10b-6A(T)(b)(14).

[54] Although this period typically will be two business days, it may be longer (for example, if the scheduled effective date of the registration statement is delayed) or shorter (for example, if pre-effective stabilization is undertaken).

[55] See Foshay at 929-931. The relationship between the passive market making proposal and stabilization is perhaps most evident in the ability of passive market makers to maintain their bids and effect purchases at a previously established level after all independent market makers have lowered their quotes. See Sections IV.B. and C. *infra*. See also Release 34-18528, 47 FR at 11487.

effecting a purchase in an eligible security at a price that exceeds the highest bid for these securities displayed on NASDAQ by a market maker who is not participating in the distribution and is not an affiliated purchaser of a distribution participant ("independent bid").[56] A passive market maker's bids would be on its own behalf rather than on behalf of the syndicate and would not have to be identical to the bids entered by any other passive market makers.[57]

If all independent bids for an eligible security are lowered below the passive market maker's bid, the passive market maker would be required to lower its bid to a level not higher than the then-highest independent bid. However, a passive market maker may continue to effect transactions at its bid at a price exceeding the then-highest independent bid until the passive market maker's purchases equal or exceed an amount equal to the mandatory exposure limit in the NASD's small order execution system ("SOES") [58] ("SOES mandatory exposure limit") [59] for the security.[60] In addition, a passive market maker may purchase all of the securities that are part of any single order that, when executed, results in the SOES mandatory exposure limit being equalled or exceeded.[61] These provisions facilitate the execution of small customer orders by allowing the passive market maker to remain in the market, and give passive market makers an opportunity to determine if the lowering of the bids of independent market makers was temporary.

*C. Purchase Limitations*

1. General Rule

Each passive market maker would be subject to a daily net purchase limitation. As proposed, on each business day [62] of the qualifying period, a passive market maker's net purchases [63] in an eligible security may not exceed 25 percent of its ADTV limit in that security during the reference period ("25% ADTV limit").[64] Using the NASD Monthly Activity Report, each passive market maker will be required to determine its 25% ADTV limit for eligible securities.

When a passive market maker's net purchases equal or exceed its 25% ADTV limit at any time during the qualifying period, it will be required to withdraw its quotations from NASDAQ immediately, and would not be able to effect any transactions for the remainder of that day unless otherwise permitted by Rule 10b-6.[65] For example, assume that on Business Day 1 of the qualifying period, a passive market maker having a 25 percent ADTV limit of 4,000 in a particular security (*i.e.*, its ADTV level in the security is 16,000 shares), effects the following passive market making transactions: [66] at 10 a.m., a purchase of 2,000 shares; at 11 a.m., a sale of 1,000 shares; and at 2 p.m., a purchase of 3,000 shares. After the 2 p.m. purchase, the passive market maker would be required to withdraw its bid from NASDAQ, because its net purchases (*i.e.*, 4,000 shares) have equalled its 25% ADTV limit.

The Commission requests comment on whether the net purchase formulation is the most appropriate means of reconciling passive market making transactions with the anti-manipulation concerns underlying Rule 10b-6, and whether the 25% net purchase limitation achieves the proper balance. The proposed net purchase limitation recognizes the fact that the price impact of market maker sales tends to offset the effects of market maker purchases. Accordingly, the volume of net purchases would appear to be a more appropriate gauge of price raising activity. The Commission requests comment on other alternative approaches.[67]

2. Single Transaction Provision

A passive market maker would be permitted to complete any single order that, when executed, results in its 25% ADTV limit being equalled or exceeded.[68] Thus, in the previous example, if the 2 p.m. transaction was a purchase of 3,500 shares (rather than 3,000 shares) the market maker would be permitted to complete this single transaction even though the transaction would result in the passive market maker exceeding its 4,000 ADTV limit. Immediately after this transaction, however, the market maker would be required to withdraw its quotations from the NASDAQ system. The Commission requests comment on whether there should be a limit to the size of the transaction permitted under this provision.

Once a passive market maker has withdrawn its bid it may not enter any

[56] The term "affiliated purchaser" includes "a person directly or indirectly acting in concert" with a distribution participant in the acquisition or distribution of the distribution security or any related security. 17 CFR 240.10b-6(c)(6)(i)(A). For example, if a distribution participant influenced an ostensibly independent market maker to publish a bid or make purchases at some price or at certain times, the market maker would be an affiliated purchaser, and its bids and purchases could not be used to determine the permissible levels of passive market making activity. In addition, such activity likely would violate Rule 10b-6. See, *e.g.*, *SEC* v. *Scott Taylor & Co., Inc.*, 183 F. Supp. 904, 908 (S.D.N.Y 1959).

[57] In the event that no independent bid exists in the market (*i.e.*, all market makers in a security are members of the syndicate), then passive market making would not be permitted. It does not appear that this situation would have arisen in any of the offerings analyzed by the NASD. See n. 34 *supra*.

[58] SOES was designed to provide the benefits of immediate execution to retail customer orders for securities quoted on NASDAQ by permitting orders to be automatically executed at the best bid or ask price ("inside market"). SOES is restricted to public customer orders of 1,000 or fewer shares in NASDAQ/NMS securities and 500 or fewer shares in NASDAQ non-NMS securities. See Securities Exchange Act Release No. 29809 (October 10, 1991), 56 FR 52092.

[59] The SOES mandatory exposure limit is the number of shares of a security that a market maker is required to accept for its account through SOES executions. Specifically, the SOES mandatory exposure limit for a security is the aggregate number of shares of the security equal to five times the maximum order size for that security. The term maximum order size means the maximum size of individual orders for a security that may be entered into or executed through SOES. All NASDAQ/NMS securities are in one of three tiers of maximum order sizes in SOES: 1,000, 500, and 200. See NASD Rules of Practice and Procedures for the Small Order Execution System, Sections a-f, NASD Manual (CCH) ¶¶ 2451-2470.

[60] This purchasing limitation is not limited to SOES transactions. All passive market making purchases would count against the permitted SOES mandatory exposure limit level.

[61] A market maker who sought to combine two or more orders to purchase an amount of shares that it would not be able to purchase if the transactions were executed separately would not be within the provisions of new Rule 10b-6A(T). The Commission expects that the NASD will monitor carefully those transactions that take a market maker over the SOES mandatory exposure limit for the security to ensure that orders are not aggregated to take advantage of this exception.

[62] Consistent with Rule 10b-6, the staff would interpret a business day as a twenty-four hour period determined with reference to the principal market for the security, and that includes a complete trading session for that market (*i.e.*, the same-day opening and closing on NASDAQ). See Letter regarding Rule 10b-6: Interpretation of "Business Day" (July 29, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,751.

[63] The term "net purchases" would be defined as the amount by which a passive market maker's purchases exceeds its sales. See Rule 10b-6A(T)(b)(8).

[64] A special rule would apply during the hour of trading prior to setting the offering price. See Section IV.D. *infra*.

[65] A market maker whose purchases on Day 1 of the qualifying period are less than its 25% ADTV limit could not carry over the balance to Day 2.

[66] This example assumes that all relevant criteria for security, distribution, and market maker eligibility are satisfied.

[67] For example, would a better approach be to limit the passive market maker's aggregate daily purchases (rather than net purchases) to 50 percent of its ADTV?

[68] The Commission expects that the NASD will monitor carefully those transactions that are permissible but take a market maker over its 25% ADTV limit to ensure there is no aggregation of orders to take advantage of this exception.

bids for, nor effect any purchases of, the eligible security for the remainder of that day irrespective of additional sales, absent the applicability of a separate exception from Rule 10b–6.

3. Proposed Interpretations

The interpretations would apply to the infrequently occurring situations described below. Where a market maker has in its possession both a customer order to sell and a customer order to purchase an eligible security, the passive market maker would be permitted to effect the transactions as principal with each customer contemporaneously. For example, if the purchase from one customer occurs before the sale to the other customer and the sale is effected and reported within 90 seconds [69] of the execution of the first transaction, then the market maker would not be deemed to have equalled or exceeded its 25% ADTV limit.[70] In the above example, following the 3,000 share purchase at 2 p.m., the market maker would not be required to withdraw its quotations if, at the time of the purchase, it had in its possession an order to sell 3,000 shares and the sell order is executed contemporaneously with the 3,000 share purchase. In this case, the market maker would be under its 25% ADTV limit following the transactions.

In the event a market maker receives a customer sell or buy order and the market maker does not have in its possession a matching order or orders with which contemporaneous off-setting executions could be effected, the market maker would be permitted to hold the initial order for a time period not to exceed 15 minutes, in which time the market maker could attempt to locate a party, other than another market maker, willing to take the other side of the transaction.[71] In this limited situation, the Commission would not consider the market maker's efforts to locate the matching order [72] to result from proscribed solicited activity. If the market maker locates customer interest for the other side of the initial order in the appropriate time frame, the market maker must effect the transactions contemporaneously (*i.e.*, the second transaction must be effected and reported within 90 seconds of the execution of the first transaction).

Among other objectives, the 15 minute limitation is designed to prevent a passive market maker from withholding a sell order from the market for an extended period. The Commission requests comment on whether the 15 minute limitation would accomplish this important objective.

Given the limited nature of the activities discussed in these proposed interpretations, it is not proposed that they be included in the text of new Rule 10b–6A(T). The Commission solicits comments on the proposed interpretations, and whether a discussion of these interpretations in the release, if adopted, would be adequate to apprise market participants, or whether they should be included in new Rule 10b–6A(T).

*D. Special Limitation on Purchases During the Hour of Trading Prior to Pricing*

A passive market maker's aggregate purchases (regardless of any sales) during the hour of trading on NASDAQ immediately preceding the pricing of the eligible security to be distributed would not be permitted to exceed an amount equal to its 25% ADTV limit reduced by the passive market maker's net purchases as of the beginning of that hour.[73] When a passive market maker's purchases equal or exceed this limitation, it would be required to withdraw its quotations from NASDAQ immediately and cease effecting any transactions for the remainder of the day, except as otherwise permitted by Rule 10b–6.

For example, assume that prior to 3 p.m. of the business day on which the offer will be priced,[74] a passive market maker with a 25% ADTV limit of 10,000 shares has effected net sales of 5,000 shares. Prior to 3 p.m., the passive market maker could purchase up to 15,000 shares (10,000 shares plus 5,000 shares). During the last hour of trading (*i.e.*, after 3 p.m.), however, the passive market maker could purchase only 10,000 shares. On the other hand, if the market maker had effected net purchases of 4,000 shares prior to 3 p.m., the market maker would be limited to purchases of 6,000 shares in the last hour, *i.e.*, the market maker's 25% ADTV limit (10,000 shares) reduced by that day's net purchases (4,000 shares).

This condition is intended to minimize potential effects of passive market making on the offering price. The Commission requests comment on whether the restriction applicable during the hour of trading on NASDAQ immediately preceding the pricing of the eligible security is necessary, and whether it appropriately balances the goal of maintaining market making capacity with the possible impact of a market maker's purchases on the offering price. Would other alternatives be more effective?

*E. Limitation on Displayed Size*

At all times, each passive market maker's displayed size may not exceed the SOES mandatory exposure limit [75] for the eligible security, or its remaining purchasing capacity in accordance with Sections IV.C. and IV.D. above.

*F. Disclosure of Passive Market Making*

Because passive market making would represent a significant change in the level of distribution participant activity in the market, and bears some resemblance to stabilization activity, disclosure of passive market making appears to be necessary and appropriate to inform the market of its potential impact on the price and volume of eligible securities.

1. Bid Disclosure

Rule 10b–6A(T) would require that a passive market maker's bid be designated as such. This identification would alert investors that distribution participants are effecting passive market making transactions. It would be the responsibility of the passive market maker to confirm that its passive market making bids are identified.

2. Prospectus Disclosure

The prospectus for any offering in which any passive market maker intends to enter bids or effect purchases in any eligible security would be required to contain the following statement on the inside front cover:

[69] NASDAQ market makers are required to report a transaction within 90 seconds of its execution. Schedule D of the NASD By-laws, Part XII, Section 2, NASD Manual (CCH) ¶1867. Therefore, the execution of the first transaction by the market maker would start the 90 second "clock," and the market maker would be required to report the trade, and execute and report the second trade, within the 90 second period in order for them to be considered contemporaneous.

[70] This interpretation is limited to transactions occurring prior to the hour before pricing. See Section IV.B *infra*. The interpretation assumes that following execution of the orders, the market maker is under its 25% ADTV limit.

[71] The market maker's solicitation activities would be limited to only those necessary to offset the order.

[72] The passive market maker could not fill the order with other market makers. See n. 87 and accompanying text *infra*.

[73] However, a passive market maker would be allowed to purchase all of the securities that are part of a single order that, when executed, results in exceeding this special purchase limitation.

[74] Trading in the NASDAQ system ceases at 4 p.m. (ET).

[75] As discussed in n.59 *supra*, the SOES mandatory exposure limit for a security is the aggregate number of shares of the security equal to five times the maximum order size for that security.

Certain underwriters [and selling group members] or their affiliates may engage in passive market making transactions in the [Identify Securities] on NASDAQ during the period from the close of business on [date] to the time of effectiveness of the registration statement of which this prospectus is a part, as permitted by the provisions of Rule 10b-6A(T) under the Securities Exchange Act of 1934. See "Plan of Distribution." [76]

The prospectus also would be required to contain a brief description of passive market making in the "Plan of Distribution" section.

The Commission requests comment on whether the above disclosure also should contain information about the amount of net purchases in the eligible securities made by passive market makers, as well as the range of prices at which such purchases were effected.[77] Specifically, would prospectus disclosure of net purchases be meaningful to an investor receiving the prospectus? What difficulties would be encountered by syndicate members in compiling and reporting net purchase data to the syndicate manager? Would this data be more difficult to disclose than the currently required data on pre-effective stabilization? [78]

3. Transaction disclosure

Proposed paragraph (c)(10) would require a passive market maker who sells to or purchases for the account of any person, any eligible security, to give or send to such person, at or before the completion of each transaction, written notice that passive market making transactions may be or have been effected. If, however, at or before the completion of the transaction, the purchaser receives a prospectus, confirmation, or other writing containing disclosure similar to that described in Section IV.F.2. then no other written notice with respect to passive market making need be given to such purchaser.[79]

The Commission requests comment on whether this proposed confirmation disclosure would be useful for investors, and whether any difficulties would be encountered in providing this information.

*G. Notification and Reporting to the NASD*

A market maker would be required to notify the NASD in writing in advance of its intention to engage in passive market making. The notification would include information demonstrating that the security, distribution, and market maker qualify for passive market making.[80] In addition, Rule 10b-6A(T) would require that a passive market maker submit to the NASD information about passive market making purchases, in such form as the NASD shall prescribe. The Commission requests comment on whether this provision is appropriate and whether Rule 10b-6A(T) should specify the authorized types of information.

These notification requirements are intended to ensure that the NASD's Surveillance Department receives adequate and timely notice of all passive market making transactions and can initiate the appropriate market surveillance procedures to monitor the market for the security subject to the distribution.[81]

*H. Transactions at Prices Resulting from Unlawful Activity*

Proposed paragraph (d) provides that no bids or purchases in an eligible security may be made at a price which the passive market maker knows or has reason to know is the result of activity that is fraudulent, manipulative, or deceptive under the Exchange Act or any rule or regulation thereunder.[82] Furthermore, any transactions by a passive market maker engaged in for the purpose of creating actual, or apparent, active trading in or raising the price of an eligible security would not be within the provisions of exception (xiv), which incorporates Rule 10b-6A(T).[83]

*I. Surveillance Procedures*

The NASD has proposed a comprehensive surveillance plan for passive market making that includes on-line monitoring and a review and analysis of historical quotation and trading information, as well as the use of the NASD's existing automated surveillance reports. The Commission considers the surveillance plan to be an essential element of the proposal, and expects to work with the NASD in refining the procedures to enhance passive market making surveillance.

*J. Temporary Rule*

The Commission proposes to adopt exception (xiv) and Rule 10b-6A(T) on a temporary basis. The Commission would expect the NASD to monitor carefully all instances of passive market making to determine its impact on the NASDAQ market. The Commission expects that the NASD would report information on all instances of passive market making to the Commission after 18 months of the effectiveness of the proposed rules. Specifically, the Commission would expect the NASD to provide data on the volume of transactions that passive market makers effect in relation to total volume of transactions during the qualifying period, and the effects on liquidity, price, and volatility in the securities. The Commission would then consider whether Rule 10b-6A(T) should be modified, extended, made permanent, or rescinded.

**V. Conclusion and General Request for Comment**

The anti-manipulation provisions are the "heart" of the Exchange Act.[84] The difficulty in administering these provisions in the context of distributions is "to determine the extent to which market activities of participants or persons otherwise interested in the distribution should be prohibited or permitted." [85] In considering the passive market making proposal published today, the Commission is mindful that, even where a market maker's bids and purchases do not lead the market, they can stimulate activity by others at higher levels and can support prices at higher levels.[86] The passive market making proposal represents a significant development in the Commission's balancing of the need to protect the markets from manipulation during a distribution and the benefits for market liquidity that may result from the ability of distribution participants to maintain relatively normal market making functions. This balancing is reflected in the twin aspects of the passive market making proposal. First, eligible market makers will be able to publish quotations and provide additional capital to the trading markets. On the other hand, their activity must be passive: Except in limited circumstances, their bids must follow, and not lead, those of independent market makers; and in this role they

[76] *Cf.* 17 CFR 229.502(d)(1).

[77] *Cf.* 17 CFR 229.502(d)(2).

[78] *See* 17 CFR 229.502(d)(2).

[79] *Cf.* 17 CFR 240.10b-7(k).

[80] *Cf.* Schedule D to the NASD By-laws, Part VI, Section 3, NASD Manual (CCH) ¶1820 (requiring market makers to provide advance notice to the NASD of their intention to engage in stabilization).

[81] The specific information, timing, and transmission requirements will require NASD rulemaking.

[82] *Cf.* 17 CFR 240.10b-7(f).

[83] See Rule 10b-6(a)(4). Moreover, the other antifraud and anti-manipulation provisions of the securities laws would continue to apply.

[84] Report of the Securities and Exchange Commission on Proposals for Amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934, 77th Cong., 1st Sess. 50 (Comm. Print 1941).

[85] Foshay at 907. See also Bruns, Nordeman & Co., 40 S.E.C. 652, 660 n.11 (1961).

[86] See, *e.g.*, *SEC* v. *Scott Taylor & Co., Inc.*, 183 F Supp. 904, 908 (S.D.N.Y. 1959); *Halsey, Stuart & Co., Inc.*, 30 S.E.C. 106, 121 (1949).

may solicit transactions through their quotations, but may not initiate transactions with other market makers.[87] The Commission is of the view that the parameters of the permitted activity, as discussed above, coupled with the real-time reporting of transactions and the surveillance plan proposed by the NASD, make it likely that any activity beyond the established bounds, and which presented manipulative concerns, will be identified and addressed swiftly.

Any persons wishing to submit written comments on the proposed exception and rule or wishing to suggest additional changes or submit comment on other matters that might have an impact on the proposal contained herein, are requested to do so. In addition to the specific comments requested in connection with the provisions of proposed exception (xiv) and Rule 10b–6A(T), the Commission requests comment in general on whether passive market making with the limitations described above is necessary and appropriate. The Commission asks commenters responding to this issue to include data on any experiences of volatility or illiquidity during the distribution period for NASDAQ securities, particularly for NASDAQ/NMS issuers.

The Commission staff is currently evaluating the appropriateness of some form of relief for exchange specialists from the restrictions of Rule 10b–6. The Commission invites comment on whether the passive market making rule proposed today for the NASDAQ market will have any anti-competitive impact with regard to the application of Rule 10b–6 to activities in the exchange markets. Commenters are invited to address the structural differences between the marketplaces in this regard, as well as whether relief is necessary and appropriate.

## VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with the provisions of the Regulatory Flexibility Act [88] regarding the proposed amendments to Rule 10b–6 and the proposed adoption of new Rule 10b–6A(T).

In the IRFA, the Commission encourages the submission of written comments with respect to any aspect of the IRFA. Those comments should specify costs of compliance with the proposed amendment and proposed new rule and suggest alternatives that would accomplish the objectives of enhanced depth and liquidity for qualifying NASDAQ/NMS securities.

A copy of the IRFA may be obtained by contacting Thomas N. McManus, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20529, (202) 272–2848.

## VII. Effects on Competition

Section 23(a) of the Exchange Act [89] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rule, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has preliminary considered proposed exception (xiv) of Rule 10b–6 and Rule 10b–6A(T) in light of the standards cited in Section 23(a)(2) and believes preliminary that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. As discussed above, the Commission solicits commenters' views on whether the proposed rule would result in any anti-competitive impact, particularly as the proposed exception is applicable to a single United States market.

## VIII. Statutory Basis and Text of Rule Amendments

The proposed amendments to Rule 10b–6 and new Rule 10b–6A(T) would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 2, 3, 9(a)(6), 10(a), 10(b), 15(c)(2), and 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c)(2), and 78w(a).

## List of Subjects in 17 CFR Part 240

Broker-Dealers, Reporting and Recordkeeping requirements, Securities, Issuers, Fraud.

For the reasons set out in the preamble, the Commission is proposed to amend title 17, chapter II of the Code of Federal Regulations as follows:

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

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 7811(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. Section 240.10b–6 is amended by removing the "." and replacing it with a "; or" at the end of paragraph (a)(4) (xiii) and adding paragraph (a)(4) (xiv) to read as follows:

**§ 240.10b–6 Prohibition against trading by persons interested in a distribution.**

(a) * * *

(4) * * *

(xiv) Market making transactions complying with § 240.10b-6A(T).

* * * * *

3. Section 240.10b-6A(T) is added to read as follows:

**§ 240.10b-6A(T) Passive market making.**

(a) *Scope of section.* This section permits broker-dealers to engage in market making transactions in eligible securities without being in violation of the provisions of § 240.10b-6.

(b) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act and § 240.10b-6 thereunder. In addition, unless the context otherwise requires, the following definitions shall apply:

(1) The term "ADTV" means the average daily trading volume in an eligible security reported by a passive market maker to the NASD for the reference period.

(2) The term "25% ADTV limit" means 25 percent of the passive market maker's ADTV.

(3) The term "eligible security" means a security that:

(i) is a NASDAQ/NMS security;

(ii) has a minimum price of five dollars per share and a minimum public float of 400,000 shares, as computed in accordance with § 240.10b-6(c)(7); and

(iii) has NASDAQ market makers that are underwriters or prospective underwriters, or affiliated purchasers of underwriters or prospective underwriters, that account for at least 40% of the total trading volume in such security, as reported to the NASD for the reference period.

(4) The term "independent bid" means a bid for a security displayed on NASDAQ by a market maker who is not participating in the distribution of that

[87] In other words, a passive market maker may not "hit" another market maker's bid or offer. For example, if a passive market maker has a net sales position during the day, it may not affirmatively take another market maker's offer to reduce its short position. Conversely, if the passive market maker is in a net purchase position, it may not affirmatively hit another market maker's bid to reduce its long position. The passive market maker may only adjust its quotations within the parameters of proposed Rule 10b–6A(T) to solicit transactions on one side of the market or the other.

[88] 15 U.S.C. 603.

[89] 15 U.S.C. 78w(a)(2).

security or a related security, and is not an affiliated purchaser of such a participating market maker.

(5) The term "NASD" means the National Association of Securities Dealers, Inc.

(6) The term "NASDAQ" means the NASDAQ system as defined in § 240.11Ac1-2(a)(3).

(7) The term "NASDAQ/NMS security" means a security that is: authorized for quotation on NASDAQ, and such authorization is not suspended, terminated, or prohibited; and designated as a national market system security, as defined in Schedule D of the NASD Schedule to the By-Laws, Part III.

(8) The term "net purchases" means the amount by which a passive market maker's purchases exceed its sales.

(9) The term "passive market maker" means a market maker on NASDAQ registered in an eligible security during the reference period and during the qualifying period, that effects transactions in accordance with the provisions of paragraph (c) of this section.

(10) The term "qualifying period" means the period from the time that a passive market maker would otherwise be prohibited from effecting transactions in an eligible security under the terms of § 240.10b-6(a)(4)(xi)(A), until the earlier of the time of commencement of offers or sales of the eligible security to be distributed or the time at which a stabilizing bid for such security is made pursuant to § 240.10b-7.

(11) The term "reference period" means the two full consecutive calendar months immediately preceding the date of filing of the registration statement under the Securities Act of 1933 pertaining to the security to be distributed.

(12) The term "related security" means:

(i) any security deemed to be in distribution pursuant to § 240.10b-6(b) of this chapter; and

(ii) a security of the same class and series as, or a right to purchase, the security to be distributed or deemed to be in distribution.

(13) The term "SOES mandatory exposure limit" means the aggregate number of shares of the security equal to five times the maximum order size for that security that may be entered into or executed through the NASD's small order execution system, as defined in the NASD Rules of Practice and Procedures for the Small Order Execution System.

(14) The term "transaction" means a bid or a purchase.

(c) Conditions to be met.

(1) General Limitations. A passive market maker must effect all bids, purchases, and sales in the capacity of a registered market maker on NASDAQ. During the qualifying period, a passive market maker shall not effect a transaction in an eligible security at a price that exceeds the highest independent bid for the eligible security at the time of the transaction.

(2) Level of Bid. A passive market maker may display its bid at a price not in excess of the highest independent bid for an eligible security.

(3) Requirements to Lower the Bid. If all independent bids for an eligible security are lowered below the passive market maker's bid, the passive market maker must lower its bid to a level not higher than the then highest independent bid; except that:

(i) the passive market maker may continue to effect transactions at its bid at a price exceeding the then highest independent bid until the passive market maker purchases an amount of the eligible security that equals or exceeds the SOES mandatory exposure limit for that security; and

(ii) a passive market maker may purchase all of the securities that are part of a single order that, when executed, results in the SOES mandatory exposure limit being equalled or exceeded.

(4) Purchase Limitations. On each day of the qualifying period, a passive market maker's net purchases shall not exceed its 25% ADTV limit; except that a passive market maker may purchase all of the securities that are part of a single order that, when executed, results in its 25% ADTV limit being equalled or exceeded. If a passive market maker's net purchases equal or exceed its 25% ADTV limit, it shall immediately withdraw its quotations from NASDAQ, and it may not effect any transaction in the eligible security for the remainder of that day, irrespective of any additional sales during that day, unless otherwise permitted by § 240.10b-6.

(5) Special Limitation on Purchases Applicable During the Hour of Trading Prior to Pricing. A passive market maker's aggregate purchases (regardless of any sales) during the hour of trading on NASDAQ immediately preceding the pricing of the eligible security to be distributed, shall not exceed an amount equal to its 25% ADTV limit minus the amount of the passive market maker's net purchases as of the beginning of that hour; except that a passive market maker may purchase all of the securities that are part of a single order that, when executed, results in the purchase limitation of this paragraph (c)(5) being equalled or exceeded. When a passive market maker's purchases equal or exceed the purchase limitation of this paragraph (c)(5), it shall immediately withdraw its quotations from NASDAQ and cease effecting any transactions, except as otherwise permitted by § 240.10b-6.

(6) Limitation on Displayed Size. At all times, the passive market maker's displayed bid size may not exceed the smaller of the SOES mandatory exposure limit for the eligible security, or the passive market maker's remaining purchasing capacity under paragraphs (c) (4) and (5), whichever is applicable, of this section.

(7) Identification of a Passive Market Making Bid. The bid displayed by a passive market maker shall be designated as such.

(8) Notification and Reporting to the NASD. A passive market maker shall notify the NASD in writing in advance of its intention to engage in passive market making. A passive market maker shall submit to the NASD information regarding passive market making purchases in such form as the NASD shall prescribe.

(9) Prospectus Disclosure. The prospectus for any offering in which any passive market maker intends to effect transactions in any eligible security shall contain the following statement on the inside front cover:

> Certain underwriters [and selling group members] or their affiliates may engage in passive market making transactions in the [Identify Securities] on NASDAQ during the period from the close of business on [date] to the effective date of the registration statement of which this prospectus is a part in accordance with the provisions of Rule 10b-6A(T) under the Securities Exchange Act of 1934. See "Plan of Distribution."

The prospectus shall also contain a brief description of passive market making in the "Plan of Distribution" section.

(10) Disclosure of Passive Market Making. A passive market maker who sells to, or purchases for the account of, any person, any eligible security, shall give or send to such person, at or before the completion of each transaction, written notice that passive market making transactions may be or have been effected. If, however, at or before the completion of the transaction, the purchaser receives a prospectus, confirmation or other writing containing disclosure similar to that described in paragraph (c)(9) of this section, then no other written notice with respect to passive market making need be given to such purchaser.

(d) Transactions at Prices Resulting from Unlawful Activity. No transaction shall be made at a price which the

passive market maker knows or has reason to know is the result of activity which is fraudulent, manipulative, or deceptive under the Act or any rule or regulation thereunder.

Dated: October 22, 1992.

By the Commission.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-26130 Filed 10-28-92; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 112, 125 and 146

### Authorization of Bonded Carriers To Transport Cargo Within Port Limits Without Obtaining Cartman's License

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations to allow bonded carriers to transport merchandise within port limits without having to obtain a cartman's license. This proposal, if adopted, would result in savings of time and money for both the trade and Customs.

**DATES:** Comments must be received on or before December 28, 1992.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Dan Baker, Office of Inspection and Control, (202) 927-0463.

**SUPPLEMENTARY INFORMATION:**

#### Background

Customs requires that the carriage of imported merchandise, for which duty has not yet been paid, only be accomplished by certain bonded carriers. A cartman is one who undertakes to transport goods or merchandise within the limits of a port. A lighterman is one who transports goods or merchandise on a barge, scow, or other small vessel to or from a vessel within the port, or from place to place within a port. The regulations regarding cartage and lighterage of merchandise are set forth in part 125 of the Customs Regulations (19 CFR part 125). The regulations regarding the bonding of carriers which receive merchandise for transportation in bond, and the licensing of cartmen and lightermen are set forth in Part 112 of the Customs Regulations (19 CFR part 112).

Currently, pursuant to §§ 112.2(b) and 112.21, Customs Regulations, Customs requires a bond and license to transact business as a cartman or a lighterman for the cartage or lighterage of merchandise entered for warehouse, designated for examination, taken to container stations, or taken into custody as unclaimed. Pursuant to 19 U.S.C. 1565, the cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate Customs officer and who shall give a bond in a penal sum to be fixed by such Customs officer for the protection of the Government against any loss of, or damage to, such merchandise while being so carted.

Customs is now planning a major in-bond revision with the intention of eventually eliminating all forms of paper involved with in-bond processing. As a first step in amending the Customs Regulations, Customs, in this document proposes to consider within port transfers by cartmen and lightermen like other in-bond movements and to allow, in most instances, bonded carriers to carry in-bond cargo within a port without requiring them to obtain cartman and lighterman licenses. Customs believes that elimination of the license requirement will save Customs and the trade time and money. While Customs is required by statute to require a cartman's license for cartage of merchandise entered for warehouse, this document, if adopted, will allow the cartage and lighterage of merchandise for all other purposes by bonded carriers without the necessity of them obtaining a cartage license. Accordingly, amendments are proposed to parts 112, 125 and 146, Customs Regulations.

#### Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Suite 4000, Franklin Court, 1099 14th Street, NW., Washington, DC.

#### Executive Order 12291

It has been determined that this document is not a "major rule" as defined in section 1(b) of E.O. 12291 and a regulatory impact analysis is not required.

#### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is in §§ 125.22, 125.33, 125.34 and 125.35. The respondents would be businesses.

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

Estimated total annual reporting and/recordkeeping burden: 88 hours.

Estimated average annual burden per respondent and/or recordkeeper: .1666 hour per respondent and 1 hour per recordkeeper.

Estimated number of respondents and/or recordkeepers: 250 respondents.

Estimated annual frequency of responses: On occasion.

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control number assigned by OMB would be amended accordingly if the proposal is adopted.

#### Regulatory Flexibility Analysis

For the reasons stated in the discussion above, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified, that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects

*19 CFR Part 112*

Administrative practice and procedure, Canada, Common carriers, Customs duties and inspection, Exports, Freight, Harbors, Mexico, Reporting and

recordkeeping requirements, Surety bonds.

*19 CFR Part 125*

Customs duties and inspection, Freight, Government contracts, Harbors, Reporting and recordkeeping requirements.

*19 CFR Part 146*

Administrative practice and procedure, Customs duties and inspection, Exports, Foreign trade zones, Penalties, Reporting and recordkeeping requirements.

**Proposed Amendments**

It is proposed to amend parts 112, 125 and 146 of the Customs Regulations (19 CFR parts 112, 125, 146) as set forth below:

## PART 112—CARRIERS, CARTMEN AND LIGHTERMEN

1. The authority citation for part 112, Customs Regulations, would continue to read as follows:

**Authority:** 19 U.S.C. 66, 1551, 1565, 1623, 1624.

2. It is proposed to amend § 112.0 by revising the first sentence to read as follows:

**§ 112.0 Scope.**

This part sets forth regulations providing for the bonding of carriers which will receive merchandise for transportation in bond, the licensing of cartmen and lightermen, and the procedures for applying for such bonds and licenses. * * *

3. It is proposed to revise § 112.2(b) to read as follows:

**§ 112.2 Bond or license required.**

* * * * *

(b) *Cartmen and lightermen.* A bond, as provided for in this part, is required to transact business as a cartman or lighterman. A license, as provided for in this part, is required to transact business as a cartman and lighterman for the cartage or lighterage of merchandise entered for warehouse. Cartage and lighterage of merchandise designated for examination, taken to container stations, taken into custody as unclaimed, or destined for admission to a foreign trade zone either may be done under the bond of a licensed cartman or lighterman, or, if approved by the district director, under the bond of a foreign trade zone operator, container station operator, centralized examination station operator, or a bonded carrier, as provided for in paragraph (a) of this section.

4. It is proposed to revise § 112.21 to read as follows:

**§ 112.21 License required.**

A customhouse cartage or lighterage license issued by the district director in accordance with this part or specific authorization of the Commissioner of Customs shall be required to perform Customs cartage or lighterage, except as provided in §§ 18.3 and 125.12 of this chapter or when such merchandise is approved by the district director to be transported under the bond of the foreign trade zone operator, centralized examination station operator, container station operator, or a bonded carrier as provided for in § 112.2(a).

5. It is proposed to amend § 112.25 by revising the first sentence to read as follows:

**§ 112.25 Bonded carriers.**

A carrier or freight forwarder who has filed a bond on Customs Form 301 containing the bond conditions set forth in § 113.63 of this chapter may be approved by the district director to transport merchandise, other than that which is to be entered for warehouse, within a port for which the bond provides coverage, without compliance with § 112.22. * * *

## PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. The authority citation for part 125, Customs Regulations would continue to read in part as follows:

**Authority:** 19 U.S.C. 66, 1565, and 1624.

* * * * *

Section 125.33 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1623, and 1646a.

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

2. It is proposed to revise § 125.1 to read as follows:

**§ 125.1 Classes of cartage.**

(a) *Government cartage.* Government cartage must be done by a licensed customhouse cartman or other bonded carrier as provided in § 112.2 of this chapter under contract or other specific authority for that purpose (except as provided for in § 125.12).

(b) *Importers' cartage.* Importers' cartage may be done by any licensed customhouse cartman or other bonded carrier as provided in § 112.2 of this chapter.

3. It is proposed to amend § 125.21 by adding a new second sentence to read as follows:

**§ 125.21 Cartage other than for examination.**

* * * Bonded carriers, as provided for in § 112.2 of this chapter, at the expense of the importer or other party in interest, may transfer merchandise from one vessel or conveyance to another, from warehouse for transportation or exportation and from an internal revenue warehouse for exportation under the internal revenue laws without payment of tax. * * *

4. It is proposed to revise § 125.22 to read as follows:

**§ 125.22 Designation of cartman or lighterman, or other bonded carrier.**

Importers and exporters shall designate on the entry and permit of bonded merchandise the bonded cartman, lighterman, or other bonded carrier as provided in § 112.2 of this chapter by whom they wish their merchandise to be conveyed. Approval of such designation shall be indicated on the entry papers by the initials of the appropriate Customs officer placed in close proximity to the designation.

5. It is proposed to revise § 125.23 to read as follows:

**§ 125.23 Failure to designate.**

If an importer does not cart his merchandise or designate a licensed cartman or other bonded carrier, as provided for in § 112.2 of this chapter, for the purpose, it shall be carted by a public store cartman authorized by contract or designated by the district director for that purpose. The cost of such cartage shall be paid by the importer or owner of the merchandise before its release from Customs custody.

6. It is proposed to revise § 125.24 to read as follows:

**§ 125.24 Failure of designated cartman, lighterman or other bonded carrier to appear.**

The cartman, lighterman or other bonded carrier designated to convey the merchandise shall be present to take the merchandise when the Customs officer in charge is ready to send it. If the designated vehicle or lighter is not present, after waiting a reasonable time, such officer shall send the merchandise by any available licensed cartman or lighterman, or qualifying bonded carrier.

7. It is proposed to amend § 125.33(a) by revising the first sentence to read as follows:

**§ 125.33 Procedure on receiving merchandise.**

(a) *From public or bonded store.* A receipt shall be taken from the cartman, lighterman or bonded carrier for all

goods delivered to him from public store or bonded store. * * *

* * * * *

8. It is proposed to amend § 125.34 by revising the first sentence to read as follows:

**§ 125.34 Countersigning of documents and notation of bad order or discrepancy.**

When a cartman, lighterman or other bonded carrier, as provided for in § 112.2, receives merchandise remaining in Customs custody, he shall countersign the appropriate document in the space provided and shall note thereon any bad order or discrepancy. * * *

9. It is proposed to revise § 125.35 to read as follows:

**§ 125.35 Report of loss, detention, or accident.**

Any loss or detention of bonded merchandise, or any accident happening to a licensed vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman or qualified bonded carrier to the district director.

10. It is proposed to amend § 125.36 by inserting the words "or carrier" between the words "cartman" and "shall" in the first sentence.

11. It is proposed to revise § 125.41 to read as follows:

**§ 125.41 Liability of cartman, lighterman or bonded carrier.**

The cartman, lighterman, or bonded carrier conveying the merchandise, including merchandise covered by a TIR carnet which has not been "taken on charge" (see § 114.22(c)(2) of this chapter), shall be liable under his bond for its prompt delivery in sound condition, or in no worse than the damaged condition noted on the delivery ticket, if damage is so noted.

12. It is proposed to amend § 125.42 by revising the first sentence to read as follows:

**§ 125.42 Cancellation of liability.**

The district director may cancel liquidated damages not in excess of $100,000 incurred under the bond of the cartman, lighterman, or bonded carrier on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as he may deem appropriate under the circumstances. * * *

## PART 146—FOREIGN TRADE ZONES

1. The general authority for part 146, Customs Regulations, would continue to read as follows:

**Authority:** 19 U.S.C. 66, 81a–81u, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

* * * * *

2. It is proposed to amend § 146.66(a) by revising the first sentence to read as follows:

**§ 146.66 Transfer of merchandise from one zone to another.**

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a carrier as provided for in § 112.2(b) of this chapter under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. * * *

* * * * *

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Approved: October 22, 1992.

**Peter K. Nunez,**

*Assistant Secretary of the Treasury.*

[FR Doc. 92–26249 Filed 10–28–92; 8:45 am]

BILLING CODE 4820–02–M

---

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 916

## Kansas Permanent Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing the receipt of a proposed amendment to the Kansas permanent regulatory program (the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions of the State's revegetation success guidelines. The amendment is intended to revise the State program at the State's own initiative to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This notice sets forth the times and locations that the Kansas program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4 p.m., c.d.t. November 30, 1992. If requested, a public hearing on the proposed amendment will be held on November 23, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on November 13, 1992.

**ADDRESSES:** Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office:

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement; 934 Wyandotte, room 500; Kansas City, MO 64105; Telephone (816) 374–6405.

Kansas Department of Health and Environment, Surface Mining Section; 1501 S. Joplin or P.O. Box 1418; Pittsburg, KS 66762; Telephone (316) 231–8615.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. Ennis; Telephone (816) 374–6405.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning the Kansas program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

### II. Proposed Amendment

By letter dated September 4, 1992, (Administrative Record No. KS–521) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment at the State's own initiative to improve its program.

Kansas is proposing revisions to its approved program for evaluating revegetation success. The revisions are made throughout a document entitled "Revegetation Guidelines and Requirements for Kansas Coal Mine Reclamation." These revisions concern the standards and methods for

evaluation of vegetative Phase II and Phase III bond release requirements.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

*Written Comments*

Written comments should be specific, pertain only to the issue proposed in the rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

*Public Hearing*

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t November 13, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

*Public Meeting*

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

**IV. Procedural Determinations**

*Compliance With Executive Order 12291*

On July 12, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Compliance With Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that this rule meets the applicable standards of subsections (a) and (b) that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

*Compliance With the National Environmental Policy Act*

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

*Compliance With the Paperwork Reduction Act*

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

*Compliance With the Regulatory Flexibility Act*

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

**List of Subjects in 30 CFR Part 916**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 11, 1992.

**Raymond L. Lowrie**

*Assistant Director, Western Support Center.*

[FR Doc. 92-26278 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-05-M

---

**30 CFR Part 948**

## West Virginia Abandoned Mine Land Program; Expanded Eligibility Criteria. Acid Mine Drainage Treatment and Abatement Program

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

**ACTION:** Proposed rule; reopening and extension of comment period on proposed amendment.

**SUMMARY:** On Monday, April 13, 1992 (57 FR 12790), OSM announced the receipt of a proposed amendment to the West Virginia Abandoned Mine Land Reclamation Plan (hereinafter referred to as the West Virginia AMLR plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment contained revisions to the State's Abandoned Mine Lands and Reclamation Act and its approved State Reclamation Plan. The purpose of the amendment was to expand the eligibility requirements to include certain sites abandoned after August 3, 1977, to establish procedures for conducting watershed based acid mine drainage abatement projects, and to create two new accounts in the State Treasury for conducting reclamation. The availability of West Virginia House Bill 2492, the enabling legislation for this change was not included in this notice, and the comment period is being reopened for 30 days to solicit comments on this legislation.

This notice sets forth the times and locations that the West Virginia AMLR Plan, House Bill 2492, and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and companion legislation, and the procedures that will be followed regarding a public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on November 30, 1992. If requested, a public hearing on the proposed amendment will be held on November 23, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on November 13, 1992.

**ADDRESSES:** Written comments and requested for a hearing should be mailed or hand delivered to Mr. James C. Blankenship, Jr., Director, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the proposed amendment, the West Virginia AMLR plan, and the administrative record on the West Virginia AMLR plan are available for public review and copying at the OSM office and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759-0530.

In addition, copies of the proposed amendment and the enabling legislation are available for public inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004.

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, suite 3, Beckley, West Virginia 25801, Telephone: (304) 255-5265.

Each requester may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office. If a public hearing is held, its location will be in the Charleston Field Office conference room at 603 Morris Street, Charleston, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; Telephone (304) 347-7158.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Secretary of the Interior approved the West Virginia AMLR plan on February 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial submission, as well as the Secretary's findings and the disposition of comments can be found in the January 23, 1981, **Federal Register** 48 FR 7324-7327). Subsequent actions taken with regard to the West Virginia AMLR plan can be found in 30 CFR 948.20 and 948.25.

The Secretary has adopted regulations that specify the content requirements of a state reclamation plan and the criteria for plan approval (30 CFR part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to an approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

## II. Discussion of Legislation

By letter dated September 17, 1991, West Virginia submitted legislation modifying its approved AMLR program. The legislation consists of new language added to the approved West Virginia statute as provided for by 30 CFR 884.13.

Specifically, the following areas of the legislation are being revised:

(1) Fee Collection Dates [402(b)]: West Virginia has changed the termination date for fee collections to conform to the Federal Surface Mine Act amendments of 1991. This change in Section 22-3-2 reflects the new termination date of September 30, 1995.

(2) Water Supply Systems [403(b)]: West Virginia has modified their legislation in § 22-3-4(b)(2) to permit water supply system funding where water supplies have been adversely affected by past coal mining practices which occurred predominantly prior to August 3, 1977.

(3) Post Act Reclamation [402(g)(6)]: West Virginia has established a special account in the State Treasury known as the "Reclamation and Restoration Fund" under § 22-3-4(b)(3)(A). Money from the fund may be expended by the commissioner for administrative and personnel expenses, and to achieve the purposes of the AMLR statute after September 30, 1995.

(4) Acid Mine Drainage Abatement [402(g)(7)(A)]: West Virginia has established a special account in the State Treasury known as the "Acid Mine Drainage Abatement and Treatment Fund" under section 22-3-4(b)(30(B). Money from this fund may be expended to address acid mine drainage problems on a hydrologic unit basis. Plans for reclaiming hydrologic units will be developed in consultation with the Soil Conservation Service and reviewed by the Bureau of Mines.

(5) The State's legislation now allows it to receive and retain up to ten percent of the total of the grants made annually under paragraphs (1) and (5), subsection (g) of section 404 of Public Law 95-87 if such amounts are deposited to the credit of either of the accounts mentioned in paragraphs (3) or (4) above.

(6) Interim Program Sites [402(g)(4)(B)]: West Virginia has modified its legislation under § 22-3-4(c) to make sites abandoned after August 4, 1977, eligible for reclamation in the following instances: (a) Sites abandoned between August 4, 1977, and January 21, 1981, are eligible (January 21, 1981, is the date that West Virginia gained primacy over its permanent Surface Mining Reclamation Program). These sites, known as "interim program sites" may be reclaimed by West Virginia's AMLR Program if they are either Priority One or Two as outlined in part A, chapter III, subsection B (Page 9) of the Plan, and bonds, other forms of financial guarantees, or any other sources of funding are not sufficient to provide for adequate reclamation or abatement; and (b) abandoned mine sites are also eligible if abandoned between August 4, 1977, and October 1, 1991, where the surety of the mining operator became insolvent during such period, and funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site. These sites must also qualify as Priority One or Two sites as outlined in the plan.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is announcing a comment period on West Virginia's program legislation to provide the public an opportunity to consider its adequacy. Specifically, OSM is seeking comments on the legislation that was submitted on September 17, 1991. If approved, the legislation will become part of the West Virginia AMLR program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on November 13, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed legislation may request a meeting at the OSM office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

*Executive Order 12291*

On March 30, 1992, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

*Paperwork Reduction Act*

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

*Regulatory Flexibility Act*

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

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land reclamation.

Dated: September 14, 1992.

**Jeffrey D. Jarrett,**

*Acting Assistant Director, Eastern Support Center.*

[FR Doc. 92–26279 Filed 10–28–92; 8:45 am]

BILLING CODE 4310–05–M

---

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Chapter I**

**[FRL 4528–2]**

## Small Non-Road Engines Regulation; Public Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public meeting.

**SUMMARY:** We are giving notice of a public meeting concerning the potential use of a consensus based process to develop data and regulations for the control of emissions from small non-road engines under the Clean Air Act Amendments. The meeting is open to the public without advance registration.

The agenda of the meeting will include: Discussion of the need and schedule for rulemaking, reporting on the development of data and regulation to date, a report of the results of a convening study recently completed by third party facilitators, and exchange of information on the kinds of consensus based procedures under consideration. The information gained from individual attendees at the meeting will be used by the agency to make a decision on whether to proceed with a consensus-based process to develop this rule.

**DATES:** The meeting will be held on November 16, 1992 form 10:30 p.m. to 5 p.m. and November 17, 1992 from 9 a.m. to 4 p.m.

**LOCATION:** Location of the meeting will be the Sheraton Inn, 3200 Boardwalk, Ann Arbor, Michigan 48108.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on the technical and substantive issues related to the rule should contact Clare Ryan, National Vehicle and Fuel Emissions Laboratory, Environmental Protection Agency, 2656 Plymouth Rd., Ann Arbor, MI 48105; phone (313) 668–4577. Persons needing further information on procedural matters

should call Deborah Dalton, consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-5495.

Dated: October 26, 1992.

**Deborah Dalton,**

*Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.*

[FR Doc. 92-26256 Filed 10-28-92; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 100

**RIN 0905-AD64**

### National Vaccine Injury Compensation Program: Revision of the Vaccine Injury Table

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Proposed rule; notice of public hearing.

**SUMMARY:** This document announces a public hearing to receive information and views on the Notice of Proposed Rulemaking (NPRM) entitled "National Vaccine Injury Compensation Program: Revision of the Vaccine Injury Table".

**DATES:** A public hearing will be held on December 3, 1992 from 1 to 5 p.m.

**ADDRESSES:** The public hearing will be held in Conference Room G of the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, (301) 443-6593

**SUPPLEMENTARY INFORMATION:** The National Childhood Vaccine Injury Act (Public Law 99-660, as amended, Title XXI of the Act) provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines; namely, diphtheria, tetanus, pertussis, polio, measles, mumps or rubella vaccines. Section 2114 of the Act contains a Vaccine Injury Table which lists these vaccines and the time periods in which certain adverse events, e.g., injuries, disabilities, illnesses, or death, must occur in order for claimants to be entitled to a presumption that the event was vaccine-related. The Secretary proposed the revision of the Vaccine Injury Table and accompanying Qualifications and Aids to Interpretation based on the findings of the August 1991 Institute of Medicine report "Adverse Effects of Pertussis and Rubella Vaccines," and the recommendations made by two advisory bodies—the National Vaccine Advisory Committee and the Advisory Commission on Childhood Vaccines. The NPRM was published in the **Federal Register**, August 14, 1992; Vol. 57, No. 158, Pages 36878-36885. The public comment period closes February 11, 1993.

In view of the importance of the Vaccine Injury Compensation Program and the effect of the NPRM, the Secretary has determined that, in addition to the 180-day period for written comments on the NPRM, an informal public hearing will be held. This hearing is to provide an open forum for the presentation of information and views concerning all aspects of the NPRM by interested persons.

In preparing a final regulation, the Secretary will consider the administrative record of this hearing along with all other written comments received during the comment period specified in the NPRM. Individuals or representatives of interested organizations are invited to participate in the public hearing in accord with the schedule and procedures set forth below.

The hearing will be held on December 3, 1992 beginning at 1 p.m. in Conference Room G at the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. The hearing will be held following the noon adjournment of the December 2-3 meeting of the Advisory Commission on Childhood Vaccines.

The presiding officer representing the Secretary, HHS will be Thomas E. Balbier, Jr., Director, Division of Vaccine Injury Compensation, Bureau of Health Professions (BHPr), Health Resources and Services Administration.

Persons who wish to participate are requested to file a notice of participation with the Department on or before November 16, 1992. The notice should be mailed to the Division of Vaccine Injury Compensation, BHPr, room 702, 6001 Montrose Road, Rockville, Maryland 20852. To ensure timely handling, any outer envelope should be clearly marked "NPRM Hearing." The notice of participation should contain the interested person's name, address, telephone number, any business or organizational affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. Groups that have similar interests should consolidate their comments as part of one presentation. Time available for the hearing will be allocated among the persons who properly file notices of participation. If time permits, interested parties attending the hearing who did not submit a notice of participation in advance will be allowed to make an oral presentation at the conclusion of the hearing.

Persons who find that there is insufficient time to submit the required information in writing may give oral notice of participation by calling Mr. Balbier at (301) 443-6593 no later than November 16, 1992. Those persons who give oral notice of participation should also submit written notice containing the information described above to the Department by the close of business November 24, 1992.

After reviewing the notices of participation and accompanying information, the Department will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person(s) and the approximate time the person's oral presentation is scheduled to begin.

Written comments and transcripts of the hearing will be made available for public inspection as soon as they have been prepared, on weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. at the Division of Vaccine Injury Compensation, room 702, 6001 Montrose Building, Rockville, Maryland 20852.

Dated: October 23, 1992.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 92-26246 Filed 10-28-92; 8:45 am]

BILLING CODE 4160-15-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 89-535, RM-6980]**

### Radio Broadcasting Services; Elizabeth City, NC, and Chesapeake, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests further comments on a petition filed by Edge Broadcasting Company, seeking the reallotment of Channel 229C from Elizabeth City, North Carolina, to Chesapeake, Virginia, and the modification of Station WKOC-FM's license accordingly. See 54 50004, December 4, 1989. Edge Broadcasting

seeks the reallotment of its station to a community within an Urbanized Area. We request comment as to whether Chesapeake is deserving of a local service preference, or whether Chesapeake should be credited with all of the aural services licensed to the Urbanized Area.

**DATES:** Comments must be filed on or before December 14, 1992, and reply comments on or before December 29, 1992.

**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: William M Barnard, Esq., McFadden, Evan & Sill, 1627 Eye Street, NW suite 810, Washington, DC 20006 (Counsel for petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-535, adopted September 24, 1992, and released October 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW.. suite 640 Washington, DC 20036.

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

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

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

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

Radio Broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

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

[FR Doc. 92-26151 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 92-231, RM-8076]**

## Radio Broadcasting Services; Marlboro, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Mountain View Broadcasting, Inc., licensee of Station WXXX-FM, Channel 269A, New Hampshire, seeking the deletion of vacant Channel 268A at Marlboro, Vermont.

**DATES:** Comments must be filed on or before December 14, 1992, and reply comments on or before December 29, 1992.

**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: David Tillotson, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036 (Counsel for petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-231, adopted September 25, 1992, and released October 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640F Washington, DC 20036.

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

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

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

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

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

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

[FR Doc. 92-26150 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 92-226, RM-8082]**

## Radio Broadcasting Services; Seminole, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by One Ten Broadcast Group, Inc., seeking the substitution of Channel 290A for Channel 288A at Seminole, Oklahoma, and the modification of Station KIRC's license to specify operation on the alternate Class A channel. Operation on Channel 290A could enable Station KIRC to improve its facilities to 6 kW. Channel 290A can be allotted to Seminole in compliance with the Commission's minimum distance separation requirements at the station's licensed transmitter site, at coordinates North Latitude 35-12-53 and West Longitude 96-44-26.

**DATES:** Comments must be filed on or before December 14, 1992, and reply comments on or before December 29, 1992.

**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: Herman L. Jones, President, One Ten Broadcast Group, Inc., 120 E. Main Street, Shawnee, Oklahoma 74801 (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. 92-226, adopted September 24, 1992, and released October 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts 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.

**Michael C. Ruger,**

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

[FR Doc. 92-26149 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

---

## 47 CFR Part 73

**[MM Docket No. 92-230, RM-8090]**

## Radio Broadcasting Services; Snow Hill, MD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Snow Hill Community Broadcasting proposing the allotment of Channel 223A to Snow Hill, Maryland. Channel 223A can be allotted at Snow Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7.0 miles) east of the community at coordinates 38-04-44 and 75-25-51.

**DATES:** Comments must be filed on or before December 14, 1992, and reply comments on or before December 29, 1992.

**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: Avram Schachter, Snow Hill Community Broadcasters 251 Rollins Ave, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-230, adopted September 24, 1992, and released October 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422 1990 M Street, NW., suite 640, Washington, DC 20036.

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

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

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

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

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

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

[FR Doc. 92-26147 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

---

## 47 CFR Part 73

**[MM Docket No. 92-227, RM-8070, RM-8072]**

## Radio Broadcasting Services; Eatonton, Fayetteville, Greenville, Griffin, Hogansville, Sparta, and Thomaston, GA, and Ashland, AL

**AGENCY:** Federal Communications Commission

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on two separately filed conflicting petitions for rule making. The first petition, filed by Orchon Broadcasting Company ("Orchon"), requests the substitution of Channel 239C3 for Channel 239A at Greenville, Georgia, and the modification of its construction permit for Station WEJG (FM) to specify operation on the higher class channel (RM-8070). The second petition was filed by Good Medicine Radio, Georgia, Inc. ("GMR"), licensee of Station WSKS(FM), Channel 249A, Sparta, Georgia, and Design Media, Inc. ("DMI"), licensee of Station WQUL(FM), Channel 249A, Griffin, Georgia. GMR and DMI propose the substitution of Channel 249C3 for Channel 249A at Sparta, Georgia, the reallotment of Channel 249C3 from Sparta to Eatonton, Georgia, and the modification of the license for Station WSKS(FM) to specify Eatonton as its community of license; and the substitution of Channel 248C3 for Channel 249A at Griffin, Georgia, the reallotment of Channel 248C3 from Griffin to Fayetteville, Georgia, and the modification of the license for Station WQUL(FM) to specify Fayetteville as its community of license. See Supplementary Information, *infra*.

**DATES:** Comments must be filed on or before December 14, 1992, and reply comments on or before December 29, 1992.

**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: Dan J. Alpert, 1250 Connecticut Ave., NW., 7th Floor, Washington, DC 20036 (Counsel for Good Medicine Radio, Georgia, Inc. and Design Media, Inc.), and Robert S. Stone, McCampbell & Young, P.C., 2021 Plaza Tower, P.O. Box 550, Knoxville, TN 37901-0550 (Attorney for Orchon Broadcasting Company, Inc.).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-227, adopted September 24, 1992, and released October 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

In order to accommodate the upgrades and community of license charges for Griffin and Sparta, petitioners also request the substitution of Channel 239A for Channel 248A at Hogansville, Georgia, and the modification of Station WEIZ(FM)'s construction permit to specify Channel 239A; the substitution of Channel 237A for Channel 239A at Greenville, Georgia, and the modification of Station WEJG(FM)'s construction permit to specify Channel 237A; the substitution of Channel 266A for Channel 237A at Thomaston, Georgia, and the modification of Station WTGA(FM)'s license to specify Channel 266A; and the substitution of Channel 238A for Channel 237A at Ashland,

Alabama, and the modification of Station WASZ(FM)'s license to specify Channel 238A, accordingly (RM-8072). The coordinates for Channel 249C3 at Eatonton are north latitude 33-23-03 and west longitude 83-19-22. The coordinates for Channel 248C3 at Fayetteville are north latitude 33-25-41 and west longitude 84-28-22. The coordinates for Channel 239A at Hogansville are north latitude 33-06-18 and west longitude 85-00-27. The coordinates for hannel 239C3 at Greenville are north latitude 33-01-39 and west longitude 84-51-39. The coordinates for Channel 237A at Greenville are north latitude 32-54-00 and west longitude 84-46-54. The coordinates for Channel 266A at Thomaston are north latitude 32-54-08 and west longitude 84-23-13. The coordinates for Channel 238A at Ashland are north latitude 33-18-30 and west longitude 85-50-58.

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.

**Michael C. Ruger,**

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

[FR Doc. 92-26148 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 73**

**[MM Docket No. 92-232, RM-8077]**

## Radio Broadcasting Services; Monticello, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Mayflower Broadcasting Corporation requesting the substitution of Channel 270C3 for Channel 270A at Monticello, Florida, and the modification of Station WJPH(FM)'s license to specify operation on Channel 270C3. The proposed coordinates for Channel 270C3 at Monticello are north latitude 30-22-56 and west longitude 83-53-26.

**DATES:** Comments must be filed on or before December 14, 1992, and reply comments on or before December 29, 1992.

**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: Richard D. Davidson, President, Mayflower Broadcasting Corporation, 6155 N. Kirkwood, Chicago, IL 60646 (Petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-232, adopted September 25, 1992, and released October 23, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

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

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

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

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

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

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

[FR Doc. 92-26146 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

---

**47 CFR Part 90**

**[PR Docket No. 92-210; FCC 92-429]**

## Extended Implementation Periods

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has adopted a Notice of Proposed Rule Making to solicit comment on a proposal to amend 47 CFR 90.629 by extending the rule's applicability to Specialized Mobile Radio (SMR) Category applicants, lengthening the "slow growth" period from three to five years, eliminating the fleet-size requirement for qualification for an extended implementation period, and eliminating the annual reporting requirement. In addition, the Commission proposed to amend 47 CFR 90.629 and 90.631 to clarify its policies with regard to licensees that do not fully meet their system construction benchmarks and channel loading requirements. These rule changes are designed to encourage the development of innovative and complex land mobile technologies and to ease the regulatory burden upon licensees of such system.

**DATES:** Comments must be filed on or before November 16, 1992 and reply comments must be filed on or before December 1, 1992.

**ADDRESSES:** Federal Communications Commission, 1919 M Street NW., Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Karen Kincaid, (202) 634-2443, Private Radio Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 92-210, FCC 92-429, adopted September 9, 1992, and released October 13, 1992. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The couplete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, telephone (202) 452-1422. The following collection of information contained in these proposed rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Washington, DC 20036, telephone (202) 452-1422. Persons wishing to comment

on this collection of information should direct their comments to Jonas Niehardt, (202) 395–4814, Office of Management and Budget, room 3225 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget also should be sent to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, Records, Management Branch, Office of Managing Director, Federal Communications Commission (202) 632–7513.

*OMB Number:* 3060–0307.

*Title:* Amendment of part 90 of the Commission's Rules Governing Extended Implementation Periods.

*Action:* Revision of currently approved collection.

*Respondents:* State or local governments, businesses or other for-profit entities, non-profit institutions, and small businesses or organizations.

*Estimated Annual Burden:* It is estimated that 200 applications will be filed annually and that it will take 1 hour per application to provide the requisite justification for an extended implementation period, which equals 200 annual burden hours.

*Estimated Frequency of Response:* On occasion.

*Needs and Uses:* This information is needed to justify the granting of an extended implementation period for the construction and operation of private land mobile radio systems. This proposed rule making, while increasing the number of applicants eligible for an extended implementation period, also decreases the burden on licensees granted an extended implementation period by eliminating the current requirement that such licensees submit an annual report on the extent to which their systems have been implemented.

**Summary of Notice of Proposed Rule Making**

1. Section 90.629 provides that applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Categories may, upon the proper showing, be given an extended period of time for constructing and placing a station in operation. Ordinarily, these licensees are required to have conventional systems constructed and in operation within eight months of licensing, and trucked systems constructed and in operation within one year of licensing, or their licenses will cancel automatically. Section 90.629 allows a three year implementation schedule for applicants able to make certain specified showings set forth in 47 CFR 90.629(a)(1)–(a)(4).

2. Recently, an increasing number of SMR applicants have expressed an interest in operating technically innovative, wide-area systems. Because of the complexity and expense of these systems, however, such applicants are frequently unable to construct and place them in operation within the one-year period generally applicable to trunked SMRs. In the Commission's view, these applicants have as compelling a need for an extended implementation period as applicants for frequencies in the categories listed in § 90.629. Accordingly, the Commission is proposing to amend § 90.629 to include SMR Category applicants.

3. The Commission to also proposing to expand the extended implementation period set forth in § 90.629 from three to five years. This proposal is premised on the Commission's experience that five years is a more realistic assessment of the amount of the extended period needed to construct and place large and complex systems in operation. The Commission proposes, however, the applicants needing less than five years request only extended implementation periods appropriate to their needs.

4. Relatedly, the Commission is proposing modifications to § 90.629 in accordance with certain proposals offered by the Utilities Telecommunications Council (UTC) in its petition for rule making filed March 20, 1992. Specifically, the Commission proposes to modify the rule that currently requires applicants for extended implementation to serve a fleet consisting of at least 200 mobile units. The Commission believes that there is little or no correlation between the number of mobile units operating on an applicant's system and the need for extended implementation. Next, the Commission proposes to included among applicants eligible for extended implementation any entity that may be required by law to follow a multi-year cycle for the planning, approval, funding, and purchasing of a proposes system. Third, the Commission proposed to clarify § 90.629(b) to indicate that licensees of trunked systems authorized an extended implementation period are required to load their systems to the same level as those licensees of trunked systems not authorized and extended implementation period.

5. The Commission also proposes to eliminate the current annual reporting requirement used to ensure a licensee's compliance with its authorized implementation period. Instead the Commission proposed to (1) place a condition on the licensee's authorization expressly stating that if the system is not constructed and placed in operation within the authorized time and in accordance with the licensee's approved implementation schedule, the authorization will be modified to reflect the loss of all channels not constructed and placed in operation at the base station locations identified in the schedule; and (2) reserve the right to request, at any time prior to the end of the implementation period, evidence that the licensee has met the implementation benchmarks identified in its schedule.

6. Finally, the Commission is proposing to modify §§ 90.629(b) and 90.631(b) to clarify its policy with regard to licensees that have not fully met the channel loading requirements.

**Initial Regulatory Flexibility Analysis**

7. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601 of the Regulatory Flexibility Act. The proposed rule changes set forth in the Notice relieve certain regulatory responsibilities and have no negative economic consequences. The Secretary of the Federal Communications Commission shall send a copy of the Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*

**List of Subjects in 47 CFR Part 90**

Radio, reporting and recordkeeping requirements.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**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, 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 90.629 is amended by redesignating paragraph (c) as paragraph (d), adding a new paragraph (c), revising the section heading, the

introductory text, and paragraphs (a) and (b) to read as follows:

**§ 90.629 Extended implementation period.**

Applicants for either trunked or conventional operations may be authorized a period of up to five (5) years for constructing and placing a system in operation in accordance with the following:

(a) The applicant submits a justification for an extended implementation period. The justification must include an implementation schedule, including a description of the applicant's proposed system, benchmarks for construction of proposed base stations (including identification of channels to be "constructed" at each station at each of the indicated benchmarks), and must show that:

(1) The proposed system will require longer than eight months (if a conventional system) or one year (if a trunked system) to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than eight months (if a conventional system) or one year (if a trunked system) to plan, approve, fund, purchase, construct, and place in operation; or

(3) The applicant is required by law to follow a multi-year cycle for planning, approval, funding, and purchase the proposed system.

(b) Authorizations under this Section are conditioned upon the licensee constructing and placing its system in operation within the authorized implementation period and in accordance with the approved implementation schedule. If the licensee fails to construct and place its system in operation within the authorized implementation period and in accordance with the approved implementation schedule, all channels not constructed and placed in operation at the base station locations identified in the implementation schedule and all base stations not constructed and placed in operation in accordance with the implementation schedule will be deleted from the licensee's authorization. If at the end of five years, all channels in the licensee's category are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every 100 mobiles loaded, plus one additional channel. Conventional channels not loaded to 70 mobile units may be subject to shared use by the addition of other licensees.

(c) For purposes of this section:

(1) A system is not considered constructed unless all of the base stations in the system are constructed in accordance with the system description provided as per paragraph (a) of this section; and

(2) A conventional system is not considered placed in operation unless, for each base station in the system, at least one associated mobile station is also placed in operation (see also §§ 90.155(c) and 90.633(d)); and

(3) A trunked system is not considered placed in operation unless, for each base station in the system, at least two associated mobile stations, or one control station and one mobile station, are also placed in operation (see also § 90.631(f)).

* * * * *

3. 47 CFR 90.631 is amended by revising paragraph (b) to read as follows:

**§ 90.631 Trunked systems loading, construction and authorization requirements.**

* * * * *

(b) Each applicant for a trunked system shall certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant. Except as provided in paragraph (i) of this section, if at the end of five years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every 100 mobiles loaded, plus one additional channel. If a trunked system has channels from more than one category, General Category channels are the first channels considered to cancel automatically. All licensees who are authorized initially before June 1, 1993, and are within their original license term or are within the term of a two-year authorization granted in accordance with paragraph (i) of this section are subject to this condition. A licensee that has had authorized channels cancelled due to failure to meet the above loading requirements will not be authorized to obtain additional channels to expand that same system for a period of six months from the date of cancellation.

* * * * *

[FR Doc. 92-26099 Filed 10-28-92; 8:45 am]
BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 663**

## Pacific Coast Groundfish Fishery

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

**ACTION:** Notice of receipt of an application for an experimental fishing permit and request for comments.

**SUMMARY:** This notice announces receipt of an application for an experimental fishing permit (EFP) to harvest Pacific whiting south of 42° north latitude during the period January 1, 1993, through December 31, 1993. If granted, the permit would allow fishing that otherwise would be prohibited by Federal regulations. The purpose of the EFP is to develop a shoreside whiting fishery in the Monterey subarea and to allow a fishery in the Eureka subarea while the Pacific Fishery Management Council (Council) considers a new season opening date of March 1, 1993. Issuance of experimental fishing permits is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

**DATES:** Comments must be received by November 30, 1992.

**ADDRESSES:** Copies of the experimental fishing permit application are available from, and comments may be submitted to: Gary C. Matlock, Acting Regional Director, Southwest Region, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Rodney McInnis, (310) 980-4040, or Svein Fougner, (310) 980-4034.

**SUPPLEMENTARY INFORMATION:** The FMP and its implementing regulations at 50 CFR part 663 specify that EFP's may be issued to authorize fishing that otherwise would be prohibited by the FMP and regulations. The procedures for issuing permits are contained in the regulations at § 663.10.

An EFP application has been accepted for review and copies have been forwarded to the Council, the U.S. Coast Guard, and the directors of the fishery management agencies for the States of California, Oregon, Washington, and Idaho.

The applicant proposes the use of two midwater trawl vessels, each of which would harvest between 35 to 50 metric tons, daily, of Pacific whiting south of 42° north latitude during the period January 1, 1993, through December 31, 1993. The purpose of the experiment

would be to demonstrate that a shore-based whiting fishery is feasible in the Monterey subarea; and allow harvest of whiting in the Eureka subarea while the Council considers a March 1 season opening date. Regulations at 50 CFR 663.23(b)(3) specify that the harvest of whiting not begin before April 15; therefore, the proposed harvest would not be consistent with current regulations.

The application will be discussed at the November 17–20, 1992, public meeting of the Council, which will be held at the Radisson Hotel near Sea-Tax Airport, Seattle, Washington. The decision whether to issue an EFP and determinations on appropriate permit conditions will be based on a number of considerations, including recommendations made by the Council and comments received from the public.

A copy of the application is available for review at the NMFS Southwest Regional Office (see **ADDRESSES**).

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

Date: October 23, 1992.

**Richard H. Schaefer,**

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

[FR Doc. 92–26244 Filed 10–28–92; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 57, No. 210
Thursday, October 29, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

October 23, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

**Revision**

- Agricultural Marketing Service
- Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement (M.A. 146/7 CFR Part 998)—7 CFR Part 997
- Form FV-117 through Form FV-117-9
- Recordkeeping; On occasion; Weekly; Monthly; Annually
- Businesses or other for-profit; Small businesses or organizations; 2,190 responses; 817 hours
- Mark Hessel, (202) 720-3923

**New Collection**

- Food and Nutrition Service
- Determination of Food and Nutrition Needs for Special Populations in Schools and Administrative Requirements for Meeting Those Needs
- One-time only
- Individuals or households; Non-profit institutions; 1,450 responses; 684 hours
- Dr. Jeannie Sneed, (601) 266-5773
- Agricultural Marketing Service
- International Carriage of Perishable Foodstuffs
- OT-8 through OT-16
- Recordkeeping; On occasion
- Businesses or other for-profit; 16 responses; 451 hours
- Brian M. McGregor, (202) 690-1319

**Reinstatement**

- Rural Electrification Administration
- Review Rating Summary
- REA Form 300
- Once every three years
- Businesses or other for-profit; Small businesses or organizations; 295 responses; 1,180 hours
- Frederick Gatchell, (202) 720-1398

Larry Roberson,
*Deputy Departmental Clearance Officer.*

[FR Doc. 92-26188 Filed 10-28-92; 8:45 am]

BILLING CODE 3410-01-M

## Forest Service

### Exemption of Fort Spring Salvage, Onion Salvage, Bare Flat Salvage, Big John Salvage, Dark Salvage, Rim Salvage, Robinson Salvage, West Robinson Salvage, and Long Prairie Salvage Timber Sales From Appeal, Fremont National Forest, OR; Exempt Decisions From Administrative Appeals.

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice to exempt decisions from administrative appeal.

**SUMMARY:** This is a notification that the decisions to implement the following Salvage Timber Sales on the Fremont National Forest are exempted from appeal: Robinson Salvage, West Robinson Salvage, Big John Salvage, Fort Spring Salvage, Onion Salvage, Bare Flat Salvage, Rim Salvage, Dark Salvage, and Long Prairie Salvage. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the Federal Register on January 23, 1989 (54 FR 3342).

**DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Graham, Forest Supervisor, Fremont National Forest, 524 North G Street, Lakeview, Oregon 97630.

**SUPPLEMENTARY INFORMATION:** During the summer of 1992, nine large fires burned over 15,000 acres on the Bly, Lakeview, and Paisley Ranger Districts of the Fremont National Forest. Most of the area burned is commercial timber land designated as Management Area 5 (Timber and Range Production) by the Forest Plan. As each fire was controlled, an analysis team was assigned to assess damage to the resources that had occurred and to begin an analysis of possible management practices for treating the areas. These teams surveyed most of the burned area, initiated project scoping, and started the analysis process for the alternative treatments. The analysis teams each identified the need to salvage the timber which has died or which has a high likelihood of dying as a result of these fires in as short a time as possible so the logs would remain merchantable. Rapid drying of burned trees will result in cracking or "checking," especially of the smaller diameter trees, making them unsuitable as sawlogs. None of the sales will involve new permanent road construction although some reconstruction and temporary road construction would be done on several of these sales to facilitate harvest operations.

Public scoping for these sales identified no significant issues. Most responses received expressed a concern that the timber be harvested as soon as possible to maximize utilization of the timber. Internally raised issues related to protection of water quality and soil productivity (erosion), harvesting on steep slopes within the Onion area, visual quality, maintaining down woody debris, and retaining snags for cavity nesting species. All of these would be adequately addressed by following Standards and Guidelines in the Fremont National Forest Land and Resource Management Plan (Forest Plan).

Based on the scoping and initial analysis done so far, an interdisciplinary team developed two alternatives to be considered in detail

for each proposed sale: (1) Harvest dead and seriously damaged trees from the burned area, and (2) No Action.

The effects of the proposed actions are disclosed in the analysis files and decision documents for each sale. The following table shows the estimated volumes, acres treated, and the area burned for each of the proposed sales.

| Sale name | Volume harvested (Thousand Board Feet) | Area treated (acres) | Area burned (acres) |
|---|---|---|---|
| Robinson Salvage | 21,000 | 10,500 | 10,800 |
| West Robinson Salvage | 700 | 300 | ..... |
| Big John Salvage | 3,600 | 500 | 1,135 |
| Fort Spring Salvage | 2,000 | 1,500 | 1,550 |
| Onion Salvage | 1,000 | 600 | 1,100 |
| Bare Flat Salvage | 500 | 140 | 160 |
| Rim Salvage | 366 | 85 | 325 |
| Dark Salvage | 300 | 100 | 245 |
| Long Prairie Salvage | 130 | 25 | 60 |
| Total | 29,596 | 13,750 | 15,375 |

Road work for these projects would be very limited. Approximately .2 miles of road would be reconstructed for the Dark Salvage, 1 mile of road would have rock added on the Big John Salvage, and an undetermined amount of reconstruction would be done under the Robinson Salvage. New construction would be limited to temporary roads for all sales. Wet areas would be avoided in the harvest alternatives. Steep slopes and rocky areas would be harvested using helicopters or cable logging systems. The proposed harvest alternatives have been designed to meet applicable Forest Plan Standards and Guidelines. Harvesting the dead and dying timber would meet both the Forest Plan objectives and the objectives for salvage.

The sales and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, these projects are exempted from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notices for Onion Salvage, Robinson Salvage, Big John Salvage and Fort Spring Salvage Timber Sales and the Decision Memos for Dark Salvage, Rim Salvage, West Robinson Salvage, Bare Flat Salvage, and Long Prairie Salvage Timber Sales may be signed by the Forest Supervisor or the District Ranger. Therefore, these projects will not be subject to review under 36 CFR part 217.

Dated: October 22, 1992.

**Richard A. Ferraro,**

*Deputy Regional Forester.*

[FR Doc. 92-26198 Filed 10-28-92; 8:45 am]

BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, November 24, 1992, at the Hyatt Regency, Hibiscus Room, 400 SE. 2d Avenue, Miami, Florida 33231. The purpose of the meeting is to discuss the status of the Commission, SACs, 1993 appropriations, and rechartering plans; discuss and update the current project, Racial Tensions in Florida, and to discuss civil rights developments in Miami and the Federal response in the aftermath of Hurricane Andrew.

Persons desiring additional information, or planning a presentation to the Committee should contact Florida Chairperson Bradford Brown 305/361-4991 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated: at Washington, DC, October 21, 1992.

**Carol-Lee Hurley,**

*Chief Regional Programs Coordination Unit*

[FR Doc. 92-26242 Filed 10-28-92; 8:45 am]

BILLING CODE 6335-01-M

### Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3 p.m. and adjourn at 5 p.m. on Friday, November 20, 1992, at the Nations Bank Tower, 600 Peachtree Street, 52d Floor Conference Room A, Atlanta, Georgia 30308. The purpose of this meeting is: (1) To discuss the status of the SACs and the Commission; (2) to hear a report on civil rights progress and/or problems in the State and Nation; and (3) to discuss the Affirmative Action (AA) and Equal Opportunity (EO) plans of the Atlanta Committee for the Olympic Games (ACOG) as they relate to minorities and women.

Persons desiring additional information, or planning a presentation to the Committee should contact Georgia Chairperson, Dale M. Schwartz 404/657-8097 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730-2476, TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 21, 1992.

**Carol-Lee Hurley,**

*Chief Regional Programs Coordination Unit*

[FR Doc. 92-26241 Filed 10-28-92; 8:45 am]

BILLING CODE 6335-01-M

## Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 12 noon, on November 18, 1992 at the Waikiki Trade Center, 2255 Kuhio Avenue, 11th Floor Conference Room, Honolulu, Hawaii, 96815. The purpose of the meeting is to review current civil rights developments in the State, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre S. Tatibouet, or Philip Montez, Director of the Western Regional Office (213) 894-3437, TDD (213) 894-0508. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, October 22, 1992.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92-26240 Filed 10-28-92; 8:45 am]

BILLING CODE 6335-01-M

## Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Wednesday, November 18, 1992, at the Residence Inn by Marriott, 2300 Elm Hill Pike, Nashville, Tennessee 37210. The purpose of the meeting is to: (1) To discuss the status of the Commission, SACs, rechartering, etc.; (2) to discuss civil rights progress and/or problems in the State; (3) to report/update on the current project, Racial Tensions in Tennessee; and (4) to review meeting transcripts from the three racial tensions meetings.

Persons desiring additional information, or planning a presentation to the Committee should contact Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at 404/730-2476, TDD 404/730-2481. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 21, 1992.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92-26239 Filed 10-28-92; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

[Docket No. 920930-2269]

## General Order Increasing the Prohibition on Exports of Unprocessed Timber From Public Lands in Washington State

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Notice of general order on log exports.

**SUMMARY:** Effective October 23, 1992, the Secretary of Commerce increased to 100 percent the prohibition on the export of unprocessed timber harvested from non-Federal Washington state public lands pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (the Act). This notice announces the Secretary of Commerce's decision and includes a copy of the Order increasing the timber export prohibition to 100 percent.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 491 of the Act requires a prohibition on the export of unprocessed timber originating from non-Federal public lands in the contiguous states located west of the 100th meridian. The Act requires the Secretary of Commerce to issue orders prohibiting the export of all unprocessed timber originating from public lands in states with annual timber sales volumes of 400 million board feet or less. The Act also requires the Secretary to issue orders prohibiting the export of at least 75 percent of the annual sales volume of unprocessed timber from public lands in any states with annual timber sales volumes exceeding 400 million board feet. The State of Washington is the only state that meets this criteria.

Section 491(c) of the Act permits the Secretary of Commerce to increase the amount of unprocessed timber prohibited from export upwards from 75 percent based on the consideration of certain factors and a determination that the purposes of the Act have not been adequately met and that such an increase would further the purposes of the Act. The purposes of the Act include: (1) Promoting the conservation of forest resources in conjunction with state and Federal resources management plans, and other actions or decisions, affecting the use of forest resources; and (2) taking actions essential for the acquisition and distribution of forest resources or products in short supply in the western United States.

On December 29, 1991, the Secretary of Commerce issued an order prohibiting for the period beginning January 1, 1992, and ending December 31, 1993, the export of 75 percent of the unprocessed timber originating from public lands located in states with annual timber sales volumes greater than 400 million board feet. Since that order was issued, the Department of Commerce has monitored the Washington state timber supply situation to determine if the Secretary should take further action.

### II. Review of Public Comments

On September 22, 1992, the Department published a notice in the **Federal Register** (57 FR 43692) announcing that the Secretary is considering increasing the export prohibition to 100 percent. The Department also invited comments from interested parties that might assist the Secretary in making the determination whether to increase the quantity of unprocessed timber subject to the export prohibition. The Department solicited information concerning the following:

(1) Actions or decisions taken, for the purpose of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products;

(2) Whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous 12 months;

(3) The probable effects of unprocessed timber on the ability of timber mills to acquire unprocessed timber;

(4) Whether the purposes of the Act are being adequately met; and

(5) Whether an increase in the prohibition on export to 100 percent would further the purposes of the Act.

The Department received fifteen comments in response to the September

22, 1992, notice. Twelve comments favored increasing the export prohibition to 100 percent. The Northwest Independent Forest Manufacturers, numerous domestic wood processors, and the Governor of Washington favored increasing the export prohibition. They are convinced that this action will provide additional timber for saw mills that are unable to obtain Federal supplies. They provided data showing: (1) a substantial decline in the Federal timber sales program in Washington due to legal injunctions; and (2) the likelihood that such injunctions would bar new Federal sales for the balance of 1992 and 1993. Their evidence showed that timber sales in Washington state had declined by over 70 percent between FY1991 and FY1992 because of timber set-asides stemming from government actions and decisions to protect the Northern Spotted Owl. They estimated that increasing the prohibition would provide enough timber to keep the mills operating and preserve jobs in the wood processing.

Two parties, the Washington Citizens for World Trade and the Weyerhaeuser Corporation, did not oppose increasing the ban, if it was an interim measure to provide needed timber for saw mills until the President and Congress could reach a comprehensive agreement on federal timber sales in the Pacific Northwest. Both of the above groups, however, stated that once the President and Congress achieved a solution that provided stability for the Federal timber sales program in the Pacific Northwest, the Department should review the costs and benefits of the Washington state log export ban.

The Washington state Department of Natural Resources (DNR) opposed any expansion of the export ban. They believed that Commerce should not base its decision solely on changes in the Federal timber supply and that current timber market conditions did not justify the proposed action. They stated that the domestic wood processors can obtain adequate supplies of timber. To support its arguments the DNR cited the following: (1) The reduced output of lumber from Washington state mills, (2) the large volume of unharvested Washington state timber under contract, and (3) the increased availability of logs resulting from a 25 percent decline in all log exports from Washington state since the 75 percent ban became effective. The DNR also requested a delay in the effective date of any increase and an extension of the public comment period.

## III. Order

The Department has been monitoring the timber supply situation since Secretary Mosbacher signed the last Order on December 29, 1991, to continue in effect the 75 percent ban on exports. (See appendix for a copy of that Order.) The Department believes that there is a basis for increasing the prohibition to 100 percent. Specifically, there has been a substantial reduction in the overall supply of timber due principally to the reduced availability of Federal timber in Washington state. The reduction is the result of injunctions related to environmental and endangered species issues that bar new Federal timber sales. As a result, certain domestic wood processors have been unable to obtain adequate supplies of forest products and resources.

Having considered the relevant factors, including the public comments received, the Secretary of Commerce has determined that the current timber supply situation warrants issuing a general order increasing the prohibition on exports to 100 percent in order to further the purposes of the Act.

The Secretary of Commerce has also determined that good cause exists to make this General Order effective immediately. The Secretary made this determination because of the urgent need to take action essential for the acquisition and distribution of forest resources and products in short supply in the western United States. Such action is consistent with the purposes of the Act and the public interest. For the same reasons, the Secretary declined to extend the comment period.

Accordingly, on October 23, 1992, the Secretary of Commerce issued the following General Order:

**General Order Increasing the Prohibition on Exports of Unprocessed Timber From Certain Public Lands**

The Forest Resources Conservation and Shortage Relief Act of 1990, Public Law 101-382, 104 Stat. 714 (16 U.S.C. 620 et seq.) (FRCSRA), requires the Secretary of Commerce to issue orders prohibiting certain exports from the United States of unprocessed timber originating from public lands. Pursuant to the Act, on December 29, 1991, the Secretary of Commerce signed a General Order ("1991 Order") prohibiting for the period beginning January 1, 1992, and ending December 31, 1993, the export from the United States to any destination, including Canada, of 75 percent of the unprocessed timber originating from public lands located in states with annual timber sales volumes greater than 400 million board feet.

Section 491(c) of the Act (16 U.S.C. 620c (c)) permits me to increase the volume of timber prohibited from export above the minimum specified in paragraphs (b)(2) (B) and (C), based on a determination that the purposes of the Act have not been adequately met and that such an increase would further the purposes of the Act. In making this determination, I must consider: (1) Actions or decisions taken, for the purposes of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products; (2) whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous twelve months; and (3) the probable effects of unprocessed timber exports on the ability of timber mills to acquire unprocessed timber.

Having considered all relevant factors, including comments received in response to the **Federal Register** notice of September 22, 1992 (57 FR 43692), I have determined that the purposes of the Act have not been adequately met and that an increase in the prohibition of exports would further the purposes of the Act. Moreover, I have determined that any delay in the effective date of this Order would allow export sales to be completed contrary to this Order's purposes and the public interest. Accordingly, there is good cause for giving immediate effect to this Order.

Therefore, pursuant to section 491(c) of the Act, effective this day and ending December 31, 1993, I hereby increase to 100 per cent the prohibition on timber exports in the 1991 Order. The increase made by this Order applies only to contracts for the purchase of unprocessed timber from public lands entered into on or after the date of this Order.

Dated: October 23, 1992.

**Barbara Hackman Franklin,**

*Secretary of Commerce.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the statutorily-mandated limitation on the export of unprocessed public timber, which will occur as a result of this action, will not have a significant economic impact on a substantial number of small entities. This is because the action amounts to a small expansion of a preexisting prohibition, and, therefore, would affect only a small number of exporters.

Dated: October 23, 1992.

**James M. LeMunyon,**

*Acting Assistant Secretary for Export Administration.*

**Appendix—General Order Prohibiting Exports of Unprocessed Timer From Public Lands**

The Forest Resources Conservation and Shortage Relief Act of 1990, Public Law 101-382, 104 Stat. 714 (16 U.S.C. 620 *et seq.*) (FRCSRA), requires that the Secretary of Commerce issued orders prohibiting certain exports from the United States of unprocessed timber originating from public lands. This order is being issue pursuant to the provisions of the FRCSRA.

(a) Timber originating from public lands located in States with annual timber sales volumes greater than 400,000,000 board feet. Pursuant to section 620c(b)(2)(B) of FRCSRA.

effective January 1, 1992, for the period beginning January 1, 1992, and ending December 31, 1993, the export from the United States to any destination, including Canada, of 75 percent of the annual sales volume of unprocessed timber from public lands located west of the 100th meridian in States with annual timber sales volumes exceeding 400,000,000 board feet, is prohibited. The remaining 25 percent of the annual sales volume of unprocessed timber may be exported pursuant to State regulations issued in accordance with the FRCSRA and subsection (b) of this order.

(b) Administration by states. Pursuant to section 620c(d)(2) of the FRCSRA, each State subject to this order shall determine the species, grade, and geographic origin of unprocessed timber prohibited from export by this order and the provisions of the FRCSRA. Each State shall issue such regulations necessary to carry out this order and the purposes of the FRCSRA. Each State's regulations shall comply with the requirements set out in subsection 620c(d)(3)(A) of the FRCSRA.

(c) Prior contracts. Consistent with section 620c(d)(4) of the FRCSRA, the prohibition on exports imposed pursuant to this order does not apply to any contract for the purchase of unprocessed timber from public lands entered into before January 1, 1991, on exports set out in subsection (a) of this order.

(d) Western Red Cedar. Consistent with section 620c(d)(5) of the FRCSRA, this order shall not be construed to supersede the controls on the export of Western Red Cedar required by section 7(i) of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401 et seq.), and as set out in § 777.7 of Export Administration Regulations (15 CFR 777.7).

(e) Definitions. (1) Public lands. As defined in section 620e(5) of the FRCSRA, "public lands" means lands that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(i) Held by the United States;

(ii) Held in trust by the United States for the benefit of any Indian tribe or individual;

(iii) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(iv) Held by any Native Corporation as defined in section 1602 of the Alaska Native Claims Settlement Act of 1980 (43 U.S.C. 1601 et seq.).

(2) Unprocessed timber. As defined in section 620e(7) of the FRCSRA, the term "unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term "unprocessed timber" does not include timber processed into any on of the following"

(i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export "R" or "N" list grades, sawn on 4 sides not intended for remanufacture.

(ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export "R" or "N" list clear grades, sawn or four sides, not to exceed twelve inches in thickness.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on four sides, with wane less than one-quarter inches in thickness.

(iv) Chips, pulp, or pulp products.

(v) Veneer or plywood.

(vi) Poles, posts, or piling cut or treated with preservatives for use as such.

(vii) Shakes or shingles.

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(ix) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

Dated: December 29, 1991.

Robert A. Mosbacher,

*Secretary of Commerce.*

[FR Doc. 92-26178 Filed 10-23-92; 4:31 pm]

BILLING CODE 3510-DT-M

---

## International Trade Administration

[A-580-812]

## Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 29, 1992.

**FOR FURTHER INFORMATION CONTACT:** John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3464.

**PRELIMINARY DETERMINATION:** We preliminarily determine that dynamic random access memory semiconductors of one megabit and above (DRAMs) from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

### Case History

Since the initiation of this investigation on May 12, 1992, (57 FR 21231, May 19, 1992), the following events have occurred.

On June 8, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On June 30, 1992, the Department of Commerce (the Department) presented antidumping duty questionnaires to Goldstar Electron Co., Ltd. and Goldstar Electron America (Goldstar), Hyundai Electronics Industries Co., Ltd., and Hyundai Electronics America (Hyundai), and Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc. (Samsung). These three respondents accounted for at least 60 percent of the exports of DRAMs to the United States.

On July 15, 1992, the Department determined that Singapore would be the appropriate third country market for Hyundai. On July 13, 1992, petitioner alleged that Hyundai sold DRAMs in Singapore at prices below the cost of production. On July 28, 1992, the Department determined that it had reasonable grounds to believe or suspect that Hyundai had sold DRAMs in Singapore below cost, and therefore, initiated a cost investigation in accordance with section 773(b) of the Act. The Department issued Hyundai section D of the antidumping duty questionnaire on July 28, 1992. On August 20, 1992, the Department presented to Hyundai section E of the antidumping questionnaire, which concerns further manufacturing in the United States.

The respondents submitted sales questionnaire responses in July, August and September, 1992. The Department issued supplemental sales questionnaires in September, 1992. Respondents submitted the responses to these supplemental questionnaires in September and October, 1992. However, due to time constraints, the Department is not using these supplemental responses for purposes of the preliminary determination.

On September 3, 1992, petitioner requested that the Department postpone the preliminary determination until October 6, 1993, pursuant to 19 CFR 353.15(c). The Department granted this request on September 8, 1992 (57 FR 42544, September 15, 1992).

On September 30 and October 2, 1992, respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of the publication of the affirmative preliminary determination. See, the "Postponement of Final Determination" section of this notice.

On October 6, 1992, the Department postponed the preliminary

determination by 14 days (57 FR 46843, October 13, 1992). In accordance with 19 CFR 353.15(b), the Department found this investigation extraordinarily complicated due to certain issues regarding the cost information submitted by the three respondents. Also on October 6, 1992, the Department sent letters to the three respondents requesting additional cost information. On October 9, 1992, the three respondents submitted their responses to this letter. The Department considered these responses for its preliminary determination.

**Scope of Investigation**

For purposes of this investigation, DRAMs are all one megabit and above dynamic random access memory semiconductors, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea but packaged in a third country are included in the scope; however, wafers produced in a third country and assembled or packaged in Korea are not included in the scope. The scope includes memory modules, such as Single In-Line Processing Modules (SIPs) and Single In-Line Memory Modules (SIMMs), that contain one megabit or above dynamic random access memory semiconductors that are assembled together and function as memory. Modules that contain other parts that are needed to support the function of memory are considered to be covered memory modules. Only those modules which contain additional items which alter the function of the module to something other than memory are not-covered modules. The scope also includes video random access memory VRAMs), as well as any future packaging and assembling of DRAMs.

On September 4, 1992, Apple Computer, Inc. (Apple) requested that the Department formally state that a certain product imported by Apple containing Korean DRAMs is not within the scope of investigation. On September 29, petitioner stated that it opposed this request. On September 28, 1992, Samsung requested that the Department modify the current scope of this investigation to exclude future generations of DRAMs. The Department is allowing all interested parties an opportunity to comment on these scope exclusion requests. Comments should be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than November 19, 1992.

The DRAMs subject to this investigation are classifiable under subheadings 8473.30.4000, 8542.11.0001, 8542.11.0024, 8542.11.0026 and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

**Period of Investigation**

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

**Such or Similar Comparisons**

We have determined that all products covered by this investigation constitute three such or similar categories of merchandise: (1) Dynamic random access memory semiconductor chips of one megabit and above; (2) video random access memory semiconductor chips of one megabit and serve; and (3) memory modules. Furthermore, we have made comparisons of merchandise in the United States, home market or third country based on identical sales only.

**Fair Value Comparisons**

To determine whether sales of DRAMs from Korea to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

**United States Price**

For Goldstar, Hyundai and Samsung, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation. Exporter's sale price (ESP) methodology, in those instances, was not otherwise indicated.

In addition, for Goldstar, Hyundai and Samsung, where certain sales to the first unrelated purchaser took place after importation into the United States, we also based USP on ESP, in accordance with section 772(c) of the Act.

For Goldstar and Samsung, because a value-added tax (VAT) was paid on home market sales but not on U.S. sales, we added to the U.S. selling price for the price-to-price comparisons the amount of the VAT that would have been collected if the export sales had been taxes. We recalculated this VAT to reflect that discounts, where appropriate, were granted on sales to the United States. Also for Goldstar and Samsung, because import duties are paid on raw material inputs used to produce DRAMs sold in the home market, we added to U.S. price the amount of duty that would have been collected if the merchandise had been sold in the home market. For all respondents, we recalculated credit to reflect the fact that discounts, where appropriate, were granted on sales to the United States. We made additional, company-specific adjustments as follows:

*A. Goldstar*

For Goldstar, we calculated purchase price based on packed, f.o.b., f.c.a., or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland insurance, air freight, and air insurance. Goldstar did not report imputed credit expenses. Instead, it reported as credit expenses only banking fees it incurred on certain sales transactions that were paid for by bank notes. Therefore, we imputed credit expenses for all purchase price sales using in our calculation, as best information available (BIA), the interest rate reported for ESP sales. In addition, we disallowed Goldstar's claimed VAT credit expense, as it did not take into account the savings gained from early payment of VAT by the customer.

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties, U.S. inland freight, U.S. brokerage, credit expenses, warranty expenses, royalty payments, U.S. commissions, U.S. subsidiary packing and U.S. and Korean indirect selling expenses, including U.S. and Korean inventory carrying costs.

*B. Hyundai*

For Hyundai, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling. We recalculated U.S. credit to reflect the financing costs incurred by Hyundai on its direct sales to Singapore, rather than on its sales through its subsidiary in Singapore.

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage, air freight, U.S. inland freight, insurance, merchandise processing, U.S. brokerage, repacking, credit expenses, commissions, royalties, bank charges, price protection expenses and U.S. and Korean indirect selling expenses,

including U.S. and Korean inventory carrying costs.

*C. Samsung*

For Samsung, we calculated purchase price based on packed, f.o.b., c&f, or c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland freight, foreign inland insurance, air freight, and air insurance. We treated U.S. banking charges as direct selling expenses for the preliminary determination since there was no narrative description of these charges.

We calculated ESP on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign brokerage and handling, foreign inland freight, air freight, air insurance, U.S. inland freight, U.S. brokerage, U.S. commissions, foreign banking charges, product liability premiums, credit expenses, royalty payments, advertising and sales promotion expenses, warranty expenses, U.S. subsidiary packing and U.S. and Korean indirect selling expenses, including inventory carrying costs. We treated U.S. banking charges as direct selling expenses for the preliminary determination since there was no narrative description of these charges.

**Foreign Market Value**

In order to determine whether there were sufficient sales of DRAMs in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of DRAMs to the volume of third country sales of DRAMs in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of DRAMs by Goldstar and Samsung. For Hyundai, the home market was not viable and, therefore, we based FMV on third country sales. We selected Singapore as the third country because the merchandise exported to Singapore was most similar to the merchandise exported to the United States, the volume of Hyundai's Singapore sales during the POI was the largest of any third country, and the marketing conditions of Singapore were comparable to those in the United States.

In a September 16, 1992, submission, Samsung urged the Department to treat its local letter of credit sales as export sales. Based on the practice established in the Final Determination of Sales at Less Than Fair Value: Color Picture Tubes from Korea (52 FR 44186, November 18, 1987), the Department has decided to treat Samsung's local letter of credit sales as export sales. To be consistent, the Department treated Goldstar's local letter of credit sales as export sales as well.

Based on petitioner's allegations that Goldstar and Samsung are selling DRAMs in Korea at prices below their cost of production (COP), and that Hyundai is selling DRAMs in Singapore at prices below its cost of production, the Department initiated COP investigations for the home market sales of Goldstar and Samsung and the third country sales of Hyundai. See, Initiation of Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea (57 FR 21231, May 19, 1992) and the July 28, 1992, memorandum from David L. Binder to Richard W. Moreland. The Department, therefore, initiated investigations to determine whether Goldstar, Hyundai and Samsung had home market or third country sales that were made at less than their respective COP.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of a respondent's sales were at prices above the COP, we discarded only the below-cost sales. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the repondent's below-cost sales were made in substantial quantities and over an extended period of time.

In order to determine whether home market or third country prices were above the COP, we calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and packing. We adjusted respondents' cost data as described below:

For Goldstar, the Department relied on the information submitted by the petitioner, as BIA, for the cost of manufacturing (COM) for four megabit products, adjusted by the company-specific yields in the petition, and on COM information from Goldstar's most recent response for the one megabit products. Because of differences between the profits earned on home market sales reported on the computer tape and the profit rate stated in the COP/CV submission for the class or kind of merchandise, the Department asked Goldstar to provide additional information. The COMs in the original response were not confirmed by the information presented in Goldstar's October 9 submission. Accordingly, we did not rely on the original submission. As BIA, for the one megabit's COM we used the October 9 submission, which we considered to be more reliable based on proprietary claims. In contrast, since Goldstar had made proprietary representations regarding the four megabit's COMs which were not confirmed by the October 9 submission, the Department used the petitioner's costs as BIA.

For all other costs, *e.g.*, interest, research & development, general & administrative, the Department relied on Goldstar's submitted COP and CV data except in those cases where it appeared that these costs were not appropriately quantified and/or valued:

1. We adjusted research & development expenses, since it appeared that the amount used by Goldstar may not have included all research and development expenses incurred with respect to the products under investigation;

2. We included an amount related to the amortization of deferred exchange losses, since this cost was not included by the company;

3. We revised interest expense using Goldstar's audited financial statements for the year ended December 31, 1991, since the calculation submitted by Goldstar was based on unaudited and incomplete financial statements; and

4. We included an amount for general and administrative expenses related to Goldstar's parent corporate headquarters.

For Hyundai, the Department relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. An amount for severance payments was included in the COM based on Hyundai's financial statements, since severance payments were not included in Hyundai's reported labor costs;

2. A calculation for an adjustment made by Hyundai to its COM related to the "Construction in Progress" account was not provided, and the methods used to account for the amount of interest from this account was not in accordance with GAAP (thus, the Department included as part of depreciation, an amount based on Hyundai's financial statements);

3. We rejected an adjustment made by Hyundai to its COM related to its off-spec merchandise, since this adjustment

was not specific to each product and the calculation did not use a comparable basis for the quantity of off-spec non off-spec products;

4. We included an amount for the amortization of deferred exchange losses based on Hyundai's financial statements, since this cost was not included by Hyundai;

5. We included an amount for research & development based on Hyundai's financial statements, since the amount submitted by Hyundai did not include general research & development and did not include all research & development expenses valued in accordance with GAAP;

6. We rejected the amount of interest income used by Hyundai as an offset to interest expenses, since Hyundai stated that the amount was calculated based on its financial statements and because the information from the statements did not support the amount of the interest income; and

7. We included an amount for general and administrative expenses based on Hyundai's financial statements, since the reported general and administrative expenses were not reconciled to the financial statements.

For Samsung, the Department relied on the information submitted by the petitioner, as BIA, for the COM, adjusted by the company-specific yields in the petition. As with Goldstar, Samsung reported differences between the profits earned on home market sales on the computer tape and the profit rate stated in the COP/CV submission for the class or kind of merchandise. Thus, the Department requested additional information from Samsung.

While Samsung furnished data in response to this request, it changed the methodology used to determine profit from the methodology used for the initial submission. Because of this change in methodology, the Department could not use the information provided by Samsung regarding its profit calculation as support for the response.

Moreover, Samsung's initial submission presented other issues related to the completeness of the COP/CV information. For example, although requested, Samsung:

1. Did not state whether the COM reported in the submission was the same as the value reported in Samsung's finished goods inventory records (thus, the Department could not determine whether the reported COP/CV mirrored the company's records);

2. Did not provide requested information concerning purchases from related companies (thus and the Department could not rely on the accuracy of the COP/CV's material costs);

3. Did not provide the amount of import duties included in the COP/CV (thus, the Department could not determine whether the amounts included in the COP/CV were comparable with the amount claimed as duty drawback);

4. Did not state whether the costs related to its leased equipment had been included in the COP/CV calculation, although the company did state that leased equipment was used to manufacture the product (thus, the Department could not rely on the completeness of the fixed overhead); and

5. Did not state whether severance payments were included as part of the labor costs (thus, the Department could not rely on the completeness of the labor costs).

For all other costs, *e.g.*, interest, research & development, general & administrative, the Department used Samsung's data except in the following cases when it appeared that these costs were not appropriately quantified and/or valued:

1. We included an amount for the amortization of deferred exchange losses, based on Samsung's financial statements, since this cost was not included by Samsung;

2. We included an amount for general and administrative expenses, based on Samsung's financial statements, since the general and administrative expenses were not reconciled to the financial statements;

3. We revised interest expense to reflect the amount reported on Samsung's financial statements, and to exclude certain interest income used as an offset to interest expense; and,

4. We lagged COP/CV data by one fiscal quarter because the response appeared to reflect costs incurred during the POI instead of the costs of the merchandise sold during the POI.

For CV to purchase price comparisons, we made circumstance-of-sale adjustments, where appropriate, for bank charges, royalty payments, advertising and credit expenses. For Samsung, we added to CV U.S. commissions and deducted the weighted-average home market indirect selling expenses, including advertising and inventory carrying costs, up to the amount of U.S. commissions, in accordance with 19 CFR 353.56(b)(1). For Hyundai, we deducted from CV third country commissions and added U.S. indirect selling expenses capped by the third country commissions in accordance with 19 CFR 353.56(b)(1).

For CV to exporter's sales price comparisons, we made deductions, where appropriate, for credit expenses, royalty payments, bank charges and advertising. We also deducted from CV the weighted-average home market or third country indirect selling expenses, including, where appropriate, advertising and inventory carrying costs, up to the amount of indirect selling expenses, in accordance with 19 CFR 353.56(b)(2) and, where appropriate, commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1).

For home market or third country price to purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for credit expenses, royalty payments, bank charges and advertising. For Goldstar and Samsung, we also made a circumstance of sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. For all respondents, we deducted home market or third country packing costs and added U.S. packing costs.

For home market or third country price to ESP comparisons, we made deductions, where appropriate, for credit expenses, royalty payments, bank charges and advertising. We also deducted from FMV the weighted-average home market or third country indirect selling expenses, including, where appropriate, advertising and inventory carrying costs, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1). For Goldstar and Samsung, we also made a circumstance of sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. For all respondents, we deducted home market or third country packing costs and added U.S. packing costs. We made additional, company-specific adjustments as follows:

*A. Goldstar*

For Goldstar, we calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions for inland freight and inland insurance.

*B. Hyundai*

For Hyundai, we calculated FMV based on FOB Kimpo Airport or ex-Singapore-warehouse prices to unrelated customers in the third country. We made deductions for discounts,

rebates, air freight, insurance, brokerage, and third country inland freight. For home market price to purchase price comparisons, we deducted third country commissions and added U.S. indirect selling expenses capped by the third country commissions, in accordance with 19 CFR 353.56(b)(2).

*C. Samsung*

For Samsung, we calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions for inland freight. For home market price to purchase price comparisons, we added to FMV U.S. commissions and deducted the weighted-average home market indirect selling expenses, including advertising and inventory carrying costs, up to the amount of U.S. commissions, in accordance with 19 CFR 353.56(b)(1).

**Currency Conversion**

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

**Critical Circumstances**

Petitioner alleges that "critical circumstances" exist with respect to imports of DRAMs from the Republic of Korea. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is subject of the investigation over a relatively short period.

We normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A) of the Act. Petitioner has provided information concerning an antidumping duty investigation on DRAMs from Korea being conducted by the European Community (E.C.). The E.C. issued its preliminary determination in June of this year, subsequent to the POI in the instant investigation. We have determined that this is not sufficient to impute knowledge under section 733(e)(1)(A)(i) of the Act, as an antidumping duty order has not yet been issued by the E.C.

With regard to Hyundai, since the preliminarily-determined dumping margin is less than 25 percent, we cannot impute knowledge of dumping under section 733(e)(1)(A)(ii) of the act. Therefore, in accordance with section 733(e)(1)(A) of the Act, we preliminary determine that, for Hyundai, critical circumstances do not exist with respect to imports DRAMs from Korea. For Goldstar and Samsung, because the preliminarily-determined dumping margins exceed 25 percent, in accordance with section 773(e)(1)(A)(ii) of the Act, we determine that knowledge of dumping existed for DRAMs from Korea.

For Goldstar and Samsung, in determining whether there have been massive imports of DRAMs, we relied upon the compnay-specific export data submitted by the companies. Based on our analysis of the monthly shipment data submitted by Goldstar and Samsung, we preliminarily determine that imports of DRAMs have not been massive over a relatively short period of time. Therefore, we find that the requirements of section 733(e)(1)(B) of the Act have not been met and that critical circumstances do not exist with respect to Goldstar and Samsung.

Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily determine that critical circumstances do not exist with respect to imports of DRAMs from the Republic of Korea.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of DRAMs from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

| Producer/manufacturer/exporter | Weighted-average margin percentage |
|---|---|
| Goldstar Electron Co., Ltd, and Goldstar Election America | 52.41 |
| Hyundai Electronics Co., Ltd. and Hyundai Elections America | 5.99 |
| Samsung Electronics., Ltd. and Samsung Semiconductor, Inc | 87.40 |
| All others | 61.88 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Postponement of Final Determination**

As stated above, in accordance with 19 CFR 353.20(b), respondents who account for a significant portion of the merchandise covered by this proceeding have requested that, in the event of an affirmative determination, the Department postpone the final determination. We find no compelling reason to deny the request. Accordingly, we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 19, 1993, and for rebuttal briefs no later than January 26, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 2, 1993, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a

list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

The determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: October 20, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-26290 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-DS-M

---

[A-559-806]

## Portable Electric Typewriters From Singapore; Court of International Trade Decision

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of Court of International Trade decision.

**SUMMARY:** On September 3, 1992, the United States Court of International Trade (CIT) ordered that the Department of Commerce's (the Department's) determination to rescind the investigation in this case should be reversed. On September 14, 1992, Smith Corona Corporation filed a Notice of Appeal of the CIT decision. If the CIT's opinion in this case is affirmed on appeal, then the ITA will, as the CIT has ordered, consider whether Brother Industries (USA) Inc. (BIUSA) filed the petition in this case "on behalf of" the domestic industry; if so, the Department will proceed with the investigation.

**EFFECTIVE DATE:** September 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Hager or Ross L. Cotjanle, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-5055 or 482-3534, respectively.

**SUPPLEMENTARY INFORMATION:** On April 18, 1991, BIUSA filed a petition with the Department, alleging injury to a domestic industry due to less than fair value sales of portable electric typewriters (PETs) from Singapore. Smith Corona opposed the petition and argued that BIUSA lacked standing to file the petition because BIUSA was not an "interested party" that had filed "on behalf of" a domestic industry. See 19 U.S.C. 1673a(b)(1) (1988). In essence, Smith Corona argued that BIUSA was merely an assembler of PETs, and not a manufacturer or producer. On October 2, 1991, the Department determined that BIUSA was not an interested party and terminated the investigation. The Department did not reach the issue of whether BIUSA had filed the petition on behalf of the domestic industry.

On September 3, 1992, the CIT held that the Department's determination that BIUSA is not a manufacturer is not supported by stanstantial evidence and is not in accordance with law. In addition, the Court held that a fair application of the criteria stated in the Department's determination demonstrates that BIUSA is a United States "manufacturer" with a clear stake in the outcome of the antidumping investigation. As such, the CIT reversed the decision of the ITA, and remanded the case to the Department to complete the standing inquiry and, if necessary, to complete the investigation. *Brother Industries (USA) Inc.* v. *United States et al.*, Court No. 91-11-00794, Slip Op. 92-152 (CIT September 3, 1992).

*Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), is the case in which the Court of Appeals for the Federal Circuit ("CAFC") first articulated a requirement that the Department must publish a notice of a Court Decision which is not "in harmony" with an International Trade Commission or Department of Commerce determination. The CAFC also required that the Department order the suspension of liquidation of entries of investigated merchandise. In *Timken*, the Department published a final determination which was then appealed to the CIT. When the CIT issued a decision adverse to the administrative determination, The Timken Company requested that liquidation take place in accordance with the CIT's decision, i.e., that the CIT decision be implemented. The CAFC rejected that view, requiring instead that liquidation of entries be suspended during the course of the appeal. The CAFC distinguished between a "final decision," i.e., a decision which can be appealed, and a "conclusion decision," i.e., a decision which can no longer be appealed. The CAFC stated that, ". . . Commerce should suspend liquidation until there is a conclusive court decision which decides the matter, so that subsequent entries can be liquidated in accordance with that conclusive decision." Id. at 342. The only way that liquidation can occur "in accordance with the conclusive decision" of the courts is if there has been a final determination by the Commerce Department. Thus, *Timken's* requirement of suspension of liquidation was based upon the fact that, in *Timken*, a final Commerce Department determination had been published.

In accordance with *Timken*, the Department is publishing this notice of adverse decision. Because the decision of the CIT is not a "conclusive" decision, there is no requirement that the Department implement the decision. As to suspension of liquidation, at the time the CIT action commenced in this case, the Department had not published a final determination; this fact distinguishes this case from the facts of the *Timken* case. Thus, the Department does not have the authority to order a suspension of liquidation of entries of the subject merchandise.

Accordingly, upon a "conclusive" decision by the CAFC affirming the CIT, the Department will consider whether BIUSA filed the petition "on behalf of" the domestic industry; if so, the Department will proceed with the investigation.

Dated: October 21, 1992.

**Alan M. Dunn,**

*Assistant Secretary for Import Administration.*

[FR Doc. 92-26289 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-DS-M

---

## National Oceanic and Atmospheric Administration

## Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Issuance of modification to Permit No. 496 (P79D).

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 496 issued to Center for Coastal Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064, is modified to extend the authority to take elephant seals (*Mirounga angustirostris*) for scientific research purposes until December 31, 1992. This modification becomes effective on November 1, 1992.

The Permit, as modified, is available for review by appointment in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4015).

Dated: October 22, 1992.

**Michael F. Tillman,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 92-26207 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 23, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** November 2, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories on which consultations have been requested, call (202) 482-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Categories 350/650, the United States Government has decided to control imports in these categories for the period beginning on August 31, 1992 and extending through August 30, 1993 at a level of 87,280 dozen.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Bangladesh, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 41927, published on September 14, 1992.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 23, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 2, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 350/650, produced or manufactured in Bangladesh and exported during the period beginning on August 31, 1992 and extending through August 30, 1993, in excess of 87,280 dozen [1].

Textile products in Categories 350/650 which have been exported to the United States prior to August 31, 1992 shall not be subject to the limit established in this directive.

Textile products in Categories 350/650 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-26233 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after August 30, 1992.

### Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in India

October 26, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** October 26, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 369-S is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggue D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 26, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on October 26, 1992, you are directed to amend further the directive dated January 13, 1992 to increase to 515,256 kilograms [1] the current limit for cotton textile products in Category 369-S [2], as provided

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 369-S: only HTS number 6307.10.2005.

under the terms of the current bilateral agreement between the Governments of the United States and India.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-26316 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-DR-F

## Announcement of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

October 23, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending a limit and restraint period.

**EFFECTIVE DATE:** October 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories for which consultations have been requested, call (202) 482-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on August 18, 1992 (57 FR 37148) announced the establishment of a limit for cotton and man-made fiber coats in Categories 334/634 for the ninety-day consultation period beginning on July 28, 1992 and extending through October 25, 1992.

Inasmuch as no agreement was reached with the Government of India on a mutually satisfactory solution and the consultation period expires on October 25, 1992, the United States Government has decided to establish a prorated limit for Categories 334/634 for the period July 28, 1992 through December 31, 1992.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of India, notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 23, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 12, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 334/634, produced or manufactured in India and exported during the ninety-day period which began on July 28, 1992 and extends through October 25, 1992.

Effective on October 30, 1992 you are directed to amend the August 12, 1992 directive to extend the restraint period for Categories 334/634 through December 31, 1992 at an increased level of 36,587 dozen [1].

Import charges already made to Categories 334/634 for the ninety-day period shall be retained. Additional charges will be made as data become available.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-26231 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-DR-F

## Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 23, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** October 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6709. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories have been increased, variously, for carryover, swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 56506, published on November 5, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 23, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 29, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on October 30, 1992, you are directed to amend further the directive dated October 29, 1991, to increase the limits for the following categories:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Aggregate 200-239, 300-369, 400-469, 600-670 and 800-899, as a group. | 95,210,309 square meters equivalent. |

[1] The limit has not been adjusted to account for any imports exported after July 27, 1992.

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group I | |
| 200–239, 300–369, 600–670 and 800–899, as a group. | 93,592,096 square meters equivalent. |
| Sublevels in Group I | |
| 333/334/335/833/834/835. | 220,498 dozen of which not more than 98,432 dozen shall be in Categories 333/335/833/835. |
| 338 | 266,165 dozen. |
| 339 | 1,138,594 dozen. |
| 340 | 249,137 dozen. |
| 341 | 173,287 dozen. |
| 345 | 47,936 dozen. |
| 347/348/847 | 643,411 dozen. |
| 633/634/635 | 459,566 dozen. |
| 638/639/838 | 1,367,758 dozen. |
| 640 | 103,381 dozen. |
| 641/840 | 159,588 dozen. |
| 642/842 | 103,521 dozen. |
| 645/646 | 242,336 dozen. |
| 647/648 | 483,601 dozen. |
| Group II | |
| 400–469, as a group | 1,618,219 square meters equivalent. |
| Sublevel in Group II | |
| 445/446 | 88,771 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92–26232 Filed 10–28–92; 8:45 am]

BILLING CODE 3510–DR–F

## Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 23, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau establishes import restraint limits for the period beginning January 1, 1993 and extending through December 31, 1993.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Information regarding the 1993 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 23, 1992.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Aggregate | |
| 200–239, 300–369, 400–469, 600–670 and 800–899, as a group. | 91,617,170 square meters equivalent. |
| Group I | |
| 200–239, 300–369, 600–670 and 800–899, as a group. | 88,001,418 square meters equivalent. |
| Sublevels within Group I | |
| 237 | 61,000 dozen. |
| 239 | 92,903 kilograms. |
| 331/831 | 300,000 dozen pairs. |
| 333/334/335/833/834/835. | 198,542 dozen of which not more than 104,584 dozen shall be in Categories 333/335/833/835. |
| 336/836 | 23,000 dozen. |
| 338 | 255,591 dozen. |
| 339 | 1,070,581 dozen. |
| 340 | 241,917 dozen. |
| 341 | 156,031 dozen. |
| 342 | 39,281 dozen. |
| 345 | 43,162 dozen. |
| 347/348/847 | 604,978 dozen. |
| 349 | 146,322 dozen. |
| 350/850 | 16,000 dozen. |
| 351/851 | 27,000 dozen. |
| 352 | 63,618 dozen. |
| 359/859 | 137,892 kilograms. |
| 631 | 231,386 dozen pairs. |
| 633/634/635 | 420,429 dozen. |
| 636 | 15,443 dozen. |
| 638/639/838 | 1,309,227 dozen. |
| 640 | 93,087 dozen. |
| 641/840 | 159,992 dozen. |
| 642/842 | 93,213 dozen. |
| 645/646 | 218,205 dozen. |
| 647/648 | 440,186 dozen. |
| 649 | 146,322 dozen. |
| 651 | 13,455 dozen. |
| 652/852 | 160,000 dozen. |
| 659 | 89,762 kilograms. |
| 670 | 340,194 kilograms. |
| 845/846 | 30,452 dozen. |
| Group II | |
| 400–469, as a group | 1,433,685 square meters equivalent. |
| Sublevels within Group II | |
| 434 | 1,854 dozen. |
| 438 | 6,689 dozen. |
| 442 | 5,574 dozen. |
| 445/446 | 77,292 dozen. |

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Macau.

The conversion factors for the following merged categories are listed below:

| Category | Conversion factor (Square meters equivalent/category unit) |
|---|---|
| 333/334/335/833/834/835. | 34.2 |
| 359/859 | 8.5 |
| 633/634/635 | 34.5 |
| 638/639/838 | 12.9 |
| 641/840 | 12.1 |
| 652/852 | 13.4 |

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 92-26234 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-DR-F

## COMMODITY FUTURES TRADING COMMISSION

### Regulatory Coordination Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, section 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the new Hearing Room at the Commission's Washington, DC headquarters located at level B-1, 2033 K Street, NW., Washington, DC 20581, on Wednesday, November 18, 1992, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Report from the Working Group on International Competitiveness and update on Net Capital Requirements.

2. Report from the Working Group on Pension Funds discussing unnecessary regulatory barriers to the use of futures and derivatives by pension plans.

3. Report from the Working Group on Clearing and Settlement.

4. Follow-up on issues discussed at earlier Committee meetings including:

- Performance Reporting and Beginning Net Asset Value,
- Bifurcated Disclosure,
- Electronic Filing and Recordkeeping,
- Proposed Rule 4.5 (changes to exclusion from definition of "Commodity Pool Operator" to allow broader range of financial instruments to be used by pension plans), and
- Trade Allocation including Proposed Chicago Mercantile Exchange Rule 536.

5. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1992 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Chairman Wendy L. Gramm, is empowered to conduct the meeting in a manner that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Regulatory Coordination Advisory Committee, c/o Ms. Kate Hathaway or Mr. Robert Zwirb, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Ms. Hathaway or Mr. Zwirb in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on October 23, 1992.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 92-26161 Filed 10-28-92; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet November 24, 1992, from 9 a.m. to 5 p.m., in Alexandria, Virginia.

The purpose of this meeting is to review maritime environment issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of ordnance research and development.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, telephone (703) 756-1205.

Dated: October 21, 1992.

Michael P. Rummel

*Lieutenant Commander, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 92-26167 Filed 10-28-92; 8:45 am]

BILLING CODE 3810-AE-F

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Combat Mission Panel will meet on 18-20 Nov 1992 from 8 a.m. to 5 p.m. at HQ ACC Langley AFB, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Air Combat Command. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 92-26243 Filed 10-28-92; 8:45 am]

BILLING CODE 3910-01-M

### Privacy Act of 1974; Amend a Record System

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Amend a record system.

**SUMMARY:** The Department of the Navy proposes to amend an existing system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The amendment will be effective on November 30, 1992, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Gwendolyn Aitken at (703) 614-2004.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, April 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, June 3, 1986
51 FR 30377, August 26, 1986
51 FR 30393, August 26, 1986
51 FR 45931, December 23, 1986
52 FR 2147, January 20, 1987
52 FR 2149, January 20, 1987
52 FR 8500, March 18, 1987
52 FR 15530, April 29, 1987
52 FR 22671, June 15, 1987
52 FR 45846, December 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, June 8, 1988
53 FR 25363, July 6, 1988
53 FR 39499, October 7, 1988
53 FR 41224, October 20, 1988
54 FR 8322, February 28, 1989
54 FR 14378, April 11, 1989
54 FR 32382, August 9, 1989
54 FR 40160, September 29, 1989
54 FR 41495, October 10, 1989
54 FR 43453, October 25, 1989
54 FR 45781, October 31, 1989
54 FR 48131, November 21, 1989
54 FR 51784, December 18, 1989
54 FR 52976, December 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, September 14, 1990
55 FR 42758, October 23, 1990
55 FR 47508, November 14, 1990
55 FR 48678, November 21, 1990
55 FR 53167, December 27, 1991
56 FR 424, January 4, 1991
56 FR 12721, March 27, 1991
56 FR 27503, June 14, 1991
55 FR 28144, June 19, 1991
56 FR 31394, July 10, 1991 (DOD Updated Indexes)
56 FR 40877, August 16, 1991
56 FR 46167, September 10, 1991
56 FR 59217, November 25, 1991
56 FR 63503, December 4, 1991
57 FR 2719, January 23, 1992
57 FR 2726, January 23, 1992
57 FR 2898, January 24, 1992
57 FR 5430, February 14, 1992
57 FR 9246, March 17, 1992
57 FR 12914, April 14, 1992
57 FR 14698, April 22, 1992
57 FR 18472, April 30, 1992
57 FR 26422, June 10, 1992
57 FR 26821, June 16, 1992
57 FR 28499, June 25, 1992
57 FR 28502, June 25, 1992
57 FR 31700, July 17, 1992
57 FR 33326, July 28, 1992
57 FR 34127, August 3, 1992
57 FR 37791, August 20, 1992
57 FR 42741, September 16, 1992
57 FR 46153, October 7, 1992

The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports. The specific changes to the system of records are set forth below followed by the system of records notice published in its entirety, as amended.

Dated: October 20, 1992.

L. M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N01001-5**

**SYSTEM NAME:**

MSC Civilian and Naval Reserve Personnel Data File, (51 FR 18089, May 16, 1986).

**CHANGES:**

* * * * *

Add an entry after **Authority for maintenance of the system:** as follows:

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

* * * * *

**N01001-5**

**SYSTEM NAME:**

MSC Masters and Chief Engineers Data File.

**SYSTEM LOCATION:**

Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

MSC Masters and Chief Engineers aboard civil service manned ships.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Biographical and professional information which may include name, rank, Social Security Number, designation, date and place of birth, home address and phone number, active duty training, education, correspondence courses taken, active military service, civilian employment experience, training for sea, maritime licenses held, commercial shipboard and shoreside experience, marital status, number of children and their names and ages, highlights of merchant marine career, special skills and accomplishments, hobbies, community activity and association membership.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations and Executive Order 9397.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

**PURPOSE(S):**

To maintain personnel data on MSC Masters and Chief Engineers and maintain biographical information for MSC civil service mariners. Such information is used to identify location and provide biographical information on civil service mariners in response to media and internal requests for information prior to public appearances, press releases, or courtesy calls to MSC ships by MSC personnel and members of other organizations or commands.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:**

**STORAGE:**

Data cards or paper file folders stored in file cabinets.

**RETRIEVABILITY:**

Name.

**SAFEGUARDS:**

Files are maintained in areas accessible to authorized personnel only, who are properly screened, cleared and trained for proper use of the data stored. Building employs security guards. Civil service mariner files are stored in the Employment and Labor Relations Division.

**RETENTION AND DISPOSAL:**

Civil service mariner records are maintained for the duration of employment with MSC. Outdated files are destroyed when updated information is received and the entire

file is destroyed immediately upon the employee's separation or retirement from the Command.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

Written requests should contain full name of the individual, military grade or rate, and date of birth. For personal visits, the individual should be able to provide some acceptable means of identification.

**CONTESTING RECORD PROCEDURES:**

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 92-26063 Filed 10-28-92; 8:45 am]

BILLING CODE 3810-01-F

## DEPARTMENT OF ENERGY

### Chicago Field Office, NREL Area Office: Noncompetitive Financial Assistance Award; Development of a Planar Waveguide Probe

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to amend Cooperative Agreement number DE-FCO2-91ID13063 with Guided Wave, Inc. The amendment will allow for the addition of a task associated with the development of a fiber optic probe configuration of the portable planar waveguide spectrometer currently being developed under this Cooperative Agreement.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Boulevard, Golden, Colorado 80401, Attention: Cidney L. Bippus, Contract Administrator, Paul K. Kearns, Contracting Officer.

**SUPPLEMENTARY INFORMATION:** DOE intends to award to cooperative agreement amendment to Guided Wave for the addition of a task, which is the development of a planar waveguide probe. The current spectrometer used under this cooperative agreement is an "in-line" device, meaning that liquids must be extracted from a process pipe through a sample port and transported a short distance to the spectrometer for analysis. In contrast, the fiber optic probe device will be directly inserted into the process pipe and the light signal transmitted to a spectrophotometer, perhaps a few hundred meters away. Any one of several spectrometers that may be existing at a chemical processing plant, for example, could thus potentially be utilized with this fiber optic probe device.

The Development of a Planar Waveguide Probe proposal was reviewed in accordance with DOE Financial Assistance Rules, 10 CFR 600.7, and the activity was determined to be worthy of funding as a continuation of work currently funded by DOE. Guided Wave is considered to be an integral part of the program to develop more energy efficient industry processes to reduce energy consumption. DOE has determined that Guided Wave has an exclusive domestic capability to perform this additional task successfully, based upon unique equipment and technical expertise. The value of this additional task is $30,000 and the performance period is 5 months.

Issued in Chicago, Illinois on October 14, 1992.

Alan E. Smith,

*Director, Operations Management Support Div.*

[FR Doc. 92-26288 Filed 10-28-92; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. GP93-1-000]

### Louisiana Office of Conservation, Tight Formation Determination—Hosston B Zone, Louisiana-13, FERC No. JD92-06945T; Preliminary Finding

October 23, 1992.

On June 1, 1992, the Louisiana Office of Conservation (Louisiana) determined that nine out of 10 sands in the Hosston B Zone, in part of the Bryceland Field in Bienville Parish, Louisiana, qualify as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The recommended area covers approximately 5,120 acres. For the reasons discussed below, the Commission issues this preliminary finding that Louisiana's determination is not supported by substantial evidence.

#### Louisiana's Determination

On June 1, 1992, the Commission received Louisiana's notice determining that nine of the ten sands in the Hosston B Zone, in part of the Bryceland Field in Bienville Parish, Louisiana, qualify as a tight formation. The Hosston B Zone is described in Louisiana's notice as gas and condensate bearing sands interbedded with shales. The determination covers eight 640-acre sections.[1]

From shallowest to deepest, the ten sands in the Hosston B Zone are the L-1, L-2, L-3, L-4, L-5, L-6, L-7, L-8, E-1 and Jordan sands. Louisiana did not include the L-4 Sand in its determination. Louisiana concluded that, absent the L-4 sand, the Hosston B Zone meets the 0.1 md guideline since the weighted arithmetic mean permeability of the remaining nine sands is 0.087 md. However, our review shows that the L-3 and L-5 sands also exceed the 0.1 md guideline for tight formation designation.

#### Staff's Tolling Letter and Louisiana's Response

By letter dated July 16, 1992, staff requested Louisiana to explain why it had excluded one sand with permeability in excess of 0.1 md, while other sands with permeabilities in excess of 0.1 md were included.

The Commission received Louisiana's reply on September 22, 1992.[2] Louisiana

[1] T17N, R6W, Sections 11, 12, 13, and 14 and T17N, R5W, Sections 7, 8, 17, and 18.

[2] Under § 275.202(b) of the regulations, the Commission's 45-day review period does not begin until a response to a tolling letter is received.

noted that § 271.703(b)(5) of the regulations defines a tight formulation as "a natural gas formation as determined by the appropriate jurisdictional agency." Louisiana also noted that § 271.703(b)(4) of the regulations defines a formation as "any geological formation, or portion thereof described by geological as well as geographical parameters (emphasis added)." In addition, Louisiana cited the following statement from the preamble to the Commission's Interim Rule promulgating criteria for designating tight formations:

> The Commission does not intend to disqualify an entire formation if parts of that formation are tight and would not be developed without incentives. Those parts which are tight and would not be developed may qualify under this rule.[3]

**Discussion**

Under § 271.703(c)(2) of the Commission's regulations, the jurisdictional agency must show that the formation's estimated average *in situ* gas permeability, throughout the pay section, must be expected to be 0.1 md or less. The Commission has stated that jurisdictional agencies should limit their recommendations to the geographical areas and strata of a formation that meet the guidelines.

Louisiana's reliance on the Commission's statement in the preamble to the of a formation that are tight (*i.e.*, meet the Commission's 0.1 md guideline) may be qualified, even if the formation as a whole does not meet the guideline.

The record shows that the Hosston B Zone as a whole does not meet the Commission's guideline. The record also shows that data is available for each sand in the Hosston B Zone and that, while the rest of the sands in that zone meet the 0.1 md guideline, the L-3, L-4 and L-5 sands do not, on an individual basis, meet the Commission's 0.1 md guideline. Since Louisiana analyzed each sand separately, Louisiana must exclude all of the sands that exceed the guideline on the basis of the sand-by-sand analysis—not just the L-4 sand. When a single vertical interval containing a number of contiguous sands cannot be recommended for tight formation designation and the record reflects adequate sand-by-sand data to show which sands do and which do not meet the guideline, the jurisdictional agency cannot qualify sands that are not tight by selectively excluding just enough of the non-tight sands to get the average permeability of the remaining sands below the 0.1 md guideline. In other words, the permeability assessment must either be of the entire vertical zone, or of each individual sand in the zone.

Based on the above, the Commission hereby makes a preliminary finding, under section 275.202(a) of the regulations, that the determination is not supported by substantial evidence in the record upon which it was made.[4] Louisiana or the applicant may, within 30 days from the date of this preliminary finding, submit written comments and request an informal conference with the Commission pursuant to section 275.202(f) of the regulations. A final Commission order will be issued within 120 days after the issuance of this preliminary finding.

By direction of the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26307 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

[3] *See* FERC Statutes and Regulations, Regulations Preambles (1977-1981), ¶30, 130 at p. 30,909.

[4] If Louisiana were to amend the determination to include only L-1, L-2, L-6, L-7, L-8, E-1 and Jordan sands, the Commission believes that the determination would be supported by substantial evidence.

---

**[Docket Nos. ER92-44-000 and ER92-150-000]**

## Boston Edison Company; Filing

October 23, 1992.

Take notice that on October 19, 1992, Boston Edison Company (Boston Edison) tendered for filing an Amendment of Boston Edison Company FERC Electric Tariff, Original Volume No. 6 Power Sales and Exchange Tariff in above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26296 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP93-12-000]**

## CNG Transmission Corp.; Petition for Declaratory Order

October 23, 1992.

Take notice that on October 16, 1992, CNG Transmission Corporation (CNG) tendered for filing, a petition for declaratory order. CNG requests that the Commission issue an order declaring that CNG may rely on Commission Order Nos. 636 and 636-A as a justification for exercising certain contractual provisions that permit it to reduce prospectively the amounts paid for natural gas under certain of its producer supply contracts.

CNG states that as a result of Order Nos. 636 and 636-A, CNG is in the difficult position of having to chose between (1) exercising such contractual provisions and facing substantial litigation from the affected gas producers, or (2) not exercising those provisions and having the prudence of its actions challenged by customers under Order No. 636-A. CNG states that the Commission should resolve this "catch-22" by issuing an order declaring that Order Nos. 636 and 636-A have the effect of prevent CNG from recovering the full amounts paid for natural gas as part of its cost of service, thereby triggering the exercise of any contractual rights CNG may have in those circumstances, to reduce the prices paid for gas under its contracts.

CNG states that if the Commission declines to issue the requested declaratory order, it will encourage needless litigation. CNG asserts that with litigation arising in a host of jurisdictions, inconsistent interpretations of the Commission's intentions will surely result and lead to unnecessary delays and confusion in the restructuring process.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 30, 1992. 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.

**Lois D. Cashell,**

*Secretary*

[FR Doc. 92-26294 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP78-20-000]**

## Columbia Gas Transmission Corp.; Report of Cost Verification Committee

October 23, 1992.

Take notice that on September 10, 1992, the Cost Verification Committee (CVC), formed in response to Commission opinions issued in Docket No. RP78-20 (reported at 13 FERC ¶ 61,102 (1980), *reh'g den.*, 14 FERC ¶ 61,073 (1981)), filed its report on the reimbursement of certain liquefied natural gas (LNG) conversion costs. The CVC states that the report contains its conclusions and recommendations on the issue before it, the claim by Shenandoah Gas Company (Shenandoah) for recovery of certain LNG conversion expenses from Columbia Gas Transmission Corporation (Columbia), based on a meeting convened August 17, 1992, and the review of relevant documents, which are included as appendices to the report.

The CVC states that the particular conversion costs reviewed at the August 17 meeting originated with a customer of Shenandoah, Corning Glass Works (Corning). Corning sought reimbursement for $536,648.00 in LNG conversion costs from Shenandoah in Case No. 90-526-G-C before the Public Service Commission of West Virginia (PSCWV). In an order dated March 1, 1991, that became final March 21, 1991, the PSCWV required Shenandoah to place $1,100,00 in an interest bearing escrow account in order to compensate Corning for the LNG conversion costs it incurred Shenandoah was further directed to file a claim with the CVC and to notify the PSCWV upon receipt of the CVC's recommendation. The escrowed funds would, according to the order of March 1st, be disbursed in a manner consistent with the CVC's recommendation.

Based upon a review of the documents of CVC states it has determined that $472,703.48 in LNG conversion costs incurred by Corning met the standard established by the Commission, and that this amount of costs were incurred as a direct result of the introduction of LNG into Columbia's system, and were a one-time expenditure needed to insure safe use of the LNG. The CVC states further that although the PSCWV Administrative Law Judge (ALJ) had serious reservations as to the recovery of interest by Corning, the FERC ALJ had previously held that interest associated with prior reimbursement claims was appropriate. The CVC states that Corning had agreed to accept $561,352.00 in settlement, which represents 40% of the interest computed according to the Commission's regulations. The CVC states that when the settled interest is added to the actual conversion costs, it results in a recommended total qualifying claim by Shenandoah of $1,034,055.48. The CVC states its understanding that Shenandoah will notify the PSCWV of this recommendation, as well as the Commission, and the PSCWV will then direct disbursement of the total qualifying claim to Corning from the escrow account; Shenandoah will in turn seek reimbursement from Columbia, and that Columbia will then apply for reimbursement "proportionately among all customers of Columbia," citing 13 FERC at p. 61,219.

Any person desiring to be heard or to protect said filing should file motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 30, 1992. 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.

**Lois D. Cashell.**

*Secretary.*

[FR Doc. 92-26298 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. ER92-563-001]**

## Commonwealth Edison Co.; Filing

October 23, 1992.

Take notice that on October 1, 1992, Commonwealth Edison Company (Commonwealth) tendered for filing its compliance filing in the above-referenced docket.

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, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 3, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26297 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RS92-60-000]**

## El Paso Natural Gas Company; Pre-filing Conference

October 22, 1992.

Take notice that on Thursday, November 5, and Friday, November 6, 1992, a pre-filing conference will be convened in the captioned docket to discuss El Paso Natural Gas Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the Sands Hotel Expo Center which is located at 201 East Sands Avenue, Las Vegas, NV, (702) 733-5000. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Lisa T. Long at (202) 208-2105 or Marilyn L. Rand at (202) 208-0327.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26192 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. CI93-2-000]**

## Kamine/Besicorp South Glens Falls L.P., et al.; Application for Blanket Certificate With Pregranted Abandonment

Issued October 23, 1992.

Take notice that on October 19, 1992, Kamine/Besicorp South Glens Falls L.P., Kamine/Besicorp Carthage L.P., Kamine/Besicorp Natural Dam L.P. and Kamine/Besicorp Syracuse L.P., (collectively Applicants) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all

categories of natural gas subject to the Commission's NGA jurisdiction. The application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before November 16, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, applicants will not have to appear or be represented at any hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26291 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RS92-41-000]**

## Midwestern Gas Transmission Co; Prefiling Conference

October 23, 1992.

Take notice that a second prefiling conference will be convened in this proceeding on Friday, November 13, 1992 at 10 a.m. at 810 First Street, NE., Washington, DC. The purpose of the meeting is to address Midwestern Gas Transmission Company's summary and revised summary of its proposed plan for implementation of Order Nos. 636 and 636-A.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties may call Theresa Cooney at (202) 208-0418 or Jacquie McDuffy at (202) 208-0928.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26293 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

## Federal Energy Regulatory Commission

**[Docket No. RP92-222-001]**

## Northern Border Pipeline Co.; Compliance Filing

October 23, 1992.

Take notice that on October 13, 1992, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Substitute Fourth Revised Sheet No. 160
Substitute Third Revised Sheet No. 422

Northern Border states that the substitute tariff sheets have been revised to reflect the qualifying language specified by the Commission in its September 30, 1992 letter order accepting tariff sheets in the above-referenced proceeding.

Northern Border states that copies of the filing have been served upon all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26292 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RS92-67-000]**

## Northern Border Pipeline Company; Conference

October 22, 1992.

Take notice that on November 18, 1992, at 10 a.m., a conference will be convened in the above-captioned docket to discuss Northern Border Pipeline Company's (Northern Border's) proposed plan for implementation of Order No. 636. The issues to be addressed include possible modifications to the draft tariff sheets implementing Northern Border's restructuring, which will be circulated prior to the date of the conference.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Warren C. Wood at (202) 208-2091 or Thomas E. Gooding at (202) 208-0831.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26193 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. RP93-5-001]**

## Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

October 23, 1992.

Take notice that on October 16, 1992, Northwest Pipeline Corporation (Northwest) tendered the following for filing and acceptance to be a part of its FERC Gas Tariff.

**Second Revised Volume No. 1**

Substitute Fifteenth Revised Sheet No. 13

**First Revised Volume No. 1-A**

Substitute Original Sheet No. 439-A

Northwest is submitting Substitute Fifteenth Revised Sheet No. 13 which has been corrected to set forth the rate which Northwest proposes to charge under Rate Schedule T-1 for the Best Efforts Transportation Service contemplated by the Rate Schedule. This rate is equal to the maximum Rate Schedule TI-1 Base Tariff Commodity rate, as shown on Sixteenth Revised Sheet No. 201, plus the surcharges which apply to Rate Schedule T-1.

Additionally, Northwest is submitting Substitute Original Sheet No. 439-A to modify the Base Revenue Level identified thereon, as supported in this proceeding by the Prepared Direct Testimony of Tim J. Hausler, Exhibit No. (TJH-1). Northwest requests any waivers as may be deemed necessary by the Commission to make Substitute Fifteenth Revised Sheet No. 13 and Substitute Original Sheet No. 439-A effective coincidental with the other revised tariff sheets submitted with the October 1, 1992 application in this docket.

Northwest states that copies of the filing is being served on Northwest's

affected 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 Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26301 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. ER92-829-000]**

## Pacific Gas and Electric Co.; Filing

October 23, 1992.

Take notice that on October 19, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing, pursuant to section 205 of the Federal Power Act and § 35.12 of the Federal Regulatory Commission's regulations (18 CFR 35.12), an amendment to its previous filing under FERC Docket No. ER92-829-000. In response to FERC's staff's request, PG&E has provided additional information regarding benefits the City of Vernon receives from the exchange of the transmission services.

Copies of this filing have been served upon the City, the California Public Utilities Commission and the parties to the service list in the above referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 4, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26295 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket Nos. RP86-119-028 and RP92-220-002]**

## Tennessee Gas Pipeline Co.; Tariff Filing

October 23, 1992.

Take notice that on October 19, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered for filing revised tariff sheets of Fourth Revised Volume No. 1 of its FERC Gas Tariff, to be effective on the dates listed on Exhibit A attached to the filing.

Tennessee states that the filing is being made to comply with the Commission's orders dated September 18, 1992 and September 30, 1992 in the above referenced proceedings. In those orders, the Commission directed Tennessee to file revised tariff sheets to incorporate the changes required by the Commission.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

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 October 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 92-26300 Filed 10-28-92; 8:45 am]

BILLING CODE 6717-01-M

---

## Office of Conservation and Renewable Energy

## State Energy Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* State Energy Advisory Board.

*Date and Time:* November 12, 1992—9 a.m., to 6 p.m., November 13, 1992—9 a.m. to 5 p.m.

*Place:* Madison Hotel, 15th & M Streets, NW., Washington, DC 20005, (202) 785-1255.

*Contact:* Sarah Kirchen, U.S. Department of Energy, Office of Technical and Financial Assistance, CE-055, Office of Conservation and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-586-1693, FAX: 202-586-1605.

*Purpose of the Board:* To make recommendations to the Assistant Secretary for Conservation and Renewable Energy regarding energy efficiency goals and objectives and programmatic and administrative policies related to these programs, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs improvement Act of 1990 (P.L. 101-440).

*Purpose of the Meeting:* To consider the various reports from the STEAB committees, and approve the 1992 STEAB Annual Report.

*Tentative Agenda:*

- Briefings by research programs of the Office of Conservation and Renewable Energy, at the Department of Energy.
- Review of STEAB Committee activities.
- Review and approve the 1992 STEAB Annual Report.

*Public Participation:* The meeting is open to the public. The chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Sarah Kirchen at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. (10-minute rule)

*Transcript:* Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 26, 1992.

**Marcia L. Morris,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 92-26287 Filed 10-28-92; 8:45 am]

BILLING CODE 6450-01-M

---

## Office of Fossil Energy

## National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* National Coal Council.

*Date and Time:* Thursday, November 19, 1992 at 9:30 a.m.

*Place:* Ritz-Carlton Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy

(FE-5), Washington, DC 20585. Telephone: 202/586-3867.

*Purpose of the council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

—Call to order by William R. Wahl, Chairman of the National Coal Council.
—Remarks by Chairman Wahl.
—Remarks by the Honorable James D. Watkins, Secretary of Energy (Invited).
—Report of the Finance Committee.
—Report of the Coal Policy Committee.
—Discussion of any other business properly brought before the Council.
—Public comment-10-minute rule.
—Adjournment.

*Public Participation:* The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

*Transcript:* Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC., on October 26, 1992.

**Marcia Morris,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 92-26285 Filed 10-28-92; 8:45 am]

BILLING CODE 6450-01-M

## Coal Policy Committee, National Coal Council, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* Coal Policy Committee of the National Coal Council (NCC).

*Date and Time:* Tuesday, November 17, 1992, 2 p.m.-4 p.m.

*Place:* Ritz-Carlton Hotel 2100 Massachusetts Avenue, NW., Washington, DC 20008.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-5), Washington, DC 20585. Telephone: 202/586-3867.

*Purpose of the Parent Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

*Purpose of the Meeting:* To discuss progress on current studies.

*Tentative Agenda:*

—Call to order and opening remarks by Joseph Craft, Chairman of the Coal Policy Committee.
—Remarks by Department of Energy representative.
—Discussion of progress on current studies.
—Discussion of potential future study topics.
—Dicussion of any other business to be properly brought before the Committee.
—Public Comment—10-minute rule.
—Adjournment.

*Public Participation:* The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

*Transcript:* Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC., on October 26, 1992.

**Marcia Morris,**

*Deputy Advisory Committee, Management Officer.*

[Fr Doc. 92-26286 Filed 10-28-92; 8:45 am]

BILLING CODE 6450-01-M

# FEDERAL COMMUNICATIONS COMMISSION

## Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 23, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

*OMB Number:* 3060-0046.

*Title:* Application for New or Modified Common Carrier Radio Station Authorization Under Part 22.

*Form Number:* FCC Form 401.

*Action:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting.

*Estimated Annual Burden:* 36,500 responses; 8 hours average burden per recordkeeper; 292,000 hours total annual burden.

*Needs and Uses:* The information requested by FCC Form 401 is used by Commission staff in carrying out its duties as set forth in sections 308 and 309 of the Communications Act, 47 U.S.C. section 308 and 309, to determine the technical, legal and other qualifications of the applicant to operate the station. The FCC Form 401 requires the submission of information such that a determination of public interest, convenience and necessity in accordance with section 309 of the Act can be made. In addition to the requirements specified in the form, applicants must submit exhibits and other showings as required by part 22. The initial request for authorization for a mobile radio station governed by part 22 is made on FCC Form 401. The forms is also used to solicit authorization to modify a facility and for partial assignment. The information is used by Commission staff in carrying out its duties as set forth in the Communications Act of 1934, as amended. Without this information the Commission would not be able to carry out its statutory responsibilities.

**Note:** No change in burden or revision of the FCC Form 401 is requested at this time. Thus, the current version of the form will be used (updated only for the new expiration and edition dates) until the Commission completes the proceeding to revise part 22 in CC Docket No. 92-115. When that proceeding is finalized the form will be revised to include free processing data, streamline the filing requirements and design it for future electronic filing and filings on magnetic media.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-26143 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 92-171; DA 92-1398]

## Private Land Mobile Radio Services; Oklahoma Public Safety Plan

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Oklahoma (Region 34). As a result of accepting the Plan for Region 34, licensing of the 821-824/866-869 MHz band in that region may begin immediately.

**EFFECTIVE DATE:** October 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632-6497.

**SUPPLEMENTARY INFORMATION:**

### Order

*Adopted:* October 6, 1992.

*Released:* October 14, 1992.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On March 26, 1992, Region 34 (Oklahoma) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Oklahoma.

2. The Oklahoma Plan was placed on Public Notice for comments on August 3, 1992, 57 FR 35825 (August 11, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Oklahoma and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Oklahoma.

4. Therefore, we accept the Oklahoma Public Safety Radio Plan. Furthermore, licensing of the 821-824/866-869 MHz band in Oklahoma may commence immediately.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

[FR Doc. 92-26145 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

[DA 92-1464]

## Toll Fraud Record; Open for Comments

October 22, 1992.

### Record on Toll Fraud to Remain Open

*File No. 93-Toll Fraud-01*

On October 9, 1992, the Commission held an *En Banc* hearing on toll fraud where panelists gave oral presentations and submitted written testimony. The record associated with this hearing will remain open until November 16, 1992. Parties interested in filing additional comments should file an original and 5 copies of their additional comments with the Secretary, Federal Communications Commission, 1919 M Street NW., room 222, Washington, DC 20554. Participants wishing each Commissioner to receive a personal copy of their comments should file additional copies with each Commissioner's office. All comments must be captioned "93-Toll Fraud-01."

All comments captioned "93-Toll Fraud-01" will be available for public inspection by interested parties during regular business hours in the Common Carrier Bureau, Domestic Facilities Division Reference Room located at 2025 M Street NW., room 6220. For additional information on how to file comments, parties may contact Linda Dubroof, Domestic Facilities Division, at (202) 634-1800.

Federal Communications Commission.

**Donna R. Searcy.**

*Secretary.*

[FR Doc. 92-26142 Filed 10-28-92; 8:45 am]

BILLING CODE 6712-01-M

# FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-966-DR]

## Florida; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida (FEMA-966-DR), dated October 8, 1992, and related determinations.

**EFFECTIVE DATE:** October 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Florida, dated October 8, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 8, 1992:

Union County for Individual Assistance.

Nassau County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support.*

[FR Doc. 92-26235 Filed 10-28-92; 8:45 am]

BILLING CODE 6718-02-M

# FEDERAL MARITIME COMMISSION

[Docket No. 92-51]

## Worldlink Logistics, Inc. v. Evergreen Marine Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Worldlink Logistics, Inc. ("Complainant") against Evergreen Marine Corporation ("Respondent") was served October 23, 1992. Complainant alleges that Respondent has violated sections 8(c) and 10(b)(3), (b)(12) and (d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1707(c) and 1709(b)(3), (b)(12) and (d)(1), by failing and refusing to make available to Complainant the essential terms of a service contract, refusing to abide by its own tariff in denying Complainant's request for a service contract, and unreasonably interpreting its service contract bonding requirements.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 25, 1993, and the

final decision of the Commission shall be issued by February 22, 1994.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-26191 Filed 10-28-92; 8:45 am]

BILLING CODE 6730-01-M

## Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Sunship International Corp., 28 East Jackson, Suite 1306, Chicago, IL 60604.
Officer: M. Aziz, President.

American Rate Inc., 2110 N.W. 20th Street, Miami, FL 33142.
Officers: Abraham Torres, President, Cesar E. Matto, Vice President, Natividad P. Del Rosario, Secretary/Treasurer.

Speed Cargo Services, Inc., 8377 N.W. 68th Street, Miami, FL 33166.
Officers: Nestor Paz, President, Carlos A. Rice, Vice President.

A.J. Campbell, Inc., 1717 East Loop, Suite 170, Houston, TX 77029.
Officers: A.J. Campbell, President, R.K. Schneidt, Vice President, Ruth H. Campbell, Secretary, William D. Campbell, Treasurer.

ExpressAir Cargo Services, Inc., 11091 N.W. 27th Street, Suite 125, Miami, FL 33172.
Officers: Lorenzo J. Lopez, President/Director, Rosa Anderson-Flores, Vice President.

World Ports International, Inc., 510 Plaza Drive, Suite 2230, College Park, GA 30349.
Officers: Shanny Kala, President, Karim Kassam, Vice President.

Colmo Enterprises, Inc., 8229 N.W. 68th Street, Miami, FL 33166.
Officers: Folger Raul Mont, President, Paul Edgar Mont, Secretary/Director, Miguel Angel Lock, Director, Jorge Felix Tong, Market Development Manager.

A.E. & N. Cargo, Inc., 8376 N.W. 64th Street, Miami, FL 33166.
Officer: Nancy Panduro, President.

Craig International, Inc., 6779-P Engle Road, Middleburg Heights, OH 44130.
Officers: Charles A. Craig, President/Director/Stockholder, Olga Diaz-Craig, Vice President/Treasurer/Secretary/Director.

Atlant (USA) Inc., 5777 W. Century Blvd., #1120, Los Angeles, CA 90045.
Officer: Bolko Kissling, President.

Rapid Air & Ocean, Inc., 6974 N.W. 12th Street, Miami, FL 33126.
Officers: Salvatore Arzillo, Jr., President/Director/Stockholder.

Dated: October 22, 1992.

By the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 92-26190 Filed 10-28-92; 8:45 am]

BILLING CODE 6730-01-M

# FEDERAL RESERVE SYSTEM

## FBOP Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. FBOP Corporation*, Oak Park, Illinois; to engage *de novo* through its subsidiary, Fairfield Financial Corporation, Oak Park, Illinois, in the bulk purchase of assets from the FDIC, Resolution Trust Corporation or any financial institution and (2) the servicing and collection of purchased assets owned by subsidiaries and affiliates of FBOP Corporation, pursuant to §§ 225.25(b)(1), (b)(23) and 225.22(c)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 23, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-26211 Filed 10-28-92; 8:45 am]

BILLING CODE 6210-01-F

## Rollin R. Harder; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Rollin R. Harder*, Brooklyn, Iowa; to acquire 50.78 percent of the voting shares of Wingo, LTD., Brooklyn, Iowa, and thereby indirectly acquire Poweshiek County Savings Bank, Brooklyn, Iowa.

Board of Governors of the Federal Reserve System, October 23, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-26210 Filed 10-28-92; 8:45 am]

BILLING CODE 6210-01-F

## Key Corp, 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 November 20, 1992.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. Key Corp*, Albany, New York; to acquire 100 percent of the voting shares of National Savings Bank of Albany, Albany, New York.

*2. VSB Bancorp, Inc.*, Closter, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Valley Savings Bank, S.L.A., Closter, New Jersey, which will be converted to a savings bank charter under the title Valley Savings Bank.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Commerce Bank Corporation*, Winter Haven, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce Bank of Central Florida, Winter Haven, Florida.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Gibson Investment Company*, Gibson, Iowa; to acquire 49.22 percent of the voting shares of Wingo, Ltd., Brooklyn, Iowa, and thereby indirectly acquire Poweshiek County Savings Bank, Brooklyn, Iowa.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Area Bancshares Corporation*, Owensboro, Kentucky; to acquire 100 percent of the voting shares of Southern Deposit Bank, Russellville, Kentucky.

**E. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Wally Bancorp, Inc.*, Parker, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Parker, Parker, Colorado.

**F. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Independent Bancorp of Arizona*, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Independent Banks of Arizona, Phoenix, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, October 23, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-26209 Filed 10-28-92; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

[File No. 912 3337]

## The Clorox Co.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California-based manufacturer of various products from misrepresenting the total fat, saturated fat, cholesterol, or sodium content of any of its salad dressings in the future.

**DATES:** Comments must be received on or before December 28, 1992.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

**FOR FURTHER INFORMATION CONTACT:** Anne Maher, FTC/S-4002, Washington, DC 20580. (202) 326-2987.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Clorox Company, a corporation ("respondent" or "proposed respondent") and it now appearing that proposed respondent is willing to enter into an agreement to cease and desist from the use of certain acts and practices being investigated,

*It is hereby agreed* by an between the respondent, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1221 Broadway, Oakland, California 94612.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the daft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been

violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

*Order*

I

*It is ordered* That respondent the Clorox Company, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of any salad dressing in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means:

A. The absolute or comparative amount of total fat, saturated fat, cholesterol, or sodium in any such product; or

B. The existence or the amount of total fat, saturated fat, cholesterol, or sodium in any such product relative to any amount or use being advertised or promoted.

*Provided, however,* That nothing in provisions A and B above shall prohibit any representation as to the amount of total fat, saturated fat, cholesterol, or sodium in any salad dressing if such representation is specifically permitted in labeling, for the serving size advertised or promoted for such product, by regulations promulgated by the U.S. Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act.

II

*It is Further ordered* That for five(5) years after the last date of dissemination of the representation, the respondent or its successors and assigns, shall maintain and, upon request, make available to the Federal Trade Commission for inspection and copying copies of:

A. All materials that were relied upon by the respondent in disseminating any representation covered by this Order; and

B. All test reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question any representation that is covered by this Order.

III

*It is Further Ordered* That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the company, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the company which may affect compliance obligations arising out of this Order.

IV

*It is Further Ordered* That respondent shall, within thirty (30) days after service upon it of this Order, distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this Order.

V

*It is Further Ordered* That respondent shall, within sixty (60) days after service upon it of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the requirements of this Order.

## Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to public comment, to a proposed consent order from the Clorox Company ("Clorox").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns certain advertising claims for Clorox's Hidden Valley Ranch/Take Heart salad dressings. The Commission's complaint charges that Clorox represented, contrary to fact, that its Take Heart salad dressings contain no fat in any amount that would be reasonably consumed. In reality, Take Heart salad dressings do contain fat. For example, the Original Ranch flavor contains two grams of fat per two tablespoons while other varieties (French, Italian, Blue Cheese, and Thousand Island) contain approximately one gram of fat per two tablespoons, Thus, the complaint alleges that the representation that Take Heart dressings contain no fat is false and misleading, constituting unfair or deceptive acts or practices in violation of Commission law.

The consent order contains provisions designed to remedy the violations charged and to prevent respondent from engaging in similar activities in the future. In particular, Part I prohibits Clorox from misrepresenting the absolute or comparative amount of total fat and saturated fat in any salad dressing. In addition, Part I prohibits Clorox from misrepresenting the existence or amount of total fat and saturated fat in any salad dressing relative to any amount or use being advertised. Further, to ensure compliance with this provision, the order contains the same prohibitions with respect to cholesterol and sodium. Finally, Part I provides Clorox with a safe harbor for any claims about total fat, saturated fat, cholesterol, or sodium that are specifically permitted in labeling by Food and Drug Administration regulations.

Part II requires respondent to maintain all materials relied upon by Clorox in disseminating any claim covered by the order. In addition, part II requires Clorox to maintain all tests and similar materials that contradict or qualify any claim covered by the order.

Part III of the order requires respondent to notify the Commission prior to any change in the corporation that may affect compliance obligations arising out of the order.

Part IV requires respondent to distribute a copy of the corder to each operating division, each managerial employee, and each officer, agent, representative, or employee engaged in advertising or other materials covered by the order.

Part V of the order requires respondent to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92-26265 Filed 10-28-92; 8:45 am]

BILLING CODE 6750-01-M

---

[File No. 892 3112]

## Medical Marketing Services, Inc., et al., Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Florida firm and its founder from misrepresenting in advertising or promotional materials—with respect to any chemical face peel procedure or any health care service—the degree of risk, level of pain, recovery period, or results associated with the procedure; any entity's approval or endorsement of the procedure; or any training the respondents provide for the procedure and services.

**DATES:** Comments must be received on or before December 28, 1992.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Kelly, FTC/H-200, Washington, DC 20580. (202) 326-3304.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Agreement Containing Consent Order To Cease and Desist

In the Matter of Medical Marketing Services, Inc. a corporation, and Michael Walerstein, individually and as an officer of Medical Marketing Services, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Medical Marketing Services, Inc., (hereinafter "MMS"), and Michael Walerstein (hereinafter "Walerstein"), individually and as an officer of MMS, hereinafter sometimes referred to as "proposed respondents," and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

*It is hereby agreed* by and between Medical Marketing Services, Inc., by its duly authorized officer, and Michael Walerstein, individually and as an officer of Medical Marketing Services, Inc., and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent MMS is a Florida corporation. Its office and principal place of business was located at 860 Southwest 89th Terrace, Plantation, Florida 33324.

2. Proposed respondent Michael Walerstein is the founder, president and sole stockholder of MMS. He directs, controls and formulates the acts and practices of MMS, including the acts and practices alleged in the complaint herein. Respondent's address is 3101 Port Royale Blvd., Apt. 217, Fort Lauderdale, Florida 33308.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34 of the Commission's Rules, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent Walerstein's address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

*Order*

Definition

For purposes of this Order, the term "chemical face peel procedure" (hereafter "peel procedure") shall mean the application of a chemical solution containing phenol, or other solution having a similar effect, to the skin to destroy the top layers of the skin.

I

It is ordered that respondents, Medical Marketing Services, Inc., a corporation, its successors and assigns, and its officers, and Michael Walerstein, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale or sale of any peel procedure or any other health care service; in connection with the advertising, promotion, offering for sale or sale of any training in performing any peel procedure or any other health care services; or in connection with the advertising, promotion, offering for sale or sale of any service in marketing any peel procedure or any other health care service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, in any manner, directly or by implication, that:

1. Any peel procedure is free or virtually free of the risk of serious adverse medical complications.

22. Any peel procedure involves little or no pain or discomfort.

3. Any peel procedure involves a recovery period consisting of only a few days.

4. Any peel procedure eliminates facial folds of skin.

5. Any peel procedure is not a chemical face peel.

6. Any peel procedure is accepted or recognized by the American Medical Association.

B. Making any representation, directly or by implication, about the safety of any peel procedure, or any other health care service which entails serious adverse risks, unless respondents clearly and prominently disclose in close proximity to any such representation that such procedure or service entails adverse risks.

C. Misrepresenting, in any manner, directly or by implication:

1. The degree of risk associated with any peel procedure or any other health care service;

2. The level of pain or discomfort associated with any peel procedure or any other health care service;

3. The recovery period required for any peel procedure or any other health care service;

4. The results that can be achieved with any peel procedure or any other health care service;

5. Approval or endorsement of any peel procedure or any other health care service by any entity.

D. Misrepresenting, in any manner, directly or by implication, the likely condition of the typical patient's skin within any specified period following any peel procedure.

E. Making any representation, directly or by implication, relating to the risks or benefits of any peel procedure unless respondents clearly and prominently disclose in close proximity to such representation that the peel procedure is a chemical face peel.

F. Misrepresenting, in any manner, directly or by implication, any material fact relating to any peel procedure or any other health care service, or the results thereof.

G. Disseminating to any provider of health care services any material containing any representation prohibited by any of the above provisions I.A.–F. of this order.

II

*It is further ordered*, That for the purpose of determining and securing compliance with this Order, respondents MMS, or its successors and assigns, and Walerstein shall:

A. Within thirty (30) days following the date of entry of this Order, distribute a copy of this Order to all of respondents' present officers, agents, representatives, independent contractors and employees having responsibilities with respect to the subject matter of this Order; and for a period of five (5) years from the date of entry of this Order, distribute a copy of same to all of respondents' future officers, agents, representatives, independent contractors and employees having said responsibilities.

B. For a period of five (5) years from the date of entry of this Order, maintain and, within ten (10) days of a written request, make available to duly authorized representatives of the Commission for inspection and copying, complete records relative to the manner and form of respondents' compliance with the above terms and provisions of this Order, including copies of each different material in which any representation subject to Part I of this Order is made.

C. For a period of ten (10) years from the date of entry of this Order, notify the Commission in writing at least thirty (30) days prior to any discontinuance of respondent Walerstein's affiliation with the corporate respondent and inform the Commission in writing within 30 days of any affiliation of respondent Walerstein with a new business or employment which involves the advertising, promotion, offering for sale or sale of any peel procedure or any other health care service, the advertising, promotion, offering for sale or sale of training in performing any peel procedure or any other health care service or the advertising, promotion, offering for sale or sale of any service in marketing any peel procedure or any other health care service, each such notice to include the respondent Walerstein's new business address and a statement of the nature of the business or employment with which the respondent is newly affiliated, as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

D. Within ten (10) days after issuance of this Order, designate an agent authorized to accept correspondence and service of process from the Federal Trade Commission on behalf of respondent Walerstein, notify the Commission of the name and address of such agent, and cause said agent to notify the Commission in writing within ten (10) days of his or her acceptance of such designation, and, for a period of ten (10) years from the date of issuance of this Order, at all times maintain such a designated agent, notify the Federal Trade Commission of any change in the name or address of such designated agent within 10 days of such change, and cause each such designated agent to notify the Commission in writing within ten days of his or her acceptance of such designation.

E. Notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the filing of a bankruptcy petition, or any other change in the corporate respondent that may affect compliance obligations arising out of this Order.

F. Within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which respondents have complied with this Order.

## Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Medical Marketing Services, Inc., ("MMS"), a Florida corporation, and Michael Walerstein, the founder, president and sole stockholder of MMS (collectively, the "respondents"). Respondents promoted and sold training and marketing services related to a chemical face peel procedure to licensed physicians throughout the United States, who in turn used respondents' material to market the peel procedure to the public.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that, since at least early 1986, proposed respondents provided their physician clients with promotional materials that contain deceptive statements about a chemical face peel procedure—which respondents referred to as "endodermology"—for their clients' use in marketing the peel procedure to the public.

According to the complaint, respondents falsely represented that (1) the peel procedure is free of the risk of serious adverse medical complications, (2) the peel procedure involves little or no pain or discomfort, (3) the peel

procedure involves a recovery period of eight days, (4) the peel procedure eliminates facial folds of skin, (5) the peel procedure is not a chemical face peel and (6) the peel procedure is accepted or recognized by the American Medical Association. Further, according to the complaint, respondents represented that the peel procedure is safe and failed to disclose that such procedure entrails serious adverse risks. In light of respondents' representations that the procedure is safe, such failure to disclose is a deceptive omission of material fact. Finally, the complaint alleges that, through the use of "before" and "after" photographs of a woman, and a caption saying "Imagine Looking Younger In just 8 days," respondents falsely represented that the "after" photograph accurately depicts the likely condition of the typical patient's skin within eight days of when the peel procedure is administered.

The order covers any misrepresentations made by respondents in connection with the advertising, promotion, offering for sale or sale of any peel procedure or any other health care service; in connection with the advertising, promotion, offering for sale or sale of any training in performing any peel procedure or any other health care service; or in connection with the advertising, promotion, offering for sale or sale of any service in marketing any peel procedure or any other health care service.

Part I(A) of the proposed order would prohibit respondents from making the specific representations enumerated in the complaint.

Part I(B) prohibits respondents from making any representations about the safety of any peel procedure or any other health care service which entails serious adverse risks unless respondents disclose that such procedure or service entails adverse risks.

The order in Part I(C) prohibits respondents from misrepresenting the degree of risk, the level of pain discomfort, the recovery period, the results that can be achieved and approval or endorsement of any peel procedure or any other health care service. Part I(D) prohibits respondents from misrepresenting the likely condition of the typical patient's skin within any specified period following any peel procedure.

Part I(E) prohibits respondents from making any representation relating to the risks or benefits of any peel procedure unless respondents disclose that the peel procedure is a chemical face peel. Part I(F) prohibits respondents from misrepresenting any material fact relating to any peel procedure or any other health care service. Finally, Part I(G) prohibits respondents from disseminating to any provider of health care services any material containing any of the above misrepresentations.

Part II of the proposed order contain various record keeping, compliance and notification requirements, which are largely standard in Commission orders.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 92-26266 Filed 10-28-92; 8:45 am]

BILLING CODE 6750-01-M

## GENERAL SERVICES ADMINISTRATION

### Notice of Intent To Prepare an Environmental Impact Statement; Federal Offices—Atlanta, GA

The General Services Administration (GSA) proposes to lease approximately 1,376,000 square feet of office space to be constructed at the downtown location of the former Rich's department store. The proposed building will consolidate numerous leases of Federal agencies located throughout Atlanta and will house about 7,575 Federal employees. In accordance with 40 CFR part 1502, GSA intends to prepare an Environmental Impact Statement (EIS) for the proposed action. The EIS will evaluate the following alternatives:

1. No Action.
2. Lease construction on the Rich's site.
3. Acquisition and renovation of the existing Rich's facility.
4. Alternative sites for construction and/or acquisition.
5. Direct Federal construction in the central business district.

To identify the scope of issues that will be addressed in the EIS, and to identify potential impacts to the quality of the human environment, public participation is invited by providing written comments. Comments should be made within 30 days and be directed to: Judith M. Cobb, Director, Planning Staff (4PL), General Services Administration, 401 West Peachtree Street, NW., Suite 2500, Atlanta, Georgia 30365-2550.

Dated: October 8, 1992.

Judith M. Cobb,

*Director, Planning Staff.*

[FR Doc. 92-26218 Filed 10-28-92; 8:45 am]

BILLING CODE 6820-23-M

### Notice of Intent to Prepare an Environmental Impact Statement; U.S. Courthouse—Springfield, IL

**AGENCY:** U.S. General Services Administration.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The General Services Administration (GSA) is issuing this notice to advise the public that an Environmental Impact Statement will be prepared and considered for the construction of a new U.S. Courthouse in Springfield, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Ms. Hyon Choe, Planning Staff—5PL, room 3670, General Services Administration—Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312-353-8092.

**SUPPLEMENTARY INFORMATION:** The GSA will prepare an Environmental Impact Statement (EIS) for the construction of a new U.S. Courthouse on an approximately 2.4 acre parcel located in downtown Springfield, Illinois. The proposed project will consist of approximately 156,000 square feet of occupiable space with both indoor and outdoor parking areas. The proposed project is being undertaken to accommodate the projected space requirements of the Federal Courts.

The EIS will evaluate other alternatives the no-build alternative. The EIS will also evaluate impacts on the affected environment for the following resource areas: topography, geology and soils, biology and hydrology, meteorology, air and noise quality, cultural resources, land use, community services, utility services, traffic and transportation, hazardous materials, economics and aesthetics.

**PUBLIC SCOPING MEETING:** To ensure that the full range of issues relating to the proposed project are addressed and all potential significant issues are identified, comments and suggestions are being solicited. To facilitate the receipt of comments, a public scoping meeting will be held at 6 p.m., Monday, November 9, 1992 at the Lincoln Conference Center, South Eighth Street and Capitol Avenue, Springfield, Illinois.

Written comments may be mailed to the GSA contact person through November 30, 1992.

Issued in Chicago, Illinois, on October 16, 1992.

Donald L. Zito,

*Regional Administrator, GSA Region V.*

[FR Doc. 92-26219 Filed 10-28-92; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 92C-0347]

### Biogeneral, Fiber Technology Group; Filing of Color Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Biogeneral, Fiber Technology Group has filed a petition proposing that the color additive regulations be amended to provide for the safe use of 3-(5-chloro-2-benzoxazolyl)-7-(diethylamino)-2*H*-1-benzopyran-2-one (Color Index Solvent Yellow 160:1) for coloring polymethylmethacrylate monofilament intended for use as supporting haptics for intraocular lenses.

**FOR FURTHER INFORMATION CONTACT:** Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 0C0225) has been filed by Biogeneral, Fiber Technology Group, 11055 Flintkote St., San Diego, CA 92121. The petition proposes to amend the color additive regulations to provide for the safe use of 3-(5-chloro-2-benzoxazolyl)-7-(diethylamino)-2*H*-1-benzopyran-2-one (Color Index Solvent Yellow 160:1; CAS Reg. No. 35773-43-4), for coloring polymethylmethacrylate monofilament intended for use as supporting haptics for intraocular lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 7, 1992.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-26172 Filed 10-28-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0333]

### Kraft General Foods; Filing of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Kraft General Foods has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in table syrups, including sweet sauces and toppings.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFF-333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9523.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2A4314) has been filed by Kraft General Foods, 250 North St., White Plains, NY 10625. The petition proposes to amend the food additive regulations in § 172.800 *Acesulfame potassium* (21 CFR 172.800) to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in table syrups, including sweet sauces and toppings.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 7, 1992.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-26171 Filed 10-28-92; 8:45 am]

BILLING CODE 4160-01-F

## Health Resources and Services Administration

### Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending December 31, 1992

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending December 31, 1992, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 6¾ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of the 91-day U.S. Treasury bills for the preceding calendar quarter (3.14 percent), and rounding the result (6.64 percent) upward to the nearest ⅛ percent (6¾ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending December 31 1992, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 8¼ percent for the quarter ending March 31, 1992; 7⅝ percent for the quarter ending June 30, 1992; and 7⅜ percent for the quarter ending September 30, 1992.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 6¾ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.14 percent); adding 3.50 percent (6.64 percent) and rounding that figure to the next higher one-eighth of one percent (6¾ percent).

3. For fixed rate loans executed during the period of October 1, 1992 through December 31, 1992, and for variable rate loans executed on or after October 22, 1985, the interest rate is 6¼ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99-129), enacted October 22, 1985, amended the formula

for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.14 percent); adding 3.0 percent (6.14 percent) and rounding that figure to the next higher one-eighth of one percent (6¼ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: October 23, 1992.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 92-26247 Filed 10-28-92; 8:45 am]

BILLING CODE 4160-15-M

## Public Health Service

### Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organizations, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 57 FR 41146, September 9, 1992) is amended to establish the Division of Healthy Start within the Maternal and Child Health Bureau, Health Resources and Services Administration.

Under Section HB-20, Functions, in the *Maternal and Child Health Bureau (HBM)* add the functional statement for the *Division of Healthy Start (HBM5)* after the *Division of Science, Education, and Analysis (HBM4)* as follows:

*Division of Healthy Start (HBM5)*

Provides national leadership in planning, directing, coordinating, monitoring and evaluating the implementation of the Presidential Healthy Start Initiative to strengthen and improve the delivery of health services in the 15 Healthy Start communities. Specifically:

(1) Administers a national Healthy Start program which collects and analyzes information regarding the Healthy Start projects;

(2) Provides program policy direction, technical assistance, and professional consultation on Healthy Start activities;

(3) Accounts for the administration of funds and other resources for grants, contracts and programmatic consultation and assistance;

(4) Coordinates with other MCHB Divisions and Offices in promoting program objectives and the mission of the Bureau;

(5) Serves as the focal point within the Bureau in implementing programmatic requirements for a national Healthy Start program;

(6) Coordinates Healthy Start activities with this Agency, particular with the PHS Interagency Committee on Infant Mortality and with the Office of Communications pertaining to its national public information and public education campaign, and with other Federal programs, such as the Health Care Financing Administration, and the Agency for Children and Families;

(7) Provides liaison with public, private, professional and voluntary organizations on programs designed to improve delivery of health care and social services for Healthy Start projects;

(8) Disseminates information on Healthy Start activities;

(9) Participates in the development of strategic plans, regulatory activities, policy papers, legislative proposals, and budget submissions relating to Healthy Start activities; and

(10) Provides a focus for international health activities of the Bureau for Healthy Start activities.

*Section HB-40, Delegations of Authority*

All delegations and redelegations of authorities to officers and employees of the Maternal and Child Health Bureau which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation provided they are consistent with this reorganization.

This reorganization is effective October 1, 1992.

Dated: October 21, 1992.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 92-26245 Filed 10-28-92; 8:45 am]

BILLING CODE 4165-15-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[Docket No. D-92-1010; FR-3270-D-01]

### Delegation of Authority for the HOPE for Homeownership of Multifamily Units Program (HOPE 2 Program)

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of delegation of authority.

**SUMMARY:** This notice delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing the Secretary's power and authority with respect to the HOPE for Homeownership of Multifamily Units Program (HOPE 2 Program), subject to specified exceptions.

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Milner, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-4542, TDD (202) 708-9300. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** This notice delegates all power and authority of the Secretary of Housing and Urban Development for the HOPE for Homeownership of Multifamily Units Program (HOPE 2 Program) concurrently to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing, except for the power to sue and be sued.

The authority delegated to the Deputy Assistant Secretary for Multifamily Housing under this delegation does not include the power to issue or waive rules and regulations. The Assistant Secretary for Housing-Federal Housing Commissioner may redelegate to employees of the Department any of the power and authority delegated under this delegation, except the authority to issue or waive rules and regulations. The Deputy Assistant Secretary for Multifamily Housing is not authorized to redelegate the power and authority delegated under this delegation.

The HOPE 2 Program is a new program authorized by title IV, subtitle B, of the National Affordable Housing Act ("NAHA") (Pub. L. 101-625, 104 Stat. 4079, 4162 (November 28, 1990), codified at 42 U.S.C. 12701, 12871). HOPE is an acronym which stands for Homeownership and Opportunity for People Everywhere. Among the HOPE grant programs, HOPE 2 provides homeownership opportunities for eligible, low-income families and individuals to purchase units in multifamily (five or more units) properties which are currently owned by certain Federal, State or local government entities, are subject to mortgages held or insured by the Secretary, or are deemed to have serious physical or financial problems under the terms of an insurance or loan program administered by the Secretary. In general, under the HOPE 2 Program HUD awards grants on a competitive

basis to eligible applicants (including resident management corporations, resident councils, cooperative associations, State or local governments and instrumentalities thereof, and public or private nonprofit organizations) for the planning or implementation of eligible HOPE 2 homeownership programs.

The Secretary of Housing and Urban Development hereby delegates the following authority:

*Section A. Authority Delegated*

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and to the Deputy Assistant Secretary for Multifamily Housing all the power and authority of the Secretary with respect to the HOPE for Homeownership of Multifamily Units Program (HOPE 2 Program) authorized by title IV, subtitle B of the National Affordable Housing Act ("NAHA") (42 U.S.C. 12701, 12871).

*Section B. Authority Excepted*

The authority delegated to the Assistant Secretary for Housing-Federal Housing Commissioner under this delegation does not include the power and authority to sue and be sued. The authority defeated to the Deputy Assistant Secretary for Multifamily Housing under this delegation does not include the power to sue and be sued or the power to issue or waive rules and regulations.

*Section C. Authority to Redelegate*

The Assistant Secretary for Housing-Federal Housing Commissioner may redelegate to employees of the Department any of the power and authority delegated under this delegation, except the authority to issue or waive rules and regulations. The Deputy Assistant Secretary for Multifamily Housing is not authorized to redelegate the power and authority delegated under this delegation.

Authority: National Affordable Housing Act, title IV, subtitle B (42 U.S.C. 12701, 12871); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 23, 1992.

**Jack Kemp,**

*Secretary of Housing and Urban Development.*

[FR Doc. 92-26184 Filed 10-28-92; 8:45 am]

BILLING CODE 4210-32-M

## Office of the Assistant Secretary for Housing-Federal Housing Commissioner

**[Docket No. D-92-1011; FR-3271-D-01]**

## Redelegation of Authority for the HOPE for Homeownership of Multifamily Units Program (HOPE 2 Program)

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

**ACTION:** Notice of redelegation of authority.

**SUMMARY:** The Assistant Secretary for Housing-Federal Housing Commissioner is redelegating all power and authority with respect to the HOPE for Homeownership of Multifamily Units Program (HOPE 2 Program) to Regional Administrators, Field Office Managers, Directors of Offices of Housing, and the Deputy of each such official, and Directors of Housing Management Divisions, subject to certain specified exceptions.

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Milner, Office of Resident Initiatives, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-4542, TDD (202) 708-9300. (These are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Secretary of Housing and Urban Development has delegated all power and authority with respect to the HOPE for Homeownership of Multifamily Units Program (HOPE 2 Program) to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing, subject to certain exceptions. That delegation of authority is published elsewhere in today's issue of the **Federal Register**. Such exceptions include the power and authority to sue or be sued and the authority to redelegate responsibility and authority for the issuance or waiver of rules and regulations. In this redelegation of authority, the Assistant Secretary for Housing-Federal Housing Commissioner is redelegating to specified officials of HUD Regional and Field Offices authority with respect to the HOPE 2 Program, subject to the exceptions set forth below.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates as follows:

*Section A. Authority Redelegated*

Regional Administrators, Field Office Managers, Directors of Offices of Housing, and the Deputy of each such official, and Directors of Housing Management Divisions are authorized by the Assistant Secretary for Housing-Federal Housing Commissioner to exercise the power and authority of the Assistant Secretary with respect to the HOPE 2 Program authorized by title IV, subtitle B, of the National Affordable Housing Act ("NAHA") (42 U.S.C. 12701, 17871).

*Section B. Authority Excepted*

There is excepted from the authority redelegated under this redelegation, the power and authority to (1) issue or waive rules and regulations, (2) approve or terminate grants, or (3) redelegate the power and authority redelegated herein.

Authority: Title IV, Subtitle B, of the National Affordable Housing Act (42 U.S.C. 12701, 12871); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

Dated: October 21, 1992.

**Arthur J. Hill,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 92-26185 Filed 10-28-92; 8:45 am]

BILLING CODE 4210-27-M

# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NM-060-03-4140-01-LEAS-600]**

## Change of Mailing Address

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** This notice sets forth the new mailing address of the Bureau of Land Management, Roswell District Office, Roswell, New Mexico.

**DATES:** November 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Howard Parman, Public Affairs Officer, Bureau of Land Management, (505) 622-9042.

**SUPPLEMENTARY INFORMATION:** The Department of Interior's Bureau of Land Management, New Mexico State, Roswell District Office is changing their mailing address effective November 30, 1992. The new mailing address will be: Bureau of Land Management, Roswell District Office, 1717 W. Second Street, Roswell, New Mexico 88201.

Dated: October 21, 1992.

**Tony L. Ferguson,**

*Acting District Manager.*

[FR Doc. 92-26237 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-FB-M

[NV-060-03-4320-01]

## Meeting and Agenda for the Battle Mountain District Grazing Advisory Board

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Meeting and agenda for the Battle Mountain District Grazing Advisory Board.

**SUMMARY:** In accordance with Public Law 94-579 and section 3, Executive Order 12548 of February 14, 1986, notice is hereby given that the Battle Mountain District Grazing Advisory Board will meet on December 1, 1992. The meeting will convene at 9 a.m. at the Battle Mountain District Conference Room, North 2d and Scott Street, Battle Mountain, Nevada 89820

Agenda items for the meeting will include: (1) Agricultural Extension Service Speaker (2) WH & B gather plans for FY93 (3) Range Improvement Projects planned for FY93 and proposed for FY94 (4) Evaluations/Multiple Use Decision's completed in FY92 and Evaluations/Multiple Use Decision's scheduled for FY93.

The meeting is open to the public. Interested persons may make oral statements to the board between 11:30 and 12 noon, on December 1, 1992, or file written statements for the board's consideration. If you wish to make oral comments, please contact James D. Currivan at the address and phone number below by November 27, 1992.

**DATES:** The board will meet December 1, 1992.

**ADDRESSES:** Bureau of Land Management, Battle Mountain District Office, P.O. Box 1420 Battle Mountain, Nevada 89820.

**FOR FURTHER INFORMATION CONTACT:** James D. Currivan, District Manager, (702) 635-4000.

Dated: October 15, 1992.

**James D. Currivan,**

*District Manager, Battle Mountain, Nevada.*

[FR Doc. 92-26166 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-HC-M

[CO-010-02-4320-02]

## Craig District Grazing Advisory Board Meeting

Time and Date: December 1, 1992 at 10 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to the public, interested persons may make oral statements between 10 a.m. and 11 a.m., or may file written statements.

Matters to be Considered:

1. Election of officers
2. District update
3. Status report on FY '92 range improvement projects
4. Area Reports
5. Expenditures of Grazing Advisory Board Funds

Contact Person for More Information: Jim Andersen, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: October 20, 1992.

**Robert W. Schneider,**

*Associate District Manager.*

[FR Doc. 92-26168 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-040-03-4332-03-ADVB]

## Meeting for the Safford District Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 94-579 and 43 CFR part 1780, that a meeting of the Safford District Advisory Council will be held.

**DATES:** Tuesday, December 1, 1992, 10 a.m. to 4 p.m.

**ADDRESSES:** Safford District Office, 425 E. 4th St., Safford, AZ 85546.

**FOR FURTHER INFORMATION CONTACT:** Diane Drobka, Public Affairs Officer, Safford District, 425 E. 4th St., Safford, AZ 85546. Telephone (602) 428-4040.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include:

1. Advisory Council Charter review, Council goals.
2. Update of Gila Box planning effort.
3. Status AZCO Mine EIS.
4. Plan Amendment for Tucson lands.
5. Pueblo Devol stabilization.
6. Tour of new Safford District Office.
7. BLM 2015 restructuring.
8. Dorothy B. Mine.
9. Water rights.
10. Black Hills Back County Byway.
11. Management Updates:
    a. Grazing Advisory Board meeting highlights.
    b. RMP protests resolution.
    c. Clifton Ranger District—Forest Service move.

The meeting will be open to the public. Interested persons may make oral statements to the Council between 1 and 2 p.m., or may file written statements for consideration by the Council. Anyone wishing to make an oral statement must notify the District Manager by Monday, November 30, 1992.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction (during business hours) within thirty (30) days following the meeting.

Dated: October 29, 1992.

**William T. Civish,**

*District Manager.*

[FR Doc. 92-26225 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-32-M

[MT-060-02-4210-05; MTM-80161]

## Reality Action: Direct Sale-Blaine County, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** The BLM is providing notice of a proposed sale of public land in Blaine County involving the surface estate to the Unified Disposal Board (UDB) who represent Blaine, Hill and Chouteau Counties.

**SUMMARY:** The UDB will use the purchased land to provide and control access to the its adjacent sanitary landfill and to upgrade their headquarters facilities, parking lot and public refuse collection site. Sale of the public land is in conformance with the West HiLine Resource Management Plan through a plan amendment. The BLM advised State and local officials about the proposed sale. The estimated fair market value is $6,625. Sale of the public land will occur about January, 1993.

The following described public land is suitable for sale under criteria 2 and 3 of section 203 of FLPMA of 1976 (43 U.S.C. 1713):

**Principal Meridian Montana**

T. 32 N., R. 17 E.,
Section 1, Lot 1.
Containing 29.52 acres.

**DATES AND COMMENTS:** Comments on the proposed sale may occur until December 14, 1992. Send comments to: Bureau of Land Management, Havre Resource Area Office, Drawer 911, Havre, Montana 59501-0911.

The State Director will weigh adverse comments on the proposed sale and may vacate or change this notice. Without any objections this notice will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Information related to the sale and environmental assessment are available from the Havre Resource Area Manager at the above address.

**SUPPLEMENTARY INFORMATION:** The publication of this notice segregates the public land described above from appropriation under the public land

laws, including the mining laws but not from sale under section 203 of the FLPMA of 1976. The segregation will end upon issuance of the conveyance document or 270 days from the date of publication of this notice, whichever occurs first.

The conveyance of public land is subject to:

1. A reservation of a right-of-way for ditches and canals under 43 U.S.C. 945.

2. A reservation of all federal minerals.

3. The following rights-of-way of record, Montana Highway Commission (MTGF-085459), Hill County (MTM-58535), Montana Power (MTM-58704) and Burlington Northern Railroad (MTM-041313).

Dated: October 21, 1992.

**David L. Mari,**

*District Manager.*

[FR Doc. 92-26217 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-DN-M

---

[CA-050-4410-08]

## Proposed Redding Resources Management Plan and Final Environmental Impact Statement; Availability

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability, proposed redding resource management plan and final environmental impact statement.

**SUMMARY:** In accordance with regulations (40 CFR parts 1500-1508) of the Council of Environmental Quality for implementing section 102 of the National Environmental Policy Act of 1969, as amended, and regulations (43 CFR part 1610) of the Bureau of Land Management (BLM) for implementing section 202 of the Federal Land Policy and Management Act of 1976, BLM has completed a Proposed Resource Management Plan and Final Environmental Impact Statement (RMP/EIS) for the Redding Resource Area in north-central California.

The RMP/EIS describes and analyzes alternatives for management of natural resources on approximately 247,500 acres of public land scattered through portions of Butte, Shasta, Siskiyou, Tehama, and Trinity counties of California. Management alternatives were developed to address four planning issues; i.e., public land tenure, recreation, public access, and forest management. Significant impact topics analyzed include anadromous salmonid habitat, archaeological resources, deer winter range, slender Orcutt grass, scenic, quality, (northern) spotted owl, and wetlands/waterfowl habitat. The decisions of the RMP/EIS will replace those contained within the amended Management Framework Plan for the Redding Resource Area dated 1982.

Copies may be obtained from the Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Copies will be available for review at the following BLM locations:

Office of Public Affairs, Main Interior Building, room 5600, 18th and C Street NE., Washington, DC 20240.

California State Office, 2800 Cottage Way, Sacramento, California 95825.

Ukiah District Office, 555 Leslie Street, Ukiah, California 95482.

**DATES:** A protest period on the RMP will end thirty calendar days from the publication of the Notice of Availability filed by the U.S. Environmental Protection Agency regarding this document. All protests must be postmarked within this time period and sent to the Director of the BLM.

**ADDRESSES:** Protests must be sent to the Director (760), U.S. Bureau of Land Management, 1949 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Mark T. Morse, Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, CA 96002; telephone (916) 224-2100.

**SUPPLEMENTARY INFORMATION:** The RMP/EIS analyzes five land use management alternatives for seven separate geographic units or management area. The alternatives include: No Action (continuation of existing management), Administrative Adjustment, Enhancement of Natural and Cultural Values, Resource Use, and Resource Use with National Values Consideration. Each alternative is a multiple use alternative with emphasis on different resource values, public uses, and management actions. A preferred alternative was selected for each management area. The resultant mixture of preferred alternatives comprise the proposed action of the RMP/EIS.

In addition to the planning issues, land use management alternatives, and significant impact topics analyzed in the RMP/EIS, the document proposes designation of eight Areas of Critical Environmental Concern (ACEC) and recommends expansion of one existing ACEC. The RMP/EIS would designate the following ACEC's:

The Baker Cypress Research Natural Area consists of 120 acres in northeastern Shasta County within Sections 24 and 25, T. 34 N., R. 2 E., MDBM. The proposed ACEC contains the best example of undisturbed *Cupressus Bakeri*, a very uncommon cypress.

The Deer Creek ACEC encompasses Deer Creek canyon in eastern Tehama County between the Deer Creek Irrigation District dam and the Lassen National Forest boundary near Rock Creek. Approximately 620 acres of public land fall within the 5,000 acre proposed ACEC. The canyon contains a high number of nesting raptors (including Peregrine Falcon), a nationally significant complex of refuge sites of Ishi (and the last members of the Yahi tribe), and outstanding scenic quality.

The Forks of Butte Creek Outstanding Natural Area includes approximately 2,480 acres of public land extending along Butte Creek between the Forks of Butte Creek and Helltown approximately ten air miles northeast of Chico. The area is an important primitive recreational area known for its vegetative diversity, outstanding scenic quality, and dramatic topography.

The proposed Jenny Creek ACEC includes 320 acres of existing public land spanning lower Jenny Creek canyon south of the Oregon border immediately north of Iron Gate Reservoir in Siskiyou County. The canyon contains nesting Bald Eagles and the rare endemic Jenny Creek Sucker *(Catostomus rimiculus)*. Oregon BLM is also proposing ACEC designation within Jenny Creek.

The *Orcuttia tenuis* (Hawes Corner) Research Natural Area includes forty acres of public land in Section 5, T. 30 N., R. 3 W., MDBM on the Stillwater Plains about three air miles northeast of Anderson in Shasta County. Ninety-five percent of the original habitat for slender Orcutt grass has been lost. BLM administers some of the last populations of this species.

The Sacramento River Area (Bend area) Outstanding Natural Area includes a stretch of the Sacramento River from the gaging station below Sevenmile Creek to Balls Ferry, the lowest stretches of the tributary streams, and the adjoining upland habitat. This proposed ACEC represents the largest undisturbed area along the river between Sacramento and Redding. The area contains over 25% of the global distribution of *Orcuttia tenuis*, important vernal pool habitat, undisturbed reparian communities, diverse biological values and increasing recreation value. The approximately 9,000 acres of existing public land represent the largest public holding on or adjoining the Sacramento River below Keswick Dam.

The Sacramento River Island Research Natural Area includes 88 acres of public land lying between the Sacramento River and Knighton Road south of Redding. This proposed ACEC contains the northernmost unaltered native riparian forest along the Sacramento River. The public owned habitat is wedged between private industrial, residential, and commercial uses.

The existing Shasta River ACEC is recommended for expansion to include all public land in the Shasta River canyon within 1/4 mile of normal high water and between the Highway 263 bridge (below Yreka Creek) and the Klamath River. This existing and proposed larger ACEC contains extremely important Chinook Salmon spawning habitat. The Swasey Drive ACEC contains approximately 400 acres of public land immediately west of Swasey Drive on the western outskirts of Redding. This proposed ACEC contains at least eight prehistoric archaeological sites spanning a period of about 3,000 years. Prehistoric sites north and west of Redding have been largely destroyed due to mining, land development, and reservoir construction. These sites represent the only known concentration remaining in good condition.

The RMP/EIS assesses portions of sixteen streams for inclusion in the National Wild and Scenic Rivers System. Stream segments within fourteen streams are considered eligible for inclusion in this system.

Dated: August 6, 1992.

**Mark T. Morse,**

*Area Manager.*

[FR Doc. 92-26215 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-40-M

---

[AZ-942-03-4730-02]

## Arizona State Office; Filing of Plats of Survey

October 21, 1992.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivision of section 26 and a metes-and-bounds survey in Township 8 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted September 24, 1992, and was officially filed September 29, 1992.

This plat was prepared at the request of the U.S. Forest Service, Apache-Sitgreaves National Forest, and Federal Land Exchange, Incorporated.

A plat, in 2 sheets, representing a dependent resurvey of portions of the subdivisional lines and a portion of the adjusted 1917 meanders; the subdivision of section 11, and the survey of the informative traverse and the fixed and limiting boundary of the 1930 left bank of the abandoned channel of the Colorado River, the partition lines of lot 4, and a metes-and-bounds survey, in section 11, Township 3 North, Range 22 West, Gila and Salt River Meridian, Arizona, was accepted August 11, 1992, and was officially filed August 19, 1992.

This plat was prepared at the request of the Field Solicitor, Department of the Interior, for use by the U.S. Attorney's Office.

A plat representing a corrective dependent resurvey of a portion of the subdivisional lines in Township 7 South, Range 24 East, Gila and Salt River Meridian, Arizona, was accepted June 29, 1992, and was officially filed July 9, 1992.

This plat was prepared as the result of a corrective resurvey.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, Public Services Section, P.O. Box 16563, Phoenix, Arizona 85011.

**James P. Kelley,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 92-26224 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-32-M

---

[ID-942-02-4730-12]

## Filing of Plats of Survey; Idaho

The plat, in two sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., September 24, 1992.

The plat, in two sheets, representing the dependent resurvey of portions of the south boundary, subdivisional lines, and adjusted 1892 meanders of the Clearwater and North Fork of the Clearwater Rivers, the subdivision of section 34, and the metes-and-bounds survey of a portion of the North Fork Mission and the North Fork Graveyard (Nez Perce Tract 3102), Nez Perce Indian Allotments 1861 and 1861C, and lots 17, 18, 25, and 25 all, in section 34, T. 37 N., R. 1 E., Boise Meridian, Idaho, Group No. 824, was accepted, September 22, 1992.

These surveys were executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 24, 1992.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 92-26238 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-GG-M

---

[OR-942-00-4730-02: GP3-026]

## Filing of Plats of Survey; Oregon/Washington

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

**Willamette Meridian**

Oregon

T. 15 S., R. 2 W., accepted September 30, 1992
T. 27 S., R. 3 W., accepted September 18, 1992
T. 40 S., R. 3 W., accepted September 25, 1992
T. 28 S., R. 4 W., accepted September 18, 1992
T. 29 S., R. 6 W., accepted September 30, 1992
T. 25 S., R. 8 W., accepted September 30, 1992
T. 28 S., R. 8 W., accepted September 30, 1992
T. 7 S., R. 1 E., accepted September 22, 1992
T. 34 S., R. 2 E., accepted October 16, 1992
T. 8 S., R. 3 E., accepted September 21, 1992
T. 38 S., R. 5 E., accepted October 19, 1992
T. 15 S., R. 27 E., accepted September 13, 1992

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of

reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: October 22, 1992.

**Robert E. Mollohan,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 92-26216 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-33-M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-772673.

Applicant: Stan Lukasik, Lowell, IN.

The applicant requests a permit to import one pair of captive-hatched Cabot's tragopan pheasants (*Tragopan caboti*) from Michael Barrett, Qualicum Beach, B.C., Canada, for the purpose of captive breeding.

PRT-772667.

Applicant: Lincoln Park Zoo, Chicago, IL.

The applicant requests a permit to import two male captive-born white-cheeked gibbons (*Hylobates concolor leucogenys*) from the Duisburg Zoo, Duisburg, Germany, for enhancement of propagation and survival of the species. The applicant contributes to the Gibbon Species Survival Plan and studbook.

PRT-770646.

Applicant: Paul C. Kao, Northridge, CA.

The applicant requests a permit to import two male Palawan peacock pheasants (*Polyplectron emphanum*) from Hong Kong Zoo, Hong Kong, for enhancement of propagation. This is a correction to the **Federal Register** notice published on October 1, 1992, in which the incorrect scientific name was published. Comments will be taken until November 15, 1992.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX (703/358-2281)

Dated: October 23, 1992.

**Margaret Tieger,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 92-26183 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Outer Continental Shelf, Advisory Board Scientific Committee; Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C., appendix I, and the Office of Management and Budget Circular A-63, Revised.

The OCS Advisory Board SC will meet Thursday, November 19 and Friday, November 20, 1992, at the Marriott Suites at Worldgate, 13101 Worldgate Drive, Herndon, Virginia 22070, telephone (703) 709-0400.

The SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific value of the MMS' OCS Environmental Studies Program.

Below is a schedule of meetings that will occur.

A Socioeconomic Workshop will be held from 8 a.m. to 5 p.m. on Wednesday, November 18. The agenda for the Workshop will cover the following subjects:

- Gulf of Mexico Region's "Socioeconomic Research Agenda Workshop"
- National Research Council review of MMS's socioeconomic studies
- Status of the North Carolina socioeconomic study

The Scientific Committee will meet in subcommittees on Thursday, November 19, from 8 a.m. to 5 p.m.

The agenda for the plenary session scheduled for Friday, November 20, from 8 a.m. to 3:30 p.m., will include the following subjects:

- Committee Business and Resolutions
- Environmental Studies Program Status Review
- National Academy of Science Review
- MMS Goals and Objectives

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Treichel at the address below.

Other inquiries concerning the SC meeting should be addressed to Dr. Ken Turgeon, Chief, Environmental Studies Branch, Environmental Policy and Programs Division, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070. He may be reached by telephone at (703) 787-1717.

Dated: October 20, 1992.

**Richard J. Glynn,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 92-26222 Filed 10-28-92; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-339]**

### Notice of Commission Determination Not To Review an Initial Determination Adding a Respondent to the Investigation

In the matter of Certain Commercial Food Portioners, Components Thereof, Including Software, and Process Thereof.

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) issued by the presiding administrative law judge (ALJ) on September 24, 1992, adding the Carl Jorgensen Company (Jorgensen) of Charlotte, North Carolina, as a respondent to the above-captioned investigation.

**ADDRESS:** Copies of the ID and all other non-confidential documents filed in connection with this investigation are

available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On August 26, 1992, complainant Design Systems, Inc. (DSI) filed a motion to amend the complaint and notice of investigation to include that the Carl Jorgensen Company (Jorgensen) as an additional respondent. DSI alleged that Jorgensen has purchased allegedly infringing commercial food portioners and is offering them for sale in the United States. DSI stated that it was not aware when it filed its complaint that Jorgensen was involved in the sale of the subject articles and only recently learned, through discovery, of Jorgensen's activities. Jorgensen did not respond to DSI's motion. On September 8, 1992, the Commission investigative attorney (IA) opposed complainant's motion on the grounds that there is insufficient evidence at this time to link Jorgensen to the actual importation of any accused products.

The ALJ determined that DSI had shown good cause for adding Jorgensen as a respondent and noted that DSI had proposed the addition of Jorgensen at an early stage in the investigation. The ALJ further found no showing that adding Jorgensen as a respondent at this time would prejudice the public interest or the rights of any party.

No petitions for review of the ID or agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Issued: October 19, 1992.

By order of the Commission.

Paul R. Bardos,

*Acting Secretary.*

[FR Doc. 92-26117 Filed 10-28-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-624 and 625 (Preliminary)]

## Certain Helical Spring Lockwashers From the People's Republic of China and Taiwan

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China (China) and Taiwan of certain helical spring lockwashers,[3] provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On September 8, 1992, a petition was filed with the Commission and the Department of Commerce by the Shakeproof Industrial Products Division, Illinois Tool Works, Milwaukee, WI, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain helical spring lockwashers from China and Taiwan. Accordingly, effective September 8, 1992, the Commission instituted antidumping investigations Nos. 731-TA-624 and 625 (Preliminary).

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 23, 1992. The views of the Commission are contained in USITC Publication 2565 (October 1992), entitled "Certain Helical Spring Lockwashers from the People's Republic of China and Taiwan: Determinations of the Commission in Investigations Nos. 731-TA-624 and 625 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: October 26, 1992.

By order of the Commission.

Paul R. Bardos,

*Acting Secretary.*

[FR Doc. 92-26268 Filed 10-28-92; 8:45 am]

BILLING CODE 7020-02-M#

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford did not participate in the investigation involving Taiwan.

[3] For purposes of these investigations, "certain helical spring lockwashers" consist of circular washers of carbon steel (including carbon alloy steel), or of stainless steel, whether or not heat-treated or plated, having ends that are off-line, and designed to function as a spring to compensate for developed looseness between component parts of a fastened assembly, to provide a hardened bearing surface, or to distribute load over a large area for screws or bolts.

[Investigation No. 731-TA-627 (Preliminary)]

## Pads for Woodwind Instrument Keys from Italy

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of preliminary antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-627 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of pads for woodwind instrument keys that are alleged to be sold in the United States at less than fair value.[1] The Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 7, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

**SUPPLEMENTARY INFORMATION:**

[1] Pads for woodwind instrument keys are affixed to the keys of various woodwind instruments, e.g., saxophones, clarinets, oboes, and flutes. Such pads are provided for in subheading 9209.99.40 of the Harmonized Tariff Schedule of the United States (HTS).

**Background**

This investigation is being instituted in response to a petition filed on October 21, 1992, by Prestini Musical Instruments Corporation, Nogales, AZ.

**Participation in the Investigation and Public Service List**

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list contacting the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Conference**

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 12, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202-205-3188) not later than November 9, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written Submissions**

As provided in § § 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 17, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 26, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-26267 Filed 10-28-92; 8:45 am]

BILLING CODE 7020-02-M

---

[332-334]

## United States-Canada Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Immediate Elimination of U.S. Tariffs on Certain Articles from Canada

**AGENCY:** United States International Trade Commission.

**ACTION:** Cancellaton of hearing.

**SUMMARY:** On October 20, 1992, the Commission received notice that the two scheduled witnesses for the hearing scheduled for October 26-28, 1922, in this matter were withdrawing their requests to appear. Therefore, the public hearing in connection with this investigation (scheduled to be held beginning at 9:30 a.m. on October 26, 1992, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC) is canceled. Notice of institution of this investigation and the scheduling of the hearing was published in the **Federal Register** of September 18, 1992 (57 FR 43260).

**EFFECTIVE DATE:** October 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Edward Carroll (202-205-1819), Office of Public Affairs, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202-205-1810).

Issued: October 23, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92-26269 Filed 10-28-92; 8:45 am]

BILLING CODE 7020-02-M

---

# INTERSTATE COMMERCE COMMISSION

## Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Victoria Dettmar, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6211.

Comments on the following assessment are due 15 days after the date of availability:

AB-167 (Sub-No. 1106X), Consolidated Rail Corporation—Abandonment Exemption—In Summit and Portage Counties, Ohio. EA available 10/16/92.

Comments on the following assessment are due 30 days after the date of availability:

AB-12 (Sub-No. 143X), Southern Pacific Transportation Company—Discontinuance of Service Exemption of 16.593 Miles in Ventura County, CA. EA available 10/19/92.

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

*Secretary.*

[FR Doc. 92-26261 Filed 10-28-92; 8:45 am]

BILLING CODE 7035-01-M

---

[Finance Docket No. 32171]

## South Kansas and Oklahoma Railroad, Inc.—Trackage Rights Exemption—Missouri Pacific Railroad Company

Missouri Pacific Railroad Company has agreed to grant approximately 1.91 miles of local trackage rights to South Kansas and Oklahoma Railroad, Inc., between milepost 424.42 and 426.33 at or near Fredonia, in Wilson County, KS.[1]

[1] This proceeding is related to Finance Docket No. 32168, Missouri Pac. R. Co. and South Kans. & Okla. R. Co.—Jt. Relocation Proj. Exempt., giving notice of a joint project to relocate MP's rail line between Fredonia and Humboldt, KS.

The parties intend to consummate the transaction on or after October 14, 1992.

This notice it filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, suite 210, 919 18th St., NW., Washington, DC 20006.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc—Lease and Operate. 360 I.C.C. 653 (1980).

Dated: October 21, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-26262 Filed 10-28-92; 8:45 am]

BILLING CODE 7035-01-M

---

[Finance Docket No. 32165]

## Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co., Trackage Rights Exemption; The Atchison, Topeka and Santa Fe Railway Co.

The Atchison, Topeka and Santa Fe Railway Company (SF) has agreed to grant overhead trackage rights to the Southern Pacific Transportation Company and St. Louis Southwestern Railway Company over 16.4 miles, on two rail line: (1) From Renner, TX, at milepost 73.5 to Zacha Jct., TX, at milepost 62.6, a distance of 10.9 miles; and (2) from Zacha Jct. at milepost 62.6 to Tenison, TX, at milepost 56.95, a distance of 5.5 miles due to an equation in the milepost configuration. The purpose of the trackage rights is to improve train movement in the Dallas, TX, area. The parties intended to consummate the transaction on or after October 20, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 23, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-26264 Filed 10-28-92; 8:45 am]

BILLING CODE 7035-01-M

---

[Finance Docket No. 32166]

## SPCSL Corp.; Trackage Rights Exemption; The Belt Railway Co. of Chicago

The Belt Railway Company of Chicago (BRC) has agreed to extend the term of an existing trackage rights agreement with SPCSL Corp. (SPCSL) for a period of 10 years from September 1, 1992, with two additional 10-year extension contemplated. The agreement, dated October 1, 1990, granted SPCSL the following trackage rights: (1) The BRC connection to the Burlington Northern Railroad Company, located approximately 1,000 feet north of the BRC mainline switch located at Hawthorne Interlocking Plant, at 31st Street in Chicago, IL, and the BRC connection to: (a) The CSL Intermodal Terminal located in Bedford Park, IL; (b) the Grand Trunk Western Railroad Company connection at Hayford Interlocking Plant or the BRC East Yard, located in Chicago; (c) the CSXT Intermodal Terminal at Forest Hill, located in Chicago; (d) the Norfolk Southern Corporation Intermodal Terminal at Landers Yard, located in Chicago; and (e) the Consolidated Rail Corporation connection at Rock Island Junction, located in Chicago; and (2) the BRC connection with the Indian Harbor Belt Railroad, located at Argo, IL, and the BRC connection to the CSL Intermodal Terminal, located in Bedford Park.[1] In 1992, the agreement was amended to include trackage rights over the Elsdon Branch, between the 55th Street Interlocking Plant and Lawndale Avenue, so that BRC may access Consolidated Rail Corporation's Ashland Avenue Yard.[2]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, SPCSL Corp., One Market Plaza, room 646, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights— BN*, , 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 21, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 92-26263 Filed 10-28-92; 8:45 am]

BILLING CODE 7035-01-M

[1] See *Finance Docket No. 31799, SPCSL Corp.—Trackage Rights Exemption—The Belt Railway Company of Chicago* (not printed), served December 14, 1990.

[2] See Finance Docket No. 31986, *SPCSL Corp.—Trackage Rights Exemption—The Belt Railway Company of Chicago* (not printed), served January 24, 1992.

---

[Docket No. AB-33 (Sub-No. 75X)]

## Union Pacific Railroad Company—Abandonment Exemption—in Davis County, UT

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission, under 49 U.S.C. 10505, exempts Union Pacific Railroad Company, from the prior approval requirements of 49 U.S.C. 10903-10904 to abandon its 0.268-mile branch line between milepost 2.182 and milepost 2.45 (the Syracuse Branch), near Barnes, in Davis County, UT, subject to standard employee protective conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 28, 1992. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by November 9, 1992, petitions to stay must be filed by November 13, 1992, and petitions for reconsideration must be filed by November 23, 1992. Requests for a public use condition must be filed by November 18, 1992.

**ADDRESSES:** Send pleadings referring to Docket No. AB-33 (Sub-No. 75X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

(2) Petitioner's representatives: Joseph D. Anthofer, General Attorney, Jeanna L. Regier, Registered ICC Practitioner, 1416 Dodge Street #830, Omaha, NE 68179

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 927-5610, [TDD for hearing impaired: (202) 927-5721].

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

Decided: October 22, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

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

*Secretary.*

[FR Doc. 92-26260 Filed 10-28-92; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Under the Clean Air Act; Georgia-Pacific Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on October 19, 1992, a proposed Consent Decree in *United States* v. *Georgia-Pacific Corporation* was lodged with the United States District Court for the Eastern District of California. That action was brought pursuant to the Clean Air Act for Georgia-Pacific's violation of the emissions limits in a prevention of significant deterioration permit. Pursuant to the Consent Decree, Georgia-Pacific must comply with the provisions of its permit, conduct tests on its emissions and submit those results to the Environmental Protection Agency, and pay a civil penalty of $108,000 for its violations of the Clean Air Act.

As provided in 28 CFR 50.7, the Department of Justice will receive comments from persons who are not named as parties to this action relating to the proposed Consent Decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Georgia-Pacific Corporation*, D.J. Ref. 90-5-2-1-1444.

The proposed Consent Decree may be examined at the office of the United States Attorney, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814; the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $3.00 for a copy of the consent decree (25 cents per page reproduction costs) payable to "Consent Decree Library."

**Roger Clegg,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 92-26170 Filed 10-28-92; 8:45 am]

BILLING CODE 4410-01-M

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act; Gerald T. Fenton, Inc., et al

In accordance with Department policy and 28 CFR 50.7 notice is hereby given that on October 5, 1992 a proposed Consent Decree in *United States* v. *Gerald T. Fenton, Inc., et al.*, Civil Action No. 90-0903-NJH, was lodged with the United States District Court for the District of Columbia. The Consent Decree requires defendant Gerald T. Fenton to pay $40,000 in civil penalties for alleged violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos promulgated pursuant to sections 112, 133, and 114 of the Clean Air Act, 42 U.S.C. 7412, 7413 and 7414, and codified at 40 CFR part 61, subpart M. The alleged violations took place at the Smithsonian Institution's National Museum of American History at 14th Street and Constitution Avenue, NW., Washington, DC. The Consent Decree also requires defendant Gerald T. Fenton to comply with the requirements of the asbestos NESHAP during all demolition or renovation projects where Gerald T. Fenton is an owner or operator and assure that all persons engaging in asbestos removal for Gerald T. Fenton (including his subcontractors) successfully complete an EPA approved asbestos abatement course.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Gerald T. Fenton, Inc., et al.*, DOJ Ref. #90-5-2-1-1424.

The proposed Consent Decree may be examined at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, DC 20044 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. If requesting a copy of the Consent Decree, please enclose a check in the amount of $4.50 (25 cent per page reproduction charge). Checks should be payable to the "Consent Decree Library."

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 92-26169 Filed 10-28-92; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Geography and Regional Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 16, 1992, 8:30 a.m. to 6 p.m. November 17, 1992, 8:30 a.m. to 5 p.m.

*Place:* Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

*Type of Meeting:* Part-open.

*Contact Person:* Dr. Brian P. Holly, Program Director, Geography and Regional Science, Division of Social and Economic Science, room 336, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357-7326.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* Open Session: November 16, 1992, 2-3 p.m.

*Closed session:* November 16, 1992, 8:30 a.m. to 2 p.m.; 3 p.m. to 6 p.m. November 17, 1992, 8:30 a.m. to 5 p.m. To review and evaluate research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 26, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-26229 Filed10-28-92; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panel in Physics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* November 18-20, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 114, West Bridge Building, 1201 E. California Boulevard, Pasadena, California.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Richard Isaacson, Program Director for Gravitational Physics, Physics Division, room 341, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-3464.

*Purpose of Meeting:* To provide advice and recommendations concerning the Laser Interferometer Gravitational-Wave Observatory (LIGO) project.

*Agenda:* To review and evaluate the current state and plans for the LIGO Project. This will include examination of costs and management, as well as progress and plans for detector development and construction.

*Reason for Closing:* The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and detailed cost data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 26, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-26227 Filed 10-28-92; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Political Science; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Political Science.

*Date & Time:* November 16, 1992, 9 a.m. to 5 p.m. November 17, 1992, 9 a.m. to 5 p.m.

*Place:* Room 1243, National Science Foundation, 1800 G Street, NW., Washington DC 20550.

*Type of Meeting:* Part-Open.

*Contact Persons:* Dr. Frank Scioli, Program Director and Dr. James Campbell, Program Director, National Science Foundation, 1800 G Street, NW., room 336, Washington, DC 20550, Telephone: 202/357-9406.

*Purpose of Meeting:* To provide advice and recommendations concerning research proposals submitted to NSF for financial support.

*Agenda:* Open session: November 17, 1992, 9 a.m. to 10 a.m. To discuss trends and opportunities in political science.

Closed session: November 16, 1992, 9 a.m. to 5 a.m. November 17, 1992, 10 a.m. to 5 p.m.

To review and evaluate unsolicited research proposals, submitted to or being jointly considered by, the Political Science Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 52 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 26, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-26228 Filed 10-28-92; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Panel for Sociology; Meeting Amendment

The following announcement has been amended to include an open session in the November 12, 1992 meeting agenda. The announcement originally appeared in the **Federal Register** (57 FR 48402) on October 23, 1992; however, for convenience it is being reprinted in its entirety.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time*: November 11-12, 1992; 8:30 a.m. to 6 p.m.

*Place*: Room 1242, National Science Foundation, 1800 G Street NW., Washington, DC.

*Type of meeting*: Part-open.

*Contract Person*: Dr. William S. Bainbridge, Program Director & Dr. Patricia E. White, Associate Program Director, Division of Social and Economic Science, rm. 336, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 257-7802.

*Minutes*: May be obtained from the contact person listed above.

*Purpose of Meeting*: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda*: Open session: November 12th—11 a.m. to 12 p.m.: To discuss trends and opportunities in sociology.

*Closed session*: November 11th—830 a.m. to 6 p.m.; and November 12th—8:30 a.m. to 11 a.m. & 1 p.m. to 6 p.m.: To review and evaluate unsolicited research proposals as part of the selection process for awards.

*Reason for Closing*: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: October 26, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92-26208 Filed 10-28-92; 8:45 am]

BILLING CODE 7555-01-M

# NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on November 5-7, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on September 23, 1992.

**Thursday, November 5, 1992**

*8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. The Committee will discuss priorities for preparation of reports during this meeting.

*8:45 a.m.-10:15 a.m.: NRC Regulatory Analysis Guidelines* (Open)—The Committee will review and report on the NRC staff proposal regarding the resolution of current issues associated with regulatory analysis. Representatives of the nuclear industry will participate, as appropriate.

*10:30 a.m.-12 noon: NRC Guidelines for Prioritization of Generic Issues* (Open)—The Committee will review and report on the NRC staff's proposed guidelines for the prioritization of generic issues.

*1 p.m.-3 p.m.: Meeting with Representatives of the New York Power Authority (NYPA)* (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NYPA regarding the Individual Plant Examination (IPE) for the Fitzpatrick nuclear station, its comparison with the NRC Diagnostic Evaluation of this plant, and the views of the NYPA on risk-based regulation of nuclear facilities. Representatives of the NRC staff will participate, as appropriate.

*3:15 p.m.-5:15 p.m.: Risk-Based Regulatory Requirements* (Open)—The

Committee will review and report on the NRC staff proposal regarding a transition to the use of risk-based regulations. Representatives of the nuclear industry will participate, as appropriate.

*5:15 p.m.–6 p.m.: Discussion of Proposed ACRS Positions* (Open)—The Committee will discuss proposed comments and recommendations regarding matters considered during this session.

**Friday, November 6, 1992**

*8:30 a.m.–10 a.m.: Meeting with Director, NRC Office of Nuclear Material Safety and Safeguards* (Open/Closed)—The Committee will hear a briefing and hold discussions regarding topics of mutual interest, including the status of industry and NRC proposals for revising security requirements for nuclear power plants, the status of the high-level radioactive waste storage and disposal programs, and the impact of the National Energy Security Act on the nuclear program.

Portions of this session will be closed as necessary to discuss information related to safeguards and security arrangements at nuclear facilities.

*10:15 a.m.–11:30 a.m.: Reactor Operating Events and Incidents* (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding events and incidents which have occurred at nuclear power plants, including recent occurrences at the Shearon Harris nuclear station and the LaSalle nuclear plant. The Subcommittee Chairman will report on the loss of feedwater event at the Fukushima nuclear facility in Japan. Representatives of the nuclear industry will participate, as appropriate.

Information may be presented relating to the utilities or vendors' analysis of these events, which is of a Proprietary nature or which has been provided in confidence by a foreign source. Accordingly, portions this session will be closed as necessary to discuss Proprietary Information applicable to this matter and information provided in confidence by a foreign source.

*11:30 a.m.–12 Noon: Scope and Content of Proposed ACRS Reports* (Open)—The Committee will discuss the scope and content of reports proposed for consideration during this meeting and a proposed ACRS report on research regarding environmental qualification of digital instrumentation and control systems for nuclear power plants.

*1 p.m.–2 p.m.: Appointment of New Members* (Open/Closed)—The Committee will discuss qualifications for candidates for anticipated vacancies on the Committee and qualifications of individual candidates nominated for appointment as members.

Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*2 p.m.–3:30 p.m.: Analysis of Human Factors Aspects of Operating Events* (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the report of an onsite evaluation team that evaluated a selected number of operating events and the impact of human performance. Representatives of the nuclear industry will participate, as appropriate.

*3:45 p.m.–4:45 p.m.: Insights from Common Mode Failure Events* (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding NRC staff analysis of selected common-mode failure events that have occurred in nuclear facilities. Representatives of the nuclear industry will participate, as appropriate.

*4:45 p.m.–5:30 p.m.: Future ACRS Activities* (Open)—The Committee will discuss the report of the ACRS Planning and Procedures Subcommittee regarding topics proposed for consideration by the full Committee.

*5:30 p.m.–6 p.m.: Activities of ACRS Subcommittees and Members* (Open)—The Committee will discuss reports regarding activities assigned to designated ACRS subcommittees and members, including the Planning and Procedures Subcommittee report on conduct of Committee business and plans for an international meeting of advisory bodies.

**Saturday, November 7, 1992**

*8:30 a.m.–11 a.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss reports regarding matters considered during this meeting.

*11 a.m.–12 Noon: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss replies from the NRC Executive Director for Operations regarding ACRS comments and recommendations including a proposed Committee report on the reply regarding aspects of the NRC Severe Accident Research Program.

*12 Noon–1:30 p.m.: Miscellaneous* (Open)—the Committee will complete discussion of items considered during this meeting and issues considered but 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 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, 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, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for 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) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered per 5 U.S.C. 552(c)(4), information provided in confidence by a foreign source per 5 U.S.C. 552(c)(4), Safeguards and Security Information for nuclear power plants per 5 U.S.C. 552b(c)(3), and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further 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 can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8 a.m. and 4:30 p.m. E.S.T.

Dated: October 23, 1992.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 92–26254 Filed 10–28–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-255]

## Consumers Power Co.; Palisades Plant, Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Consumers Power Company (the licensee), to withdraw its December 28, 1990, application for an amendment to Facility Operating License No. DPR-20, issued to the licensee for operation of the Palisades Nuclear Plant, located in Van Buren County, Michigan. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 20, 1991 (56 FR 11777).

The purpose of the licensee's amendment request was to revise Technical Specification (TS) Section 3.1.7.a to increase the pressurizer safety valves set point tolerance from ±1% to ±3% of nominal lift pressure.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 28, 1990, and additional information provided in a letter dated January 17, 1991, and (2) the staff's letters dated October 9 and October 20, 1992.

These 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 Van Wylen Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 20th day of October 1992.

For the Nuclear Regulatory Commission.

**Armando Masciantonio,**

*Project Manager, Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-26253 Filed 10-28-92; 8:45 am]

BILLING CODE 7590-01-M

---

[Docket No. 50-263]

## Northern States Power Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Northern States Power Company (the licensee) to withdraw its October 21, 1991, application for proposed amendment to Facility Operating License No. DPR-22 for the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The proposed amendment would have revised the Technical Specifications to add limiting conditions for operating (LCO) and surveillance requirements for reactor vessel overfill protection instrumentation.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 27, 1991, (56 FR 60118). However, by letter dated September 21, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 21, 1991, and the licensee's letter dated September 21, 1992, which withdrew the application for licensee amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Local Public Document Room located at Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland this 21 day of October, 1992.

For the Nuclear Regulatory Commission.

**William O. Long,**

*Project Manager, Project Directorate III-1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 92-26251 Filed 10-28-92; 8:45 am]

BILLING CODE 7590-01-M

---

[Docket No. 40-8905]

## Quivira Mining Co.; Ambrosia Lake Mill

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of intent to amend source material license SUA-1473 for the Ambrosia Lake Mill to incorporate reclamation schedules.

**SUMMARY:** The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-1473, Quivira Mining Company, Ambrosia Lake Mill, to incorporate a revised reclamation schedule and to add a new license condition.

**DATES:** The comment period expires December 14, 1992.

**ADDRESSES:** Copies of the response from Quivira Mining Company and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street, suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO 20555.

Comments may be hand-delivered to Room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

**SUPPLEMENTARY INFORMATION:** The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the **Federal Register** on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that Quivira Mining Company submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided a response on November 22, 1991.

The proposed schedule calls for placement of the final cover by December 31, 1997, which is consistent with the date in the MOU for this mill. The NRC staff reviewed the reclamation schedule and determined that it is compatible with the completion date in the MOU.

The NRC intends to amend Source Material License SUA-1473 to incorporate the schedules proposed by the licensee by adding License Condition No. 40 as follows:

40. The licensee shall complete site reclamation in accordance with an approved reclamation plan and ground-water corrective plan, as authorized by Licensee Condition Nos. 37 and 34, respectively, in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable.

considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—July 31, 1997.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—For impoundment No. 1—December 31, 1993. For impoundment No. 2, excluding portions used for approved byproduct material disposal—December 31, 1993.

(3) Placement of a final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m²/s above background—For impoundment No. 1—December 31, 1997; For impoundment No. 2, excluding portions used for approved byproduct material disposal—December 31, 1997.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40—For impoundment No. 1—December 31, 1999. For impoundment No. 2, excluding portions used for approved byproduct material disposal—December 31, 1999.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 2043.

C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in Section B above, must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colorado this 21st day of October 1992.

For the Nuclear Regulatory Commission

**Ramon E. Hall,**

*Director, Uranium Recovery Field Office.*

[FR Doc. 92-26252 Filed 10-28-92; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP); Withdrawal of Petition

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of the withdrawal of two petitions accepted as part of 1992 GSP Annual Review.

**ADDRESSES:** 600 17th Street NW Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative. The telephone number is (202) 395-6971

**SUPPLEMENTARY INFORMATION:**

### Withdrawal of Petition

Algas Marinas S.A., Algamar has withdrawn its petition concerning Harmonized System subheading 1302.39.00, carrageenan (case number 92-1) from consideration. Also, Thomas Consumer Electronics, has withdrawn its petition concerning Harmonized System subheading 8527.31.50, AC-only combination audio units (case number 92-10) from consideration. Therefore, the GSP Subcommittee has determined that the review of these items for addition to the list of eligible GSP items during the 1992 Annual review is no longer warranted, and has terminated such review.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 92-26230 Filed 10-28-92; 8:45 am]

BILLING CODE 3901-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 19044; 811-5578]**

### The Finland Fund, Inc.; Application

October 21, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** The Finland Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

**FILING DATE:** The application was filed on October 9, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 16, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 272-3023, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (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

### Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On July 1, 1988, Applicant filed a Notification of Registration pursuant to section 8(a) of the Act on Form N-8A. On November 30, 1988, Applicant filed a registration statement pursuant to section 8(b) of the Act.

2. Applicant never issued or sold any securities.

3. Applicant has no shareholders, assets, or liabilities. Applicant has no knowledge of any litigation or administrative proceeding to which it is a party.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-26179 Filed 10-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19047; 812-8838]

## Liberty Mutual Capital Corporation (Boston); Application

October 22, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Liberty Mutual Capital Corporation (Boston).

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) that would exempt applicant from the provisions of subparagraphs (b)(2)(i) and (b)(3)(i) of rule 3a-5 under the Act.

**SUMMARY OF APPLICATION:** Applicant requests an order that would permit it to sell certain debt instruments and use the proceeds to finance the business activities of its parent company, Liberty Mutual Insurance Company ("Liberty Mutual"), and certain subsidiaries of Liberty Mutual.

**FILING DATE:** The application was filed on August 6, 1992 and amended on October 9, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 16, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 175 Berkeley Street, Post Office Box 140, Boston, MA 02117-0140.

**FOR FURTHER INFORMATION CONTACT:** Felice R. Foundos, Staff Attorney, at (202) 272-2190, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is a Delaware corporation and subsidiary of Liberty Mutual. All of applicant's outstanding voting shares are owned by Liberty Mutual, a Massachusetts mutual property and casualty insurance company. Liberty Mutual offers a variety of individual and commercial insurance policies. Through its subsidiaries, Liberty Mutual offers additional financial services including: individual and group life, accident, and health insurance, group pension products, securities brokerage services, investment advisory services, sponsorship and distribution of mutual funds, reinsurance of property and casualty insurance, and real estate development and management.

2. Applicant was organized to finance the business operations of Liberty Mutual, subsidiaries of Liberty Mutual that qualify as "companies controlled by the parent company" under rule 3a-5(b)(3)(i), and certain subsidiaries of Liberty Mutual that are insurance companies (the "Insurance Subsidiaries") (Liberty Mutual and the above subsidiaries are collectively referred to as the "Liberty Mutual Group"). Applicant's primary function will be to borrow funds through the sale of debt securities in the United States and foreign markets, and to lend the proceeds to the Liberty Mutual Group.

3. Applicant intends to issue short-term, intermediate-term, and long-term debt securities. Such securities will be offered and sold in offerings of securities registered under the Securities Act of 1933 ("the Securities Act") or in transactions exempt from the registration requirements of the Securities Act. If the offering is exempt from the registration requirements, applicant will include a description of the business of Liberty Mutual and other data of the character customarily supplied in such offerings.

4. Although the proceeds from applicant's borrowings is intended to fund the borrowing needs of the Liberty Mutual Group, applicant may occasionally borrow amounts in excess of the amounts actually required by the Liberty Mutual Group. In such instances, applicant will invest the excess in accordance with the requirements of rule 3a-5(a)(6) pending lending the money to the Liberty Mutual Group.

5. In accordance with rule 3a-5(a)(5), applicant will invest in or loan to the Liberty Mutual Group at least 85 percent of the cash or cash equivalents raised by applicant as soon as practicable, but in no event later than six months after applicant's receipt of such cash or cash equivalents.

6. Earnings received by applicant on its capital will either be retained as capital in the form of retained earnings or additions to permanent capital, or paid as dividends by applicant to Liberty Mutual. If retained as capital, these earnings will be loaned to entities within the Liberty Mutual Group. Applicant's paid in capital and retained earnings will be invested in accordance with rule 3a-5(a)(6).

7. All debt securities and non-voting preferred stock of applicant issued to or held by the public will be unconditionally guaranteed by Liberty Mutual as to payment of principal, interest, premium, dividends, liquidation preference and sinking fund payments. Such guarantee will provide that, in the event of any default in payment of any amount listed above, the holders of the securities so guaranteed may institute legal proceedings directly against Liberty Mutual to enforce the guarantee without first proceeding against applicant.

### Applicant's Legal Analysis

1. Because of the business conducted by applicant, applicant may fall within the definition of an investment company under the Act. Rule 3a-5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of its parent company or other subsidiaries of its parent and where any purchaser of such finance subsidiary's debt instruments ultimately looks to such parent for repayment and not to the finance subsidiary.[1]

2. Applicant, however, may not rely on the safe harbor provided by rule 3a-5 because Liberty Mutual may not be considered a "parent company" as defined in the rule. Under rule 3a-5(b)(2)(i), a parent company is defined as any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Liberty Mutual is not technically a "parent company" within the meaning of rule 3a-5(b)(2)(i) because it meets the definition of investment company in section 3(a) of the Act and is excepted from such definition by section 3(c)(3) of the Act.

[1] Investment Company Act Release No. 14275 (December 14, 1984) (adopting release).

3. Similarly, applicant may not rely on the safe harbor of rule 3a-5 because the Insurance Subsidiaries may not be considered "companies controlled by the parent company" as defined in the rule. Rule 3a-5(b)(3)(i) defines such companies as any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a). Because the Insurance Subsidiaries, as Liberty Mutual, are excepted from the definition of an investment company under section 3(c)(3) of the Act, these subsidiaries do not fit within the technical definition of "companies controlled by the parent company."

4. The adopting release of rule 3a-5 stated that relief similar to that granted under rule 3a-5 may be appropriate for a finance subsidiary of a parent company that derives its non-investment company status from section 3(c) of the Act. The release stated, however, that such requests should be examined on a case by case basis. According to the adopting release, the concern was that a company could be considered a non-investment company for the purposes of the Act under section 3(c) of the Act and still be engaged primarily in investment company activities. To illustrate the concern, the release pointed to section 3(c)(1) of the Act, which provides an exemption from the Act for investment companies whose shares are beneficially owned by not more than one hundred persons and which is not making and does not propose to make a public offering of its securities. Applicant argues, however, that Liberty Mutual derives its exempt status under section 3(c)(3) of the Act and not section 3(c)(1). Applicant assets that Liberty Mutual and its Insurance Subsidiaries do not engage primarily in investment company activities, but are insurance companies whose primary activities involve the business of insurance.

**Applicant's Condition**

1. Applicant agrees that any order issued on this application shall be subject to the condition that applicant will comply with all the provisions of rule 3a-5 under the Act except: (a) Liberty Mutual will not meet the portion of the definition of "parent company" in rule 3a-5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (b) applicant will be permitted to invest in or make loans to members of the Liberty Mutual Group that do not meet the requirements of rule 3a-5(b)(3)(i) solely because they are excluded from the determination of investment company by section 3(c)(3) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 92-26181 Filed 10-28-92; 8:45 am]

BILLING CODE 8010-01-M

---

[Rel. No. IC-19043; 811-5419]

## Prudential-Bache Strategic Income Fund, Inc.; Application

October 21, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANT:** Prudential-Bache Strategic Income Fund, Inc. (doing business as Prudential Strategic Income Fund).

**RELEVANT 1940 ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on October 6, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 16, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One Seaport Plaza, New York, New York 10292.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Special Counsel, at (202) 504-2259, or Barry Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is a Maryland corporation, registered as an open-end non-diversified management investment company under the 1904 Act. Applicant registered under the 1940 Act and filed a registration statement on Form N-2 pursuant to section 8(b) of the 1940 Act on December 23, 1987. Applicant originally registered as a closed-end investment company under the name The Prudential Strategic Income Fund, Inc. On July 10, 1990, applicant filed a registration statement on Form N-1A to become registered as an open-end investment company. Effective September 4, 1990, applicant changed its name to Prudential-Bache Strategic Income Fund, Inc.

2. At a meeting held on January 7, 1992, applicant's board of directors approved an Agreement and Plan of Reorganization and Liquidation, whereby all of applicant's assets, subject to its liabilities, would be transferred to Prudential Intermediate Global Income Fund, Inc. ("Intermediate Global Income Fund"), a Maryland corporation registered under the 1940 Act as an open-end investment company, in exchange for shares of Intermediate Global Income Fund, which would be distributed to applicant's shareholders in complete liquidation of applicant (the "Reorganization"). Applicant's shareholders approved the Reorganization at a special meeting held on June 17, 1992.

3. In accordance with rule 17a-8 under the 1940 Act, applicant's directors determined that the sale of applicant's assets to Intermediate Global Income Fund was in the best interest of applicant and that the interests of the shareholders of applicant would not be diluted by the exchange of Class A and Class B shares of applicant for Class A and Class B shares of Intermediate Global Income Fund.[1]

4. The Reorganization was consummated as of the close of business on July 31, 1992, and each Class A shareholder of applicant received, in exchange for his Class A shares of applicant, Class A shares of Intermediate Global Income Fund of aggregate value equal to the shares of

[1] Pursuant to an exemptive order, applicant and Intermediate Global Income Fund were each granted relief to issue two classes of shares representing interests in the same portfolio. Prudential-Bache California Municipal Fund, Investment Company Act Rel. Nos. 17277 (Dec. 20, 1989) (notice) and 17306 (Jan. 18, 1990) (order).

applicant previously held. Similarly, each Class B shareholder of applicant received, in exchange for his Class B shares of applicant, Class B shares of Intermediate Global Income Fund of aggregate value equal to the shares of applicant previously held.

5. Applicant and Intermediate Global Income Fund together incurred expenses of $164,062 in connection with the Reorganization, including $63,649 in printing expenses, $60,752 in solicitation expenses, $28,000 in legal fees and expenses, $3,000 in audit fees and expenses, and $8,661 in mailing expenses. It was agreed that these expenses would be borne by each class of shares of each fund on a pro rata basis. Since all of applicant's assets have been transferred to the Intermediate Global Income Fund, and the Intermediate Global Income Fund has assumed all of applicant's liabilities, these expenses will be satisfied from the assets of the Intermediate Global Income Fund.

6. As of the filing of the application, applicant had no securityholders, no assets, and no liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to file Articles or Dissolution in accordance with Maryland law as soon as practicable after the order requested in the application is granted.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92-26180 Filed 10-28-92; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE-92-30]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 18, 1992.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 21, 1992.

**Denise D. Castaldo,**

*Manager, Program Management Staff.*

### Petitions for Exemption

*Docket No.:* 23147.

*Petitioner:* Boeing Commercial Airplane Group.

*Sections of the FAR Affected:* 14 CFR 91.195(a)(1).

*Description of Relief Sought:* To extend Exemption No. 4783, as amended, which allows Boeing Commercial Airplane Company to permit noise measurement tests, Ground Proximity Warning System research and development, and Federal Aviation Administration (FAA) certification flight tests at altitudes lower than 1,000 feet above the surface.

*Docket No.:* 23290.

*Petitioner:* Air Transport Association.

*Sections of the FAR Affected:* 14 CFR 121.391(d) and 121.391(f)

*Description of Relief Sought:* To extend Exemption No. 4296, as amended, which permits Air Transport Association member airlines and other similarly situated part 121 certificate holders who may apply for approval from their Principal Operations Inspectors to continue to allow required flight attendants to be located at the mid-cabin flight attendant station during takeoff and landing on B-767 aircraft.

*Docket No.:* 25628.

*Petitioner:* Moody Aviation.

*Sections of the FAR Affected:* 14 CFR part 141, appendix A

*Description of Relief Sought:* To extend Exemption No. 5032, as amended, which allows Moody Aviation to graduate a part 141 student with a "night flying prohibited" limitation on the private pilot certificate.

*Docket No.:* 26359.

*Petitioner:* Federal Express Corporation.

*Sections of the FAR Affected:* 14 CFR 121.623(a).

*Description of Relief Sought:* To extend Exemption No. 5264, which allows Federal Express Corporation (FedEx) to operate its large jet aircraft fleet in compliance with the alternate airport and fuel requirements contained in the FAR for domestic air carriers and exempts FedEx from the alternate airport requirements contained in § 121.623 (a) and (d), and fuel requirements contained in §§ 121.643 and 121.645(e). In addition to FedEx's request for extension, FedEx requested that the exemption include McDonnell Douglas MD-11 and Airbus A-300 aircraft.

*Docket No.:* 26959.

*Petitioner:* Mr. Ronald K. Rosensweet.

*Sections of the FAR Affected:* 14 CFR 121.383(c).

*Description of Relief Sought:* To allow Mr. Ronald K. Rosensweet to serve as a pilot in part 121 air carrier operations after his 60th birthday.

*Docket No.:* 26962.

*Petitioner:* Mr. Charles D. Segars.

*Sections of the FAR Affected:* 14 CFR 121.383(c).

*Description of Relief Sought:* To allow Mr. Charles D. Segars to serve as a pilot in part 121 air carrier operations after his 60th birthday.

*Docket No.:* 26963.

*Petitioner:* Mr. Dewitt T. Ferrell, Jr.

*Sections of the FAR Affected:* 114 CFR 121.383(c).

*Description of Relief Sought:* To allow Mr. Dewitt T. Ferrell, Jr. to serve as a pilot in part 121 air carrier operations after his 60th birthday.

*Docket No.:* 26980.

*Petitioner:* Southern Air Transport.
*Sections of the FAR Affected:* 14 CFR 121.358(b) and (c).
*Description of Relief Sought:* To allow Southern Air Transport to operate its cargo-only Boeing 707 and McDonnell Douglas DC-8 aircraft beyond the December 30, 1993, date under its approved retrofit schedule for the installation of low altitude windshear system equipment and to receive approval of adjustments to its retrofit schedule as necessary until December 31, 1995.

*Docket No.:* 26982.
*Petitioner:* Captain David M. Warner.
*Sections of the FAR Affected:* 14 CFR 501(b).
*Description of Relief Sought:* To allow the registration of an aircraft in the name of Captain David M. Warner, even though Captain David M. Warner is neither a citizen of the United States nor a resident alien who has lawfully been admitted for permanent residence in the United States.

*Docket No.:* 26983.
*Petitioner:* Martin Aviation.
*Sections of the FAR Affected:* 14 CFR 135.165(b)(7).
*Description of Relief Sought:* To allow Martin Aviation to conduct extended overwater operations in turbojet aircraft equipped with only one HF transmitter and receiver.

*Docket No.:* 26986.
*Petitioner:* Mr. Thomas J. Skipp, III.
*Sections of the FAR Affected:* 14 CFR 65.57.
*Description of Relief Sought:* To allow Mr. Thomas J. Skipp, III to apply for an aircraft dispatcher's certificate without having at least 2 of the last 3 years before the date of application in scheduled air carrier operations, or other aircraft operation that the Administrator finds provides equivalent experience.

*Docket No.:* 26998.
*Petitioner:* Mr. Donald R. Treichler.
*Sections of the FAR Affected:* 14 CFR 121.383(c).
*Description of Relief Sought:* To allow Mr. Donald R. Treichler to serve as a pilot in part 121 air carrier operations after his 60th birthday.

**Dispositions of Petitions**

*Docket No.:* 20583.
*Petitioner:* Tenneco, Inc.
*Sections of the FAR Affected:* 14 CFR 61.57 (c) and (d) and 61.58(c)(1).
*Description of Relief Sought/ Disposition:* To renew Exemption No. 3106, which permits Tenneco, Inc. pilots to complete the entire 24-month pilot-in-command check in an FAA-approved simulator.

*Grant, October 7, 1992, Exemption No. 3106F*

*Docket No.:* 25588.
*Petitioner:* Soaring Society of America, Inc.
*Sections of the FAR Affected:* 14 CFR 45.11(a)(b).
*Description of Relief Sought/ Disposition:* To extend Exemption No. 4988, as amended, which allows owners, operators, and manufacturers of gliders to forgo the requirement to secure an identification plate or display the model and serial number on the exterior of the aircraft at specified locations.

*Grant, October 5, 1992, Exemption No. 4988B*

*Docket No.:* 26326.
*Petitioner:* T.B.M., Inc./Butler Aircraft Co.
*Sections of the FAR Affected:* 14 CFR 91.611.
*Description of Relief Sought/ Disposition:* To reconsider the Denial of Exemption No. 5415 to permit T.B.M., Inc./Butler Aircraft Co., to conduct ferry flights with one engine inoperative on its Lockheed C130A aircraft without obtaining a special flight permit for each flight.

*Grant, October 13, 1992, Exemption No. 5532*

*Docket No.:* 26712.
*Petitioner:* Howell Enterprises, Inc.
*Sections of the FAR Affected:* 14 CFR 135.333, 135.337(a) (2) and (3), and 135.339(a)(2).
*Description of Relief Sought/ Disposition:* To permit Mr. Reece Howell III to personally train and check pilots employed by part 135 certificate holders in initial, transition, upgrade, differences, and recurrent training, in the Mitsubishi MU-2B (MU-2B) aircraft, without meeting all requirements of the affected sections, in order to be qualified applicable as an instructor and/or check airman.

*Denial, October 13, 1992, Exemption No. 5531*

*Docket No.:* 26948.
*Petitioner:* Reeve Aleutian Airways, Inc.
*Sections of the FAR Affected:* 14 CFR 121.356(a).
*Description of Relief Sought/ Disposition:* To exempt Reeve Aleutian Airways, Inc. from the requirement to install traffic alert and collision avoidance system in their L-188 aircraft.

*Denial, October 16, 1992, Exemption No. 5534*

*Docket No.:* 27007.
*Petitioner:* Air Transport Association of America.
*Sections of the FAR Affected:* 14 CFR 121.311(a), 121.391(d), and 121.577(a).
*Description of Relief Sought/ Disposition:* To exempt Air Transport Association of America from certain portions of the miscellaneous operational amendments final rule (57 FR 42662, September 15, 1992) to permit non-required flight attendants to perform safety-related duties during certain aircraft surface movement, and to permit certificate holders to provide food and beverage service during aircraft movement on the surface. Air Transport Association of America states that in a subsequent filing it will petition to amend portions of the final rule.

*Partial Grant, October 15, 1992, Exemption No. 5533*

[FR Doc. 92-26212 Filed 10-28-92; 8:45 am]
BILLING CODE 4910-13-M

## Passenger Facility Charge (PFC) Approvals and Disapprovals

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

**ACTION:** Monthly notice of PFC approvals and disapprovals. In September 1992, there were eight applications and one supplemental decision approved.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals 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). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Department of Port Control, Cleveland, Ohio.
*Application Type:* Impose and Use PFC Revenue.
*PFC Level:* $3.00.
*Total Approved Net PFC Revenue:* $34,000,000.
*Earliest Permissible Charge Effective Date:* November 1, 1992.
*Duration of Authority to Impose:* November 1, 1995.
*Class of Air Carriers not Required to Collect PFC's:* Air taxi/commercial operators.
*Determination:* Approved. The FAA has determined that the proposed class accounts for less then 1 percent of the airport's total annuals enplanements.
*Brief Description of Projects Approved to Impose and use at Cleveland-Hopkins International Airport (CLE):*

Insulate residences—full program phase I,
Taxiway "L" shoulders,
Extension of taxiway "Q".
*Brief Description of Project Approved to Impose Only at CLE:* Land acquisition/resident relocation.
*Brief Description of Project Approved to Impose Only at Burke Lakefront Airport:* Sewers for confined disposal facility.
*Brief Description of Project Withdrawn:* Asbestos encapsulation and removal.
*Determination:* The Department of Port Control withdrew this project from its application by letter to the FAA dated August 28, 1992.
*Decision Date:* September 1, 1992.
*For Further Information Contact:* Dean Nitz, Detroit Airports District Office, (313) 487-7300.
*Public Agency:* Morgantown Municipal Airport, Morgantown, West Virginia.
*Application Type:* Impose and Use PFC Revenue.
*PFC Level:* $3.00.
*Total Approved Net PFC Revenue:* $55,500.
*Earliest Permissible Charge Effective Date:* December 1, 1992.
*Duration of Authority to Impose:* January 1, 1994.
*Class of Air Carriers Not Required to Collect PFC's:* None.
*Brief Description of Projects Approved:*
Airfield lighting and guidance signs,
Overlay of taxiway C and general aviation apron.
*Brief Description of Projects Withdrawn:*
Construct and light parallel taxiway and relocate access road,
Construct aircraft rescue and firefighting (ARFF)/snow removal equipment building and acquire ARFF equipment.
*Determination:* The City of Morgantown withdrew these projects from its application by letter to the FAA dated July 24, 1992.
*Decision Date:* September 3, 1992.
**FOR FURTHER INFORMATION CONTACT:** Joseph Scheff, Beckley Airports District Office, (304) 252-6216.
*Public Agency:* Kent County Department of Aeronautics, Grand Rapids, Michigan.
*Application Type:* Impose PFC.
*PFC Level:* $3.00.
Total Approved Net PFC Revenue: $12,450,000.
*Earliest Permissible Charge Effective Date:* December 1, 1992.
*Duration of Authority to Impose:* May 1, 1998.
*Class of Air Carriers not Required to Collect PFC's:* Air taxi/commercial operators.
*Determination:* Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
*Brief Description of Project Approved:* Airfield project—construct runway 17/35 and related facilities.
*Decision Date:* September 9, 1992.
*For Further Information Contact:* Dean Nitz, Detroit Airports District Office, (313) 487-7300.
*Public Agency:* Charter County of Wayne, Michigan, Detroit, Michigan.
*Application Type:* Impose and Use PFC Revenue.
*PFC Level:* $3.00.
*Total Approved Net PFC Revenue:* $640,707,000.
*Earliest Permissible Charge Effective Date:* December 1, 1992.
*Duration of Authority to Impose:* June 1, 2009.
*Class of Air Carriers not Required to Collect PFC's:* Air taxi/commercial operators filing FAA Form 1800-31 and enplaning fewer than 500 passengers per year at DTW.
*Determination:* Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
*Brief Description of Project Approved to Impose and use at Detroit Metropolitan Wayne County Airport (DTW):*
South airport access road construction,
Stormwater retention and drainage facilities construction,
Noise berm construction,
Noise mitigation program.
*Brief Description of Project Approved to Impose at DTW and use at Willow Run Airport (YIP):* ALP update.
*Brief Description of Projects Approved to Impose at DTW:*
Midfield domestic and international terminal facility construction,
Reconstruction of existing terminals and concourses,
Land acquisition and preliminary design for fourth parallel runway.
*Brief Description of Projects Approved to Impose at YIP:*
Snow removal equipment building design and construction,
Perimeter property fencing and removal of airport hazard,
Runway 5R-23L extension and relocation of Ecorse Road and utilities,
Runway 14-32 resurfacing,
Snow removal equipment purchase.
*Decision Date:* September 21, 1992.
*For Further Information Contact:* Dean Nitz, Detroit Airports District Office, (313) 487-7300.
*Public Agency:* County of Tompkins, Ithaca, New York.
*Application Type:* Impose PFC.
*PFC Level:* $3.00.
*Total Approved Net PFC Revenue:* $1,900,000.
*Earliest Permissible Charge Effective Date:* January 1, 1993.
*Duration of Authority to Impose:* January 1, 1999.
*Class of Air Carriers not Required to Collect PFC's:* None.
*Brief Description of Project Approved:* New terminal building.
*Decision Date:* September 28, 1992.
*For Further Information Contact:* Philip Brito, New York Airports District Office, (718) 917-1882.
*Public Agency:* Parish of East Baton Rouge and City of Baton Rouge, Baton Rouge, Louisiana.
*Application Type:* Impose PFC.
*PFC Level:* $3.00.
*Total Approved net PFC Revenue:* $9,823,159.
*Earliest Permissible Charge Effective Date:* December 1, 1992.
*Duration of Authority to Impose:* December 1, 1998.
*Class of Air Carriers not Required to Collect PFC's:* Part 135 on-demand air taxis, fixed-wing and rotary, and Part 121 supplemental operators.
*Determination:* Approved. The FAA determined that the proposed classes accounts for less than 1 percent of the airport's total annual enplanements.
*Brief Description of Project Approved to Impose:*
Acquisition of parcel no. 5,
Acquisition of parcel no. 6,
Terminal concept study,
Noise mitigation.
*Decision Date:* September 28, 1992.
*For Further Information Contact:* William Perkins, Southwest Regional Airports Division, (817) 624-5979.
*Public Agency:* City of Flagstaff, Flagstaff, Arizona.
*Application Type:* Impose and Use PFC Revenue.
*PFC Level:* $3.00.
*Total Approved net PFC Revenue:* $2,463,581.
*Earliest Permissible Charge Effective Date:* December 1, 1992.
*Duration of Authority to Impose:* January 1, 2015.
*Class of Air Carriers not Required to Collect PFC's:* Air Taxi/air ambulance; air taxi/commercial services; large charter air carriers.
*Determination:* Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.
*Brief Description of Project Approved to Impose and Use:* Construct new air carrier terminal.

*Decision Date:* September 29, 1992.
*For Further Information Contact:* John P. Milligan, Western-Pacific Region Airports Division, (310) 297–1029.
*Public Agency:* City of St. Louis, St. Louis, Missouri.
*Application Type:* Impose and Use PFC Revenue.
Total Approved net PFC Revenue: $131,453,450.
*Earliest Permissible Charge Effective Date:* December 1, 1992.
*Duration of Authority to Impose:* December 1, 1997.
*Class of Air Carriers not Required to Collect PFC's:* On-demand air taxis operating exclusively under Part 135.
*Determination:* Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.
*Brief Description of Projects Approved:*
Noise land acquisition/relocation program,
East terminal expansion,
Light rail stations,
Land acquisition/obstruction removal,
Access roadway, phases III–A and III–B
Apron rehabilitation, phase VI–C.
*Decision Date:* September 30, 1992.
*For Further Information Contact:* Ellie Anderson, Central Region Airports Division, (816) 426–7425.

**PFC Application Supplement Approved**

*Public Agency:* Metropolitan Airports Commission, Minneapolis, Minnesota.
*Application Type:* Impose and Use PFC Revenue.
*Total net Approved PFC Revenue in the Supplemental Record of Decision:* $42,946,863.
*Duration of Authority to Impose:* August 1, 1994.
*Class of Air Carriers not Required to Collect PFC's:* Class of carriers as previously addressed in the decision dated March 31, 1992.
*Brief Description of Project Approved:* Ground transportation center.
*Decision Date:* September 2, 1992.
*For Further Information Contact:* Franklin D. Benson, Minneapolis Airports District Office, (612) 725–4221.

Issued in Washington, DC on October 20, 1992.

**Leonard L. Griggs, Jr.,**
*Assistant Administrator for Airports.*

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

| State airport city | Date approved | Level of PFC | Total approved net PFC revenue | Earliest charge effective date | Estimated charge expiration date [1] |
|---|---|---|---|---|---|
| Alabama: | | | | | |
| Huntsville Intl-Carl T Jones Field, Huntsville | 03/06/1992 | 3 | $20,831,051 | 06/01/1992 | 11/01/2008 |
| Muscle Shoals Regional, Muscle Shoals | 02/18/1992 | 3 | 104,100 | 06/01/1992 | 02/01/1995 |
| California: | | | | | |
| Metropolitan Oakland International, Oakland | 06/26/1992 | 3 | 8,736,000 | 09/01/1992 | 09/01/1993 |
| Palm Springs Regional, Palm Springs | 06/25/1992 | 3 | 44,612,350 | 10/01/1992 | 06/01/2019 |
| San Jose International, San Jose | 06/11/1992 | 3 | 29,228,826 | 09/01/1992 | 08/01/1995 |
| Lake Tahoe, South Lake Tahoe | 05/01/1992 | 3 | 928,747 | 08/01/1992 | 03/01/1997 |
| Colorado: | | | | | |
| Denver International (new) Denver | 04/28/1992 | 3 | 2,330,734,321 | 07/01/1992 | 01/01/2026 |
| Florida: | | | | | |
| Southwest Florida Regional, Fort Myers | 08/31/1992 | 3 | 257,673,262 | 11/01/1992 | 06/01/2015 |
| Sarasota-Bradenton, Saratoga | 06/29/1992 | 3 | 38,715,000 | 09/01/1992 | 09/01/2005 |
| Georgia: | | | | | |
| Savannah International, Savannah | 01/23/1992 | 3 | 39,501,502 | 07/01/1992 | 03/01/2004 |
| Idaho: | | | | | |
| Twin Falls-Sun Valley Regional, Twin Falls | 08/12/1992 | 3 | 270,000 | 11/01/1992 | 05/01/1998 |
| Illinois: | | | | | |
| Greater Rockford, Rockford | 07/24/1992 | 3 | 1,177,348 | 10/01/1992 | 10/01/1996 |
| Capital Springfield | 03/27/1992 | 3 | 682,306 | 06/01/1992 | 05/01/1994 |
| Maryland: | | | | | |
| Baltimore-Washington International, Baltimore | 07/27/1992 | 3 | 141,866,000 | 10/01/1992 | 09/01/2002 |
| Massachusetts: | | | | | |
| Worcester Municipal, Worcester | 07/28/1992 | 3 | 2,301,382 | 10/01/1992 | 10/01/1997 |
| Minnesota: | | | | | |
| Minneapolis-St Paul International, Minneapolis | 03/31/1992 | 3 | $66,355,682 | 06/01/1992 | 08/01/1994 |
| Mississippi: | | | | | |
| Golden Triangle Regional, Columbus | 05/08/1992 | 3 | 1,693,211 | 08/01/1992 | 09/01/2008 |
| Gulfport-Biloxi Regional, Gulfport-Biloxi | 04/03/1992 | 3 | 384,028 | 07/01/1992 | 12/01/1993 |
| Hattiesburg-Laurel Regional, Laurel-Hattiesburg | 04/15/1992 | 3 | 119,153 | 07/01/1992 | 01/01/1998 |
| Key Field, Meridian | 08/21/1992 | 3 | 122,500 | 11/01/1992 | 06/01/1994 |
| Montana: | | | | | |
| Great Falls International, Great Falls | 08/28/1992 | 3 | 3,010,900 | 11/01/1992 | 07/01/2002 |
| Missoula International, Missoula | 06/12/1992 | 3 | 1,900,000 | 09/01/1992 | 08/01/1997 |
| Nevada: | | | | | |
| McCarran International, Las Vegas | 02/24/1992 | 3 | 944,028,500 | 06/01/1992 | 02/01/2014 |
| New Jersey: | | | | | |
| Newark International, Newark | 07/23/1992 | 3 | 84,600,000 | 10/01/1992 | 08/01/1995 |
| New York: | | | | | |
| Greater Buffalo International, Buffalo | 05/29/1992 | 3 | 189,873,000 | 08/01/1992 | 03/01/2026 |
| John F. Kennedy International, New York | 07/23/1992 | 3 | 109,980,000 | 10/01/1992 | 08/01/1995 |
| LaGuardia, New York | 07/23/1992 | 3 | 87,420,000 | 10/01/1992 | 08/01/1995 |
| Ohio: | | | | | |
| Akron-Canton Regional, Akron | 04/30/1992 | 3 | 3,594,000 | 09/01/1992 | 08/01/1996 |
| Port Columbus International, Columbus | 07/14/1992 | 3 | 7,341,707 | 10/01/1992 | 03/01/1994 |
| Oklahoma: | | | | | |
| Lawton Municipal, Lawton | 05/08/1992 | 2 | 334,078 | 08/01/1992 | 01/01/1996 |
| Tulsa International, Tulsa | 05/11/1992 | 3 | 8,450,000 | 08/01/1992 | 08/01/1994 |
| Oregon: | | | | | |
| Portland International, Portland | 04/08/1992 | 3 | 17,961,850 | 07/01/1992 | 07/01/1994 |

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

| State airport city | Date approved | Level of PFC | Total approved net PFC revenue | Earliest charge effective date | Estimated charge expiration date [1] |
|---|---|---|---|---|---|
| Pennsylvania: | | | | | |
| Allentown-Bethlehem-Easton, Allentown | 08/28/1992 | 3 | $3,778,111 | 11/01/1992 | 04/01/1995 |
| Erie International, Erie | 07/21/1992 | 3 | 1,997,885 | 10/01/1992 | 06/01/1997 |
| Philadelphia International, Philadelphia | 06/29/1992 | 3 | 76,169,000 | 09/01/1992 | 07/01/1995 |
| University Park, State College | 08/28/1992 | 3 | 1,495,974 | 11/01/1992 | 07/01/1997 |
| Tennessee: | | | | | |
| Memphis International, Memphis | 05/28/1992 | 3 | 26,000,000 | 08/01/1992 | 12/01/1994 |
| Virginia: | | | | | |
| Charlottesville-Albemarle, Charlottesville | 06/11/1992 | 3 | 255,559 | 09/01/1992 | 11/01/1993 |
| Washington: | | | | | |
| Seattle-Tacoma International, Seattle | 08/13/1992 | 3 | 28,847,488 | 11/01/1992 | 01/01/1994 |

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 92-26214 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement; Washington, DC

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gerald Yakowenko, Field Operations Engineer, Federal Highway Administration, Union Center Plaza, suite 750, 820 First Street, NE Washington, DC 20002. Telephone: (202) 523-0163.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the District of Columbia Department of Public Works will prepare and circulate an Environmental Impact Statement (EIS) for Demonstration Project DE-0014(801), Georgetown University Canal Road Entrance, Washington, DC. The proposed project consists of upgrading the existing Canal Road Entrance to allow for all turning movements at the entrance.

Alternatives under consideration and to be discussed in the Environmental Impact Statement include: (1) No Action; (2) At-grade signalized intersection; (3) Grade separated interchange.

The main parking area for the campus of Georgetown University is accessed by entrances on Prospect Street, a residential street, and Canal Road, a nonresidential arterial. Restricted access at Canal Road forces commuters to use Prospect Street which interferes with the normal residential activities along this street.

The improvements to the intersection are considered necessary to reduce the congestion of vehicles on residential streets east of Georgetown University.

Early coordination letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizen who have expressed or are known to have an interest in the proposal. A scoping meeting will be held with local citizen groups and a public meeting will be held after the circulation of the Draft Environmental Impact Statement.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 21, 1992.

**Arthur J. Hill,**

*Division Administrator, Washington, D.C.*

[FR Doc. 92-26223 Filed 10-28-92; 8:45 am]

BILLING CODE 4910-22-M

## Research and Special Programs Administration

**[Notice 92-11]**

### Safety Advisory: Safety Relief Valves for Chlorine Tanks

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Safety advisory notice.

**SUMMARY:** This is to notify persons of a potential deficiency in certain safety relief valves, made by Crosby Valve and Gage Company (Crosby), which are used on bulk packagings for chlorine, such as cargo tanks and tank cars. The material of construction used for some lower diaphragms, shipped in "JQ" valves, breaking pin assemblies and replacement parts between April 19, 1992 and August 31, 1992, is incompatible with chlorine. Valves and assemblies containing these diaphragms should be replaced. Crosby requests the return of stocks containing these diaphragms.

**FOR FURTHER INFORMATION CONTACT:** Charles Hochman, telephone (202) 366-4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** RSPA has been advised of a possible performance problem with Crosby Valve & Gage Company's Safety Valves Type 1-½" JQ. These safety valves are used for chlorine and other corrosive materials. Both the Crosby Valve & Gage Company and the Chlorine Institute have published warning notices on this subject. RSPA is publishing this safety advisory in order to inform all individuals who may use these safety valves. The Crosby Valve & Gage Company warning notice dated September 10, 1992 states:.

Crosby Valve & Gage Company has been notified by one of its suppliers that they have used some improper material in the manufacturer of a lower diaphragm which is used in Crosby's Safety Valves Type 1-½" JQ for chlorine and other corrosive fluids.

The specific part in question is the "diaphragm—lower", Crosby Part Number 48893, which is designed to be produced from 3% antimony lead material. Our supplier advises that certain of these diaphragms have

been produced from improper material containing tin. Tin-lead material is not as resistant to corrosion as the 3% antimony lead material which could result in lower diaphragm leakage/failure. This could occur rapidly in the presence of chlorine.

We believe that some of these improper lower diaphragms may have been shipped to Crosby Valve customers during the time period from April 19, 1992 to August 31, 1992, in the form of completed JQ Valves, breaking pin assemblies and/or spare part diaphragms.

If your company has received any JQ Valves or parts during this time period they *should not be placed in service*! Breaking pin assemblies serviced by repair companies during this period may also contain improper diaphragms. Please *return* any stock of these diaphragms to Crosby Valve immediately for replacement. For JQ Valves, breaking pin assemblies or lower diaphragm parts which were placed in service between April 19, 1992 and today's date, *the lower diaphragm should be replaced immediately!*

Should you desire any additional information on this subject please contact Mr. John A DiCesare [Crosby Valve and Gage Company, P.O. Box 308, 43 Kendrick Street, Wrentham, Massachusetts 02093 or (508) 384-3121].

The following additional safety information was contained in The Chlorine Institute's warning notice dated September 15, 1992:

It is IMPORTANT to note that tin-lead material could present a potential reaction with chlorine. The literature (Chlorine Manual, NFPA material) warns that dry chlorine, gas, or liquid, reacts with tin at ordinary temperatures. If you think any of these valves in chlorine service could be involved, please contact Crosby as the notice indicates.

Issued in Washington, DC on October 23, 1992 under the authority delegated in 49 CFR part 106, appendix A.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 92-26177 Filed 10-28-92; 8:45 am]

BILLING CODE 9010-60-M

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 92-105]

### Revocation of the Commercial Gauger Approval of Seatran, Inc.

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Notice of the revocation of the approval of a commercial gauger.

**SUMMARY:** Seatran, Inc., of Houston, Texas, formerly Global Consultants, Inc., has not complied fully with the terms of its Commercial Gauger Agreement with Customs. Accordingly, pursuant to § 151.13, Customs Regulations (19 CFR 151.13), the commercial gauger approval granted to Seatran, Inc., of Houston, Texas has been revoked, with prejudice.

**EFFECTIVE DATE:** October 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202-927-1060).

Dated: October 21, 1992.

**John B. O'Loughlin,**

*Director, Office of Laboratories and Scientific Services.*

[FR Doc. 92-26255 Filed 10-28-92; 8:45 am]

BILLING CODE 4820-02-M

### Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 5]

### Surety Companies Acceptable on Federal Bonds Change of Name; Hartford Insurance Company of Connecticut

Hartford Insurance Company of Connecticut, A Connecticut Corporation, has formally changed its name to Trumbull Insurance Company, effective April 21, 1992. The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29375, July 1, 1992.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to Trumbull Insurance Company, Hartford, Connecticut. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $1,751,000 established for the Company as of July 1, 1992, will remain unchanged until July 1, 1993.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which gives details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, at page 29395 to reflect this change.

Questons concerning this notice may be directed to the Department of Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874-6507.

Dated: October 22, 1992.

**Charles F. Schwan, III,**

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 92-26236 Filed 10-28-92; 8:45 am]

BILLING CODE 4810-35-M

## UNITED STATES INFORMATION AGENCY

### Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting November 10, 1992, in the Carissa conference room of the Doral Resort and Country Club, 4400 Northwest 87th Avenue, Miami, FL 33178-2192. Below is the intended agenda.

Tuesday, November 10, 1992

Agenda

Part one—Closed to the Public

9 a.m.

1. Radio Marti Technical adjustments
2. TV Marti General Update

Part two—Open to Public

12 noon

3. Testimony of Cuban Exiles
4. Public Testimony

Items one and two, which will be discussed from 9 a.m. to 12 noon, will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact James Skinner, Executive Director to the Advisory Board, as access to the building is controlled. Mr. Skinner can be reached on (202) 401-7312.

Dated: October 22, 1992.

**Henry E. Catto,**

*Director.*

[FR Doc. 92-26152 Filed 10-28-92; 8:45 am]

BILLING CODE 8230-01-M

### U.S.-Russia-Ukraine Summer Language Teacher Exchange Program

**AGENCY:** United States Information Agency.

**ACTION:** Notice; request for proposals.

**SUMMARY:** The United States Information Agency (USIA) invites applications from international exchange organizations, or consortia of

accredited U.S. institutions, for the development of a summer language teacher exchange program between the United States, Russia and Ukraine. The goal of this program is to improve the teaching of American English and culture in the Russian Federation and Ukraine and the teaching of Russian and Ukrainian language and culture in the U.S. The purpose of the program is to conduct an intensive summer language program for up to 50 participants in each direction. These exchanges are subject to the availability of funding for Fiscal Year 1993.

**DATES:** Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, December 18, 1992. Faxed documents will not be accepted, nor will documents postmarked on December 18, 1992 but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline.

Duration: The exchange of participants for the U.S.-Russia-Ukraine Summer Language Teacher Exchange Program must be a minimum of eight weeks, but should not exceed a maximum of fourteen weeks. Programs must be completed by September 30, 1993.

**ADDRESSES:** The original and 14 copies of the completed application, including required forms, should be submitted to: U.S. Information Agency, Reference: U.S.-Russia-Ukraine Summer Language Teacher Exchange Program, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

**FOR FURTHER INFORMATION:** Interested U.S. organizations should write or call: Nancy Snow, Ted Kniker or Mary Ann Anderson, U.S. Information Agency, 301 4th Street, SW., European Branch, Academic Exchanges Division, E/AEE room 208, Washington, DC 20547; telephone (202) 619-5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

**SUPPLEMENTARY INFORMATION:** Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act if to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world. Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

**Program Requirements**

Support is offered for programs which bring Russian and Ukrainian citizens who are American English language educators to the U.S., and U.S. citizens who are Russian and Ukrainian language educators to Russia and Ukraine for advanced language instruction. Proposals must state how many candidates will come from each country. Proposals may be for either Russia or Ukraine or may combine programs with both countries. The majority of foreign participants should be from Russia. Programs must be reciprocal; while it is desired that an equal number of participants be exchanged, it is not a requirement. The study program should focus on U.S., Russian and Ukrainian languages. The goal of this program is to improve the teaching of American English and culture in the Russian Federation and Ukraine and the teaching of Russian and Ukrainian language and culture in the U.S. The type of language instruction should be described in detail in the proposal. The course work should offer exposure to American English and culture, Russian language and culture, and Ukrainian language and culture, while providing professional development to American, Russian and Ukrainian language instructors. It is expected that each participant return to his or her home country and share his or her newly gained knowledge of the language and culture with students and future language teachers. Courses offered may include, but are not limited to, language teaching methodologies, grammar, phonetics, and conversation. Programs for study in fields other than language studies will not be considered. Programs in the U.S. are expected to be conducted in English. Programs in Russia and Ukraine are expected to be conducted in the language of the host country. Participants are expected to study and travel as a group or subgroups. The project should also provide for an area studies component, details of which should be provided by the applicant in the proposal.

**Participant Selection**

The proposal must include detailed descriptions of the selection processes of participants, both foreign and American. Participants must be citizens of the U.S., Russia or Ukraine and they must be high school teachers or college faculty currently involved in the instruction of the language to be studied. A goal for this program is to select teachers and faculty from geographical diverse areas in the home country.

**Guidelines**

*Language Qualifications*

Participants should have sufficient fluency in the native or instructional language of the host country to be able to pursue university level study and be able to converse with citizens of the country without the aid of interpreters.

*Institutional Commitment*

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partners' presidents, chancellors, or directors, or in the form of a signed agreement by the same persons.

Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program and each institution's activities in support of the program. Documentation of support from governmental ministries or academies will be accepted when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions.

**Orientation Programs**

Participants should be provided with a substantive and comprehensive orientation to the country of their visit, and proposals should describe these orientation programs, including costs, in detail.

**Proposal Narrative**

The proposal narrative describing the program must conform to the Guidelines (E/AEE-93-01) and must include any subgrants to be issued. The narrative

must also describe in detail the abilities of the participating organizations to adapt to the changing exchange environments in the countries eligible for participation in this program. U.S. and foreign participants must be recruited nationally. Priority will be given to projects that demonstrate the widest geographic representation of participant recruitment.

**Proposed Budget**

One or two project awards to U.S. organizations will be made in a wide range of amounts, but combined awards will not exceed $240,000, which includes program and administrative costs. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. The budget should list all sources of support for the program in fiscal year 1993, including both cash and in-kind contributions.

**Allowable Costs**

Grant-funded items of expenditure will be limited to the following categories:

*Program Costs*

—International Travel (via American flag carrier);
—Domestic travel;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem;
—Academic program costs (e.g. tuition, book allowance);
—Travel and partial maintenance costs (not to exceed 50% of U.S. Government per diem rates for stays of 30 days or less, or 35% for stays over 30 day) for accompanying faculty or resident directors; for no more than one program supervisor per twenty participants;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the project);
—Taxes and visa fees.

Administrative costs—Not to exceed 20% of the requested budget
—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties;
—Other Direct Costs;
—All Indirect Costs applied to both administrative and program expenses.

**Please Note:** It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

**Review Process**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet, including the Guidelines for Preparing Proposals [EAEE–93–01]. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grants awards resides with USIA's contracting officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan—including academic rigor and excellence, thorough conception of project, demonstration of meeting participants' needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Reasonable, feasible, and flexible objectives—the capacity of the organization to conduct the program. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international programs; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the positive effect of the program on long-term mutual understanding, the inclusion of maximum sharing of information, and the establishment of long-term institutional and individual linkages.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar, degree of cost-sharing exhibited.

g. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to include participants from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of proposed activities to the criteria and conditions described above.

i. Institutional commitment as demonstrated by financial and other support to the program.

j. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

k. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution.

**Preference Factor**

Preference will be given to proposals that:

1. Demonstrate the widest geographic representation through participant recruitment;
2. Include an area studies component;
3. Include a thorough orientation component for all participants; and
4. Provide for an approximately equal number of Americans and NIS participants.

**Notice**

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

**Notification**

All applicants will be notified in writing of the results of the review process on or about March 12, 1993. All

funded proposals will be subject to periodic reporting and evaluation requirements.

**Options for Renewal**

Subject to the availability of funding for FY 1994 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: October 23, 1992.

**Barry Fulton,**

*Acting Associate Director, Bureau of Educational and Cultural Affairs.*

[FR Doc. 92-26176 Filed 10-28-92; 8:45 am]

BILLING CODE 8230-01-M

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of deadline for the submission of proposed amendments or requests for comment to be considered for publication in the **Federal Register** during the 1993 amendment cycle.

**SUMMARY:** In connection with the 1993 amendment cycle that culminates in the submission to Congress of proposed guideline amendments no later than May 1, 1993, the Commission is continuing its analysis of the implementation of the sentencing guidelines and is considering possible amendments and requests for comment for publication in the **Federal Register**. The Commission has established a final date of November 30, 1992, for the submission of proposed amendments and issues for comment by interested groups or individuals.

**DATES:** To be considered by the Commission for possible publication and action in this amendment cycle, proposed amendments or requests for comment must be received by the Commission no later than the close of business on November 30, 1992.

**ADDRESSES:** Prior to November 16, 1992, proposals should be sent to: United States Sentencing Commission, 1331 Pennsylvania Ave., NW., suite 1400, Washington, DC 20004. Attn: Public Information Specialist. Thereafter, proposals should be addressed as follows: United States Sentencing Commission, 1 Columbus Circle, NE., suite 2-500, Washington, DC 20002-8002. Attn: Public Information Specialist.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Information Specialist, Telephone: (202) 626-8500.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission, an independent agency in the judicial branch of the U.S. Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs that the Commission periodically review and revise promulgated guidelines and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, the Commission expects to vote in December 1992 on those items that will be included in an early January 1993 **Federal Register** publication soliciting formal comment on potential amendments. To provide an equivalent opportunity for all interested individuals and groups, the Commission has established a deadline of November 30, 1992, for the receipt of amendment proposals or issues for comment so as to consider them in this amendment cycle.

While the Commission solicits proposals on any aspect of the Guidelines Manual, it should be understood that the Commission may elect not to publish some proposals at all, or it may propose them for comment in a modified form. The Commission also expects to consider for publication proposals of its own.

Authority: 28 U.S.C. 994.

**William W. Wilkins, Jr.,**

*Chairman.*

[FR Doc. 92-26175 Filed 10-28-92; 8:45 am]

BILLING CODE 2210-40-M

## DEPARTMENT OF VETERANS AFFAIRS

### Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Special Medical Advisory Group will be held on December 10-11, 1992, at the Ramada Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. The session on December 10 will convene at 6 p.m. and the session on December 11 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ginny Rassman, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/535-7605) prior to December 8, 1992.

Dated: October 20, 1992.

By Direction of the Acting Secretary.

**Diane H. Landis,**

*Committee Management Officer.*

[FR Doc. 92-26248 Filed 10-28-92; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 57, No. 210
Thursday, October 29, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**"FEDERAL REGISTER" NUMBER:** 92-25812.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, October 29, 1992, 10:00 a.m., meeting Open to the Public.

This open meeting has been cancelled

**DATE AND TIME:** Tuesday, November 3, 1992 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

**DATE AND TIME:** Thursday, November 5, 1992 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Title 26 Certification Matters
Interim Rules on Ex Parte Communications
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

**Delores R. Hardy,**
*Administrative Assistant.*

[FR Doc. 92-26433 Filed 10-27-92; 2:43 pm]

BILLING CODE 6715-01-M

---

**FEDERAL HOUSING FINANCE BOARD**

**TIME AND DATE:** 10:00 a.m., Thursday, November 5, 1992.

**PLACE:** Second Floor Board Room, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED.**

**PORTIONS OPEN TO THE PUBLIC:** The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate
2. Membership Regulation—Proposed Rule
3. Leverage Ratio Regulation—Final Rule
4. Strategic Plan Update
   ÷ Introduction of Consultant—the First Boston Corporation

**PORTIONS CLOSED TO THE PUBLIC:** The Board will consider the following:

1. Approval of the September Board Minutes
2. Office of Strategic Planning
   A. Consensus Building Vehicle
   B. Leverage Implementation Issues
3. Examination and Regulatory Oversight Reports
4. Board Management Issues

The above matters are exempt under one or more of paragraphs (2), (8) and (9) of subsection 552b(c) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (8) and (9).

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

**Philip L. Conover,**
*Deputy Executive Director.*

[FR Doc. 92-26462 Filed 10-27-92; 4:17 pm]

BILLING CODE 6725-01-M

# Corrections

Federal Register
Vol. 57, No. 210
Thursday, October 29, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[(Order 92-10-35) Dockets 48298 and 48328]**

### Applications of Atlas Air, Inc. For Issuance of New Certificate Authority

*Correction*

In notice document 92-25860 beginning on page 48536 in the issue of Monday, October 26, 1992, make the following correction:

On page 48537, in the first column, under **DATES**, in the last line, "November 14, 1992" should read "November 4, 1992".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

**[T.D. 8432]**
**RIN 1545-AJ73**

### Branch Profits Tax

*Correction*

In rule document 92-21297 beginning on page 41644 in the issue of Friday, September 11, 1992, make the following corrections:

1. On page 41645:

a. In the first column, under **Paperwork**, in the first paragraph, in the sixth line, "(44 U.S.C. 35049(h))" should read "(44 U.S.C. 3504 (h))".

b. In the second column, in the first full paragraph, in the second, third and eighth lines, the sections should read "§§ 1.884-0T, 1.884-1T, 1.884-4T, and 1.884-5T" and "§ 1.884-2T".

c. In the same column, in the second paragraph, in the seventh line, the section number should read "§ 1.884-0".

d. In the third column, in the second and last lines from the top of the page, the section numbers should read "§ 1.884-1" and "§ 1.884-4".

2. On page 41648, in the first column, under number 4., in the third line from the end of the paragraph, "payment" should read "payments".

**§ 1.884-0 [Corrected]**

3. On page 41650, in the third column, in § 1.884-0(b), in the heading for *§ 1.884-3T*, "*secondtier*" should read "*second-tier*"; and in *§ 1.884-4*(f)(2), in the second line, "nonbanks" should read "non-banks".

**§ 1.884-1 [Corrected]**

4. On page 41654, in the third column, in § 1.884-1(d)(6)(iv), in the seventh line, "substained" should read "sustained".

5. On page 41656, in the first column, in § 1.884-1(e)(5), in *Example 2*(ii), insert ")" after "books".

6. On the same page, in the second column, in § 1.884-1(f)(2)(iv), in the second line, "953(3)(c)(C)" should read "953(c)(3)(C)".

**§ 1.884-2T [Corrected]**

7. On page 41659, in the second column, under paragraph 4, in the amendments to § 1.884-2T, in amendment 4., in the second line, "§ 1.884—1T" should read "§ 1.884-1T"; and in amendment 10., in the first line, "introduction" should read "introductory".

8. On page 41660, in the first column, in § 1.884-2T(b)(3), in the second line, "Section" should read "election".

**§ 1.884-4 [Corrected]**

9. On page 41662, in the 3rd column, in § 1.884-4(b)(5)(i), in the 13th line from the bottom, "interests" should read "interest".

10. On page 41665, in the second column, in § 1.884-4(c)(1)(iv), in *Example 1*, in the fourth line from the bottom, "interested" should read "interest"; and in paragraph (c)(2), in the first line, remove the ")" after "*partnership*".

11. On the same page, in the 3rd column, in § 1.884-4(c)(3)(i), in the 12th line, "limitations" should read "limitation".

**§ 1.884-5 [Corrected]**

12. On page 41666, in the third column, in § 1.884-5(b)(1)(i)(D), in the seventh line, "of" should read "or".

13. On page 41668, in the second column, in § 1.884-5(b)(3)(i), in the sixth line, "paragraphs" should read "paragraph".

14. On page 41670, in the first column, in § 1.884-5(b)(6)(iv), in the sixth line, "of" should read "or".

15. On page 41675, in the 2d column, in § 1.884-5(e)(3)(iii), in the 14th line, "(e)(i)(B)" should read "(e)(3)(i)(B)".

16. On the same page, in the third column, in § 1.884-5(e)(4)(ii), in the last line, remove "making loans and".

BILLING CODE 1505-01-D

federal register

Thursday
October 29, 1992

# Part II

# Department of Housing and Urban Development

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

24 CFR Parts 880, 881, 882, 883, 884, 886, and 888

Annual Adjustments of Contract Rents for Section 8 Assisted Housing; Comparability Studies; Proposed Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 880, 881, 882, 883, 884, 886, and 888**

**[Docket No. R-92-1602; FR-2822-P-01]**

**RIN 2502-AF01**

## Annual Adjustments of Contract Rents for Section 8 Assisted Housing; Comparability Studies

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement section 801(c) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act) by providing the method by which HUD (or the appropriate Contract Administrator) would adjust contract rents for certain projects assisted under the Section 8 Housing Assistance Payments program where the Secretary has reason to believe that application of the Annual Adjustment Factors (AAFs) would result in a material difference in the rents charged for assisted units and unassisted units of similar quality, type, and age in the same market area. The rule would also make revisions to the Department's existing regulations on contract rent adjustments by use of the AAFs.

**DATES:** Comment due date: December 28, 1992.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** James Tahash, Office of Multifamily Housing, room 6182, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-3944; (TDD number for the hearing- and speech-impaired (202) 708-4594). (These are not toll-free).

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for HUD, Washington, DC 20503.

At the end of the public comment period on this rule, the Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collection.

### I. Applicability

This rule would revise the current regulations in subpart B of 24 CFR part 888 on adjusting contract rents of Section 8 projects whose rents are adjusted by use of the Annual Adjustment Factors (AAFs). The Department publishes AAFs annually in the **Federal Register**. Additionally, the rule would add subpart E to part 888 to provide for comparability studies for certain projects, in accordance with section 801(c) of the HUD Reform Act. The amendments are discussed in detail later in this preamble.

Subpart B of this rule (Contract Rent Automatic Annual Adjustment Factors) would apply only to projects assisted under section 8 of the U.S. Housing Act of 1937 (1937 Act) whose rents are adjusted by AAFs under 25 CFR part 888. This would not include projects under Section 8 programs whose rents are adjusted using the budgeted rent increase method.

Subpart E of the rule (Comparability Studies) would also apply to projects that are subject to subpart B and regulated under the following Section 8 programs: New Construction (24 CFR part 880); Substantial Rehabilitation (24 CFR part 881); State Finance Agencies (24 CFR part 883); Section 515 Farmers Home Administration (24 CFR part 884); Section 202 Elderly or Handicapped Housing (24 CFR part 885); and Special Allocations (24 CFR part 866, subpart A (Loan Management Set-Aside) and subpart C (Property Disposition).[1]

Subpart E would not apply to the Section 8 Moderate Rehabilitation or Section 8 Certificate programs (24 CFR part 882). The Department will publish a separate proposed rule in the future implementing section 801(c) for those programs.

The Housing Assistance Payments (HAP) Contract and appropriate program regulations should be consulted to determine whether a project's rents are adjusted by the AAFs.

### II. Background

Section 8 of the 1937 Act authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. The several programs (known collectively as the Section 8 Housing Assistance Payments program) provide assistance payments for lower income families for a variety of housing options.

Under these programs, HUD (or a public housing agency (PHA) or State housing finance agency, as the Contract Administrator) enters into a HAP contract with an owner of rental housing to make housing assistance payments to the owner on behalf of eligible families. The housing assistance payment represents the difference between the contract rent, which is the maximum monthly rent approved by HUD that may be charged for a unit, and the rent paid by the tenant family under section 3(a) of the 1937 Act, which is an amount based on the family's income.

Initial contract rents, plus any allowances for utilities, generally may not exceed either the applicable Fair Market Rents (FMRs), established and published by HUD annually in accordance with 24 CFR part 888,

[1] Subpart E of the rule would not apply to owners who have obtained or may obtain in the future a judgment, for which all appeals have been exhausted, that section 801 of the HUD Reform Act is unconstitutional.

subpart A, or the rents of comparable unassisted units in the same area. However, the regulations permit HUD to approve initial contract rents that exceed the applicable FMR or comparable unassisted rent by up to 20 percent, if necessary, to account for special circumstances specified in the regulations. The rule would clarify the existing definition of initial difference, which is the dollar amount by which the initial contract rent exceeds the applicable FMR or comparable unassisted rent.

Section 8(c)(2)(A) of the 1937 Act requires that the HAP contract between HUD and a project owner provide for adjustments, at least annually, in the maximum monthly rents for units covered by the contract. The adjustments are to reflect changes in the fair market rentals established in the area for similar types and sizes of dwelling units or, if HUD determines, on the basis of a reasonable formula. Section 8(c)(2)(C) further provides that any adjustments made in the maximum rents under section 8(c)(2)(A) may not result in a material difference between rents charged for assisted and unassisted units of similar quality, type, and age in the same market area, as determined by the Secretary. HUD regulations allow an exception to this overall limitation on rent adjustments to the extent a material difference exists because of any initial difference, described above.

Under these provisions of section 8 and in accordance with 24 CFR part 888, subpart B, HUD currently publishes Annual Adjustment Factors (AAFs) for the four Census Regions, 73 metropolitan areas, and the State of Hawaii. AAFs are based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys, and represent the change in rents over the past year. On the anniversary dates of HAP contracts each year, contract rents may be adjusted in accordance with the applicable AAF for the area.

The contracts for some projects provide for rents to be adjusted automatically each year, while others provide for adjustments only on request by the owners, depending on the regulations under which the project is operated. Generally, all New Construction and Substantial Rehabilitation projects approved before 1979 receive automatic adjustments, as well as all Farmers Home Administration projects, regardless of approval date. The rents of most other projects are adjusted only on request.

Before enactment of section 801 of the Reform Act, for a project where HUD (or the Contract Administrator) had reason to believe that application of the AAFs would result in a material difference between rents charged by the project and similar unassisted housing in the same market area (except where the difference existed when contract rents were initially set), HUD interpreted section 8(c)(2)(A), its implementing regulations, and the corresponding HAP contracts as requiring that the material difference be addressed, and as providing authority to conduct a survey, or comparability study, as an alternative method of adjusting rents for the project. Where a comparability study indicated that a material difference would result from application of the AAFs, HUD used the study as the basis for limiting the size of the rent increase that would have resulted by applying the AAFs.[2]

On May 1, 1991 (56 FR 20078), HUD published a final rule implementing section 801(a) of the Reform Act, which requires HUD to make retroactive payments to owners of projects whose rents were reduced or limited, for the period from fiscal year 1980 to the effective date of the rule, as a result of the comparability studies described above (24 CFR subparts C and D). The retroactive payments rule also applies to HAP contracts that require the owners to request annual rent adjustments if the owners certify that requests were not made because of anticipated reductions.

## III. 1989 Amendment to Section 8(c)(2)(C)

Section 801(c) of the Reform Act amended section 8(c)(2)(C) of the 1937 Act to clarify and affirm HUD's ability to use comparability studies as a basis for adjusting contract rents where the Secretary has reason to believe that the application of the AAFs would result in a material difference between rents for assisted and similar unassisted units in the same market area.

The Reform Act amendment directs HUD to establish regulations for conducting a comparability study (1) upon the request of any owner of a project or, (2) as determined appropriate by the Secretary, by establishing, to the extent practicable, a modified annual adjustment factor for a geographically smaller area than an area covered by an AAF. The modified factors are to be established on the basis of a study of rents charged, and of any change in rents charged over the previous year, for assisted units and unassisted units of similar quality, type, and age in the same market area.

Section 801(c) further authorizes the Secretary to use an alternative method for conducting comparability studies to avoid a material difference where HUD determines that (1) a modified factor cannot be established, or (2) a modified factor, when applied to a particular project, would still result in a material difference between rents charged for assisted and similar unassisted units.

## IV. Improving the AAF System

The Department has evaluated various methods for improving its current AAF process so that material differences between rents are reduced or eliminated. The objective of the AAF system is to produce annual rent change estimates that are reflective of local rental markets. The best way to accomplish this objective involves obtaining a statistically reliable measure of rent change for every housing market area in the nation where projects are subject to the AAF process. Such an approach, however, is not cost effective.

The Department recognized that the current approach to determining AAFs could be improved by providing local data for areas not covered by metropolitan-specific surveys. On average, the Census Region AAFs used for such areas are statistically reliable, but use of a factor to cover such a large area can conceal significant local differences. The more localized the data used, the greater the data requirements of a system. The most cost-effective approach would be one that uses the largest aggregations of areas that yield rent change factors common to the vast majority of projects within such areas, and to provide some type of exception system for projects that have unusual circumstances. Data for each local housing market area are not needed to accomplish this objective, because sub-regional factors will often reflect the locality-specific circumstances.

The Department, therefore, determined that improvements in the AAF process could be made if HUD had access to reliable metropolitan and nonmetropolitan rent change estimates for each of the ten HUD Regions. The method chosen by the Department for obtaining rent data is by use of a Random Digit Dialing (RDD) telephone

[2] In some cases where the comparability studies showed that the then current contract rent exceeded the rents of comparable housing, HUD reduced the rent to eliminate the material differences resulting from prior years' application of the AAFs. In section 142(d) of the Housing and Community Development Act of 1987, as amended, Congress amended section 8(c)(2)(C) to prohibit the reduction of contract rents, in effect on or after April 15, 1987, for projects in the New Construction, Substantial Rehabilitation, or Moderate Rehabilitation programs, unless the project has been refinanced in a manner that reduced the periodic payments of the owner.

survey. This survey method is based on a statistical technique that makes use of computers to select a totally random sample, select, dial and keep track of the telephone numbers, tabulate the survey responses, and determine the reliability of the results.

The survey methodology used has been tested both on a metropolitan area and HUD Regional basis and found to provide reliable results. It was first tested in three different metropolitan areas that were also covered by American Housing Surveys (AHS) and Consumer Price Index (CPI) surveys of area rents which provide highly reliable results. The rent estimates provided by the RDD surveys were very close to those provided by the AHS and CPI surveys, and well within their predicted statistical variability. HUD also tested this methodology in the metropolitan and nonmetropolitan parts of two HUD Regions (four surveys) not covered by area-specific CPI surveys, and obtained similarly satisfactory results.

The RDD approach offers the potential for significant improvements in the development of AAFs. The Department is considering replacing the four Census Regional factors now in use with 20 more localized factors, each covering the metropolitan or nonmetropolitan part of a HUD Region not already covered by local CPI surveys. Local CPI survey data will continue to be used where available.

The Secretary has determined that it is not cost effective to establish separate AAFs for each of the approximately 2,750 FMR areas. The Department believes that the proposed HUD Regional system of AAFs will provide a statistically reliable and cost-effective method of calculating rent change factors that is an acceptable alternative consistent with congressional intent. The RDD method will provide factors for smaller geographic areas than permitted using CPI data. It will fully meet the statutory standard of establishing factors on the basis of a study of rents charged, and changes in rents charged over the previous year, for assisted units and unassisted units of similar quality, type, and age in the smaller market area.

The Department would continue to publish a Notice of AAFs on an annual basis, in accordance with 24 CFR 888.203 of the proposed rule. Additionally, under § 888.207 of the rule, project owners may continue to request HUD Field Offices to revise AAFs for any area where the application of the AAFs result in rents that are substantially lower than rents charged for comparable unassisted units and it is shown that the costs of operating comparable rental housing have increased at a substantially greater rate than the AAFs. Special adjustments would also continue to be available under the various program regulations to reflect increases in the actual and necessary expenses of owning and maintaining a project that have resulted from substantial general increases in real property taxes, utility rates, assessments, and utilities not covered by regulated rates.

**V. Conducting Project-Specific Comparability Studies**

Section 801(c) also authorizes HUD to apply an alternative method of adjusting rents that by the AAF system where the Secretary determines that the AAF, when applied to a particular project, may result in a material difference between the rents that would be charged at that project for the assisted units and the rents charged for similar unassisted units in the same area. This rule would amend part 888 by adding subpart E to provide the criteria for conducting project-specific comparability studies where the Secretary makes such a determination.

Under § 888.205(c) of the proposed rule, a material difference between the rents of the assisted units and rents of comparable unassisted units would be defined as a dollar amount equal to five percent of the comparable rent plus $1, or the initial difference plus $1, whichever is greater. The initial difference was the dollar amount of the difference between the contract rents approved by HUD at contract execution or cost certification and the published applicable Fair Market Rents (or comparable unassisted rents).

The rule would provide that HUD, or the Contract Administrator, as appropriate, will conduct a project-specific comparability study if there is reason to believe that application of the AAF may result in a material difference between a project's contract rents and rents for unassisted units of similar quality, type, and age in the same market area. Specifically, a comparability study would be conducted if: (1) The most recent financial statement for the project shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the statement, except if the contract does not require the owner to submit an annual financial statement, every two years, unless the owner agrees to provide an audited annual financial statement; or (2) application of the AAF would result in rents of 175 percent or more of the most recently published FMRs for Existing Housing.

*Return on Equity*

The use of a level of return on equity as an indicator is based on the direct relationship between rent levels and surplus cash. When rents are high, relative to expenses, surplus cash is also high. In the unassisted rental market, the effect of market competition on rents limits the level of return. Section 8, HUD regulations, and the HAP contract refer to the unassisted market as a source of information about rent levels. For this reason, HUD believes that comparing levels of return, as an indicator of the need for a more detailed comparison between rent levels, is a useful tool.

The Department determined the level of surplus cash that would be used as an indicator by reviewing "good" return levels in the unassisted market, and adjusting the return percentage by the lower initial equity for HUD-insured mortgages. In its review, HUD found that a level of 10 percent of initial equity is considered "good" in the unassisted market. Adjusted for the lower equity normal for HUD-insured mortgages, a level of 25 percent of initial equity generated as surplus cash will indicate the need for a comparability study.

*Projects whose rents are adjusted automatically.* For projects whose rents are adjusted automatically by the AAFs and whose contracts require the owner to submit an annual financial statement to HUD or the Contract Administrator, HUD (or the Contract Administrator) would conduct a comparability study if the most recent financial statement shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the statement.

For projects whose rents are adjusted automatically by the AAFs but whose contracts do not require the owner to submit an annual financial statement, a comparability study would be conducted every two years. The two-year timeframe would ensure owners that, in the absence of financial data on which to base a decision to perform a comparability study, rents are reviewed on an objective basis. If an owner agrees to provide audited annual financial statements, even though not required by the contract, a comparability study would be conducted only if the most recent financial statement shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the statement.

*Projects whose rents are not adjusted automatically.* For projects whose rents are not adjusted automatically (*i.e.*, the owner must request an adjustment) and

whose contract requires the owner to submit annual financial statements, a comparability study would be conducted if the owner requests an adjustment, and the most recent financial statement shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the statement.

For projects whose rents are not adjusted automatically by the AAFs but whose contract does not require the owner to submit an annual financial statement, a comparability study would be conducted if the owner requests an adjustment and a comparability study has not been completed within the last two years. However, if the owner agrees to provide audited annual financial statements, a comparability study would be conducted only if the owner requests an adjustment and the most recent financial statement shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the statement.

*Percentage of FMRs for Existing Housing*

As an alternative threshold for conducting a comparability study, the Department compared New Construction/Substantial Rehabilitation FMRs with Existing FMRs for selected years over a 15-year period. The comparison shows that New Construction/Substantial Rehabilitation FMRs were 55 to 60 percent higher, based on a weighted national average, than Existing FMRs. The threshold of 175 percent of Existing FMRs would set a reasonable outer limit to indicate the need for a comparability study, even in tight markets.

*Conducting the Comparability Study*

A project owner would be notified in writing if HUD (or the Contract Administrator) determines that a comparability study should be conducted. In conducting the study, HUD would use as similar unassisted units, or comparables, the unassisted projects used as comparables in setting the initial contract rents. Where the original comparables no longer exist, cannot be identified or found, or are no longer similar, HUD would use other unassisted projects of similar quality, type, and age in the same area.

The study would be conducted by appraisers under industry-approved appraisal standards, making adjustments necessary to accommodate any differences between the comparables and the assisted project that significantly affect the amount of rent charged. HUD would also make any allowances necessary to account for added expenses of the assisted project required to comply with HUD regulations that are not required for the comparables. In making this analysis, HUD may compare the costs incurred for compliance by other assisted projects in the area. The Department is specifically seeking comments or suggestions on performing comparability studies in areas where it is difficult to locate comparable unassisted units or to determine the comparable rent. For example, in rural areas there may be no other projects, unassisted or assisted, located near the project, and in urban areas all projects within the area may be government-subsidized or the rents of unassisted projects may be affected by local rent control laws.

If the comparability study reveals that a material difference between rents of the assisted project and the comparables would not result from application of the AAF, the contract rents would be adjusted by applying the full AAF. If the study reveals that a material difference would result from application of the AAF, HUD would allow an increase, if any, only to the level where no material difference would result. (Rents would never be reduced as a result of a comparability study, but may be reduced if a later review of rent adjustments show inaccurate reporting, administrative error, or, for projects under the New Construction or Substantial Rehabilitation programs, the project has been refinanced in such a manner that the periodic payment of the owner has been reduced.)

If no increase or only a limited increase rent is approved by HUD, the comparability study would be provided to the project owner at least 60 calendar days before the project anniversary date or, where owners are required to request rent adjustments, within 30 days of the receipt of the owner's request. The owner would be given 30 calendar days from the date of the notice to appeal the results to the HUD Field Office with jurisdiction over the project. Owners would be required to provide sufficient documentation of the objections to the decision. The Field Office would review the appeal within 15 business days from receipt of the documentation, or within a longer period of time satisfactory to both HUD and the owner. In no event, however, would the Field Office review take longer than 60 calendar days, or the full amount of the AAF would be automatically approved. Appeals from a Field Office decision, and the final review, would be taken to the Regional Office.

## VI. Other Proposals

Section 888.209 of the proposed rule would also clarify HUD's existing policy with regard to special adjustments. As regulations for the various programs provide (see, *e.g.*, 24 CFR 880.609(b)), special adjustments reflect increases in expenses that have resulted from substantial general increases in the actual and necessary expenses of owning and maintaining the assisted units (as described in each program's regulations) that are not adequately compensated for by the AAFs. The dollar amount of the special adjustment is a one-time increase that must be subtracted from the contract rent before application of the AAF in subsequent years and reapproved only if necessary, in whole or in part, before being added to the newly adjusted rent. The subtraction of a special adjustment that is not approved for the following year does not constitute a prohibited reduction of contract rents.

Under the proposed rule, owners would be provided an opportunity to adopt the budgeted rent increase method of adjusting rents by amending the HAP contract, Regulatory Agreement, and other appropriate documents. The budgeted rent increase method of adjusting rents is an effective way to remedy current material differences in rents as well as prevent future ones. That method would base rent adjustments on projected increases in actual project expenses, rather than on an area-wide change factor. It ensures that increases in rents will not exceed those necessary to meet actual changes in project expenses. Because increases in expenditures of assisted units and similar unassisted units in the same area are generally caused by local conditions, future material differences between their rents would most likely be avoided.

## VII. Other Matters

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements:

| Description | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Complete study & notification to owners by contract administrators | 123 | 1 | 123 | 21 | 2,583 |
| Process appeals by contract administrators | 13 | 1 | 13 | 4 | 52 |
| Submission of annual financial statement by owners | 300 | 1 | 300 | 10 minutes | 50 |
| Appeals by owners | 62 | 1 | 62 | 10 | 620 |
| Total annual burden | | | | | 3,305 |

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An environmental assessment is unnecessary, since statutorily required establishment and review of rent schedules that do not constitute a development decision affecting the physical condition of specific project areas or building sites is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*).

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have a potential significant impact on the formation, maintenance, and general well-being of the family and, thus, is not subject to review under that Order. Adjustments in contract rents do not affect the amount of rent a tenant family in Section 8 assisted housing is required to pay, which is an amount based on the tenant family's income.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under that Order. The rule would affect the annual adjustment of contract rents for Section 8 assisted projects.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. Specifically, the rule would govern the procedures under which HUD would conduct comparability studies when adjusting the contract rents of Section 8 assisted projects after a determination by the Secretary that the use of the AAF may result in a material difference between the rents charged for assisted units and unassisted units of similar quality, type, and age in the same area.

This rule was listed as item number 1154 in the Department's Semiannual Agenda of Regulations published at 57 FR 16804 on April 27, 1982, under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 880*

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 881*

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 882*

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 883*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 884*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

*24 CFR Part 886*

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 888*

Grant programs—housing and community development, Rent subsidies.

Accordingly, for the reasons stated in the preamble, chapter VIII of title 24 of the Code of Federal Regulations would be amended as follows:

**CHAPTER VIII—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (SECTION 8 HOUSING ASSISTANCE PROGRAMS AND SECTION 202 DIRECT LOAN PROGRAM)**

**PARTS 880, 881, 883, 884, and 886—[AMENDED]**

1. The authority citations for 24 CFR parts 880, 881, 883, 884, and 886 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, and 1437f; 42 U.S.C. 3535(d).

**§§ 880.609, 881.609, 883.710, 884.109, 886.112 and 886.312 [Amended]**

2. Sections 880.609(b), 881.609(b), 883.710(b), 884.109(c), 886.112(c), and 886.312(c) would be amended by adding the following sentence at the end of each paragraph, to read as follows:

* * * Special adjustments are subject to the provisions of 24 CFR 888.209.

**PART 882—[AMENDED]**

3. The authority citation for 24 CFR part 882 would be revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, and 1437f; 42 U.S.C. 3535(d). Subpart H is also issued under 42 U.S.C. 11361 and 11401.

**§§ 882.108, 882.410, and 882.715 [Amended]**

4. Sections 882.108(a)(2), 882.410(a)(2), and 882.715(a)(2) would be amended by adding the following sentence at the end of each paragraph, to read as follows:

* * * Special adjustments are subject to the provisions of 24 CFR 888.209.

## PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

5. The authority citation for 24 CFR part 888 would be revised, to read as follows:

**Authority:** 42 U.S.C. 1437c and 1437f; 42 U.S.C. 3535(d).

6. Part 888 would be amended by revising the title to read as set forth above and revising subpart B and adding subpart E, to read as follows:

**Subpart B—Contract Rent Automatic Annual Adjustment Factors**

Sec.
888.201 Purpose and methodology.
888.203 Manner of publication.
888.205 Use of AAFs.
888.207 Revised AAFs.
888.209 Special adjustments.

**Subpart E—Comparability Studies**

Sec.
888.501 Applicability.
888.503 Comparability studies.
888.505 Appeals from comparability studies.

### Subpart B—Contract Rent Automatic Annual Adjustment Factors

**§ 888.201 Purpose and methodology.**

(a) *Purpose.* Automatic Annual Adjustment Factors (AAFs) are used to adjust Contract Rents under the Section 8 Housing Assistance Payments program. AAFs are rent change factors derived from annual surveys of rents charged and changes in rents charged over the previous year for similar units in the same area.

(b) *Data sources.* AAFs are calculated using two separate survey sources. The 20 regional AAFs, covering the metropolitan and nonmetropolitan portions of each of the ten HUD regions, are calculated using Random Digit Dialing telephone surveys. Local AAFs are calculated using the Consumer Product Index (CPI) surveys conducted by the Bureau of Labor Statistics.

**§ 888.203 Manner of publication.**

AAFs will be published in the **Federal Register** at least annually by Notice. Interim revisions may be published as market conditions indicate. In the case of revised factors applicable only to specific areas, the HUD Field Office will publish a notice appropriate to the limited scope of the revised factors (see § 888.207).

**§ 888.205 Use of AAFs.**

(a) *Appropriate AAF.* To compute an adjustment to a Contract Rent, find the schedule of AAFs for the appropriate area from the basic schedules.

(1) If the Contract Rent includes all utilities, use the factor shown on the basic schedule for the rent bracket within which the particular Contract Rent falls.

(2) If the Contract Rent does not include all utilities but does include the highest cost utility, use the appropriate factor shown on the basic schedule.

(3) If the Contract Rent does not include any utilities or includes some utilities but not the highest cost utility, use the factor for Contract Rent (Excluding Utilities).

(b) *Application.* The adjusted monthly amount of the Contract Rent of a dwelling unit is determined by multiplying the Contract Rent in Effect on the anniversary date of the contract by the applicable AAF, as described in paragraph (a) of this section, and rounding the result to the next higher whole dollar amount.

(c) *Limitation.* Adjustments of Contract Rents must not result in a material difference between the rents charged for assisted units and unassisted units of similar age, quality, and type in the same market area, except to the extent that the differences existed with respect to the Initial Contract Rents (initial difference).

(1) A material difference between the assisted and comparable unassisted rent is defined as a dollar amount equal to five percent of the comparable rent plus one dollar, or the initial difference plus one dollar, whichever is greater.

(2) An initial difference is defined as the dollar amount by which the initial Contract Rent exceeded the applicable FMR or comparable unassisted rent at Contract execution or cost certification.

**§ 888.207 Revised AAFs.**

If the application of the AAFs results in rents that are substantially lower than rents charged for unassisted units of similar age, quality, and type in the same market area, and it is shown to HUD that the costs of operating comparable rental housing have increased at a substantially greater rate than the AAFs, the HUD Field Office will consider establishing separate or revised AAFs for that particular area. Any request for revision of the factors must be accompanied by an identification of the area, its boundaries, and evidence that the area constitutes the largest contiguous area in which substantially the same rent levels prevail. The HUD Field Office will publish appropriate notice of the establishment of any such revised AAFs. These revised AAFs will remain in effect until superseded by the subsequent publication of AAFs as described in § 888.203.

**§ 888.209 Special adjustments.**

(a) *Use of special adjustment.* A special adjustment is an additional amount granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units, as described in applicable program regulations, which are not adequately compensated for by annual adjustments under this part.

(b) *Subject to comparability.* The amount of any special adjustment is subject to the limitation described in § 888.205 of this part.

(c) *Term of special adjustment.* (1) The dollar amount of a special adjustment is a one-time increase that must be subtracted from the contract rent before application of the AAF in subsequent years and reapproved only if necessary, in whole or in part, before being added to the newly adjusted rent.

(2) The subtraction of a special adjustment that is not approved for the following year does not constitute a reduction of contract rents under § 888.503(g) of this part.

### Subpart E—Comparability Studies

**§ 888.501 Applicability.**

This subpart applies to projects whose contract rents are adjusted under subpart B of this part, and that are governed under the following regulations: New Construction (24 CFR part 880); Substantial Rehabilitation (24 CFR part 881); State Finance Agencies (24 CFR part 883); Section 515 Farmers Home Administration (24 CFR part 884); Section 202 Elderly or Handicapped Housing (24 CFR part 885); and Special Allocations (24 CFR part 886, subpart A (Loan Management Set-Aside) and subpart C (Property Disposition)).

**§ 888.503 Comparability studies.**

(a) *When a comparability study will be conducted.* For the purpose of determining whether a material difference, as described in § 888.205(c) of this part, will result from application of the AAF, HUD (or the Contract Administrator) will conduct a comparability study in the following instances:

(1) (i) For projects whose rents are adjusted automatically by the AAFs and whose owners are required to submit Annual Financial Statements to HUD or the Contract Administrator: If the most recent financial statement shows that more than 25 percent of initial equity was generated in surplus cash during

the period covered by the financial statement;

(ii) For projects whose rents are adjusted automatically by the AAFs and whose owners are not required to submit Annual Financial Statements to HUD or the Contract Administrator: Every two years; or, if the owner agrees to provide audited annual financial statements to HUD or the Contract Administrator, if the most recent financial statement shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the financial statement;

(iii) For projects whose rents are not adjusted automatically by the AAFs and whose owners are required to submit Annual Financial Statements to HUD or the Contract Administrator: If the owner requested an adjustment, and the most recent annual financial statement shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the financial statement;

(iv) For projects whose rents are not adjusted automatically by the AAFs and whose owners are not required to submit Annual Financial Statements to HUD or the Contract Administrator: If the owner requests an adjustment and a comparability study has not been completed within the last two years; or, if the owner agrees to provide audited annual financial statements to HUD or the Contract Administrator, if the owner requested an adjustment, and the most recent financial statement shows that more than 25 percent of initial equity was generated in surplus cash during the period covered by the financial statement; or

(2) If application of the AAF would result in rents 175 percent or more than the most recently published Fair Market Rent for Existing Housing, as described in §§ 888.113 and 888.115 of this part.

(b) *Notice to project owner.* HUD, or the Contract Administrator, will notify the project owner in writing of its intention to conduct a comparability study.

(c) *Conducting a comparability study.* (1) In conducting a comparability study, the project's Contract Rents, as adjusted by the AAFs, will be compared to rents charged for unassisted units of similar quality, type, and age in the same market area, or comparables. Where possible, the unassisted projects used as comparables in setting the initial Contract Rents will be used as comparables for the comparability study. Where the original comparables no longer exist, cannot be identified or found, or are no longer similar, other unassisted projects of similar quality, type, and age in the same area will be used as comparables.

(2) Comparability studies will be conducted by appraisers under industry-approved appraisal standards, making adjustments necessary to accommodate any differences between the comparables and the assisted project that significantly affect the amount of rent charged. The appraisers will take into account any additional operating expenses incurred by assisted projects necessary to comply with HUD regulations. In making this analysis, other assisted projects in the area may be used as comparables.

(d) *Where a material difference would not result.* Where the results of a comparability study show that a material difference would not result from application of the full AAF, the Contract Rent will be adjusted by the full AAF.

(e) *Where a material difference would result.* Where the results of a comparability study show that a material difference would result from application of the AAFs, the Contract Rent will be set at $1 below the level at which a material difference occurs.

(f) *Budgeted rent increase method.* As an alternative to adjusting Contract Rents by use of the AAFs, the owner may at any time choose to amend the Housing Assistance Payments Contract, Regulatory Agreement, and other appropriate documents to adopt the budgeted rent increase method of adjusting rents.

(g) *Reduction of Contract Rents.* Contract Rents will never be reduced as a result of a comparability study, but may be reduced if a review reveals inaccurate reporting, administrative error, or, for projects under the Section 8 New Construction and Substantial Rehabilitation programs, the project has been refinanced in such a manner that the periodic payment of the owner has been reduced.

**§ 888.505 Appeals from comparability studies.**

(a) *Results of comparability study provided to owner.* If no increase or only a limited increase in Contract Rents is approved by HUD after a comparability study is conducted under § 888.503 of this part, a notice showing the results of the study will be provided to the project owner at least 60 calendar days before the project anniversary date.

(b) *Appeal to Field Office.* (1) Appeals of the decision to disapprove a full adjustment under the AAF must be made within 30 calendar days from the date of the notice to the appropriate HUD Field Office. Sufficient documentation must be provided of any objections to the decision.

(2) The Field Office will review the appeal within 15 business days from receipt of the documentation, or within a longer period of time satisfactory to both HUD and the owner. In no event, however, will the Field Office review be longer than 60 calendar days, or the full amount of the AAF will be automatically approved.

(c) *Appeal to Regional Office.* Final appeals from a Field Office decision may be made to the appropriate HUD Regional Office.

Dated: October 23, 1992.

**Arthur J. Hill,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 92-26187 Filed 10-28-92; 8:45 am]

BILLING CODE 4210-27-M

Federal Register

Thursday
October 29, 1992

# Part III

# Department of Labor

## Wage and Hour Division

29 CFR Part 578

**Minimum Wage and Overtime Violations: Civil Money Penalties; Final Rule**

**DEPARTMENT OF LABOR**

**Wage and Hour Division**

**29 CFR Part 578**

## Minimum Wage and Overtime Violations; Civil Money Penalties

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** This document provides the final regulations implementing the civil money penalty provisions of the 1989 Amendments to the Fair Labor Standards Act of 1938 (FLSA), which were signed into law on November 17, 1989.

**DATES:** These rules are effective November 30, 1992.

**FOR FURTHER INFORMATION CONTACT:** Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8412. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

### I. Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements.

### II. Background

The Fair Labor Standards Amendments of 1989 were enacted into law on November 17, 1989. Among other provisions, the Amendments amended section 16(e) of the Act, 29 U.S.C. 216(e), to provide for assessment of civil money penalties not to exceed $1,000 against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of FLSA for each such violation. These regulations define certain statutory terms and set forth the criteria to be used by the Administrator in determining the penalty to be assessed.

Proposed regulations, 29 CFR part 578, were published in the **Federal Register** on June 3, 1991 (56 FR 25168), with a comment period that closed August 2, 1991. Seven comments were received during the comment period on the proposed regulations from representatives of employers, trade associations, and individuals. The major issues raised by the commenters are identified below, as are the significant changes that have been made in the final regulatory text in response to the comments received.

Procedural regulations for assessing and contesting these civil money penalties, as well as civil money penalties for violations of the child labor provisions of the Act, are set forth at 29 CFR part 580, published in the **Federal Register** on May 31, 1991 (56 FR 24990). Under the provisions of those regulations, employers who wish to contest a determination by the Administrator to assess a civil money penalty have the right to take exception to the assessment and the right to request a hearing on the Administrator's determination before an Administrative Law Judge (ALJ). In such ALJ proceedings, it is the Administrator's burden to establish through reliable, supporting evidence that an employer has committed a repeated or willful violation of the Act within the meaning of these regulations.

### III. Discussion of Major Comments Received

As a preliminary matter, one commenter stated that the Department has no authority to issue these regulations because the 1989 FLSA Amendments did not specifically authorize the issuance of regulations under the civil penalty provisions. This commenter stated that the only reference to regulations in section 16(e) relates to administrative procedures only. The Department is of the view that the section 16(e) regulatory authority includes the authority to issue the regulations in this part. In any event, the Department has the implied power to issue rules as part of its enforcement and implementation of the statute. *United States* v. *Markgraf*, 736 F. 2d 1179 (7th Cir. 1984); *American Trucking Association, Inc.* v. *United States*, 688 F. 2d 1337 (11th Cir. 1982), cert. den., 467 U.S. 1240 (1984). In fact, some courts have held that it would be arbitrary and capricious for an agency to fail to issue standards for the exercise of its discretion. See cases cited at *Industrial Holographics, Inc.* v. *Donovan* 722 F. 2d 1362, 1367 n.9 (7th Cir. 1983).

*"Repeated" Violations*

All of the commenters were critical of one or more aspects of the procedures proposed to determine a "repeated" violation. The major area of concern expressed was the provision in § 578.3(b)(i) whereby the Administrator would issue a finding of a violation which conclusively established such violation for purposes of the civil money penalty provisions, unless specifically disputed in writing by the employer. It was proposed that such finding would constitute a prima facie case that the employer had previously violated either section 6 or section 7 of the Act at any hearing on subsequent civil money penalty assessments. The objections to this proposal included allegations of lack of due process, inadequate notice to the employer of the nature of the findings, and insufficient time for an employer's response to a finding by the Administrator. After reexamination and consideration of these comments and the complexity of the proposed procedure, the Wage and Hour Division has decided not to implement the proposed procedure at this time. Instead, the burden will be on the Administrator, as in other proceedings, to establish both the violation at issue and the previous violation. The regulation has been revised accordingly.

Several commenters urged that the regulations be changed so that only an identical minimum wage or overtime violation be considered a "repeated" violation, and that the statute should not be read to allow the finding of a repeated violation on the basis of a previous violation of either the minimum wage or overtime provisions. The legislative history of this provision provides that "granting the Secretary the authority to assess fines for flagrant violations will act as a deterrent to potential violators" (House Report No. 101-260, September 26, 1989, p. 25, reprinted in [1989] U.S. Code Cong. & Ad. News 713). That purpose is best served by the proposed definition of "repeated." For example, it is the experience of the Wage and Hour Division that the same or similar practices or conduct of an employer can produce a violation of either or both minimum wage and overtime provisions. An employer who improperly fails to count as working time certain preliminary or concluding work activities can violate either the minimum wage and overtime provisions of the Act or both (depending on the employee's rate of pay and whether the unrecorded working time, when added to the paid time, exceeds 40 hours in the workweek). An employer who improperly asserts exempt status under FLSA's executive, administrative, or professional employee exemption (FLSA section 13(a)(1) and Regulations, 29 CFR part 541) for an employee paid a weekly salary of $200 who works 50 hours each week would likewise violate both the minimum wage and overtime provisions. An employer should not escape liability when the same proscribed conduct is done a second time.

Several commenters urged that a repeated violation not be charged to multi-establishment employers when the violations occurred at different establishments. There is nothing, however, in the statute which relieves

an employer from liability for civil money penalties in such a situation. A different approach would encourage employers to not take responsibility for the actions of their establishments, and to fail to take steps to ensure that violations do not recur. However, this is one of the considerations which may be taken into account, in reviewing the employer's previous history of violations, in determining the amount of the penalty pursuant to § 578.4(b)(3).

Other commenters suggested that the Department adopt a statute of limitations or maximum time period for establishing a repeated violation. It is the Department's view that such a maximum period is not appropriate in the regulations, because there is no such limitation in the statute. However, it is anticipated that the length of time since the previous violation will be taken into consideration in determining whether to assess a civil money penalty and, as a part of reviewing the previous history of violations, in determining the size of the penalty pursuant to § 578.4(b)(3).

One commenter suggested that the Department should not consider final State court decisions as establishing prior violations, but only decisions of federal courts. The FLSA, in section 16(b), specifically authorizes private actions "in any Federal or State court of competent jurisdiction." Thus, final State court decisions are equally authoritative and the Department may use them as a basis for finding a repeated violation.

*"Willful" Violations*

One commenter questioned the inclusion within the proposed definition of a "willful" violation an employer's "deliberate indifference" toward the requirements of the Act. The definition of a "willful" violation is based on the decision in *McLaughlin* v. *Richland Shoe,* 486 U.S. 128 (1988), in which the Supreme Court defined a "willful" violation of the FLSA for purposes of the 3-year statute of limitations for recovery of back wages contained in section 6 of the Portal-to-Portal Act. The Court rejected the "in the picture" standard for a willful violation in favor of a standard of employer knowledge of whether its conduct was prohibited by the Act or a showing of reckless disregard regarding whether its conduct was prohibited by the statute. Although in the judgment of the Department "deliberate indifference" clearly would constitute "reckless disregard," the subject language is deleted from the final regulation.

One commenter suggested that the term used in § 578.3(c)(1), "requirements of the Act," is at variance with the Court's language in *Richland Shoe* of "prohibited by the statute." However, these are alternative ways of saying the same thing, i.e., when overtime is required by the Act to be paid, the employer is prohibited by the statute from not paying it.

The other major issue which generated comments was the provision in § 578.3(c)(2) that would hold a violation to be "willful" if an employer's actions are at variance with advice from the Administrator. Several commenters construed this provision as creating a willful violation on the basis of negligent, as opposed to reckless, conduct by the employer, which was rejected in *Richland Shoe.*

It is the view of the Department that where an employer acts contrary to advice that the employer has received from the Wage and Hour Division, such action cannot be deemed merely negligent, but rather constitutes a willful act. The regulation has been revised to make clear that an employer's conduct is deemed "knowing" if the employer has previously been advised by a responsible official of the Wage and Hour Division that the employer's conduct in question is not lawful. Similarly, an employer's conduct is deemed to be in reckless disregard of the Act's requirements if the employer should have inquired further into whether its conduct was in compliance with the Act and the employer fails to make adequate further inquiry.

*Executive Order 12291*

This rule is not considered to be a "major rule" within the meaning of Executive Order 12291, in that it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

*Regulatory Flexibility Analysis*

Only persons who have repeatedly or willfully violated the minimum wage and overtime requirements of the Act will be affected by this rule. Furthermore, penalties will be assessed only in the amount of up to $1000 for each such violation, and the assessment will take into consideration the size of the employer's business. Accordingly, the Department has determined that this regulation will not have a significant economic impact on a substantial number of small entities. The Secretary has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

**List of Subjects in 29 CFR Part 578**

Employment, Labor, Law enforcement, Penalties.

Signed at Washington, DC on this 23rd day of October, 1992.

**Lynn Martin,**

*Secretary of Labor.*

**Judith A. Sotherlund,**

*Deputy Assistant Secretary for Employment Standards.*

**Karen R. Keesling,**

*Acting Administrator, Wage and Hour Division.*

Accordingly, Title 29, Chapter V, Subchapter A, of the Code of Federal Regulations is amended by adding a new part 578 to read as set forth below:

## PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

Sec.
578.1 Purpose and scope
578.2 Definitions
578.3 Violations for which penalty may be assessed
578.4 Determination of penalty

**Authority:** Sec. 9, Pub. L. 101–157, 103 Stat. 938, sec. 3103, Pub. L. 101–508, 104 Stat. 1388-29 (29 U.S.C. 216(e)).

### § 578.1 Purpose and scope.

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to subject any person who repeatedly or willfully violates section 6 or section 7 of the Act to a civil money penalty not to exceed $1,000 for each such violation. This part defines terms necessary for administration of the civil money penalty provisions, describes the violations for which a penalty may be imposed, and describes criteria for determining the amount of penalty to be assessed. The procedural requirements for assessment and contest of such penalties are set forth in 29 CFR part 580.

**§ 578.2 Definitions.**

(a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 (29 U.S.C. 201 et seq.));

(b) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division who is authorized by the Administrator to perform any of the functions of the Administrator under this part.

(c) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

**§ 578.3 Violations for which penalty may be assessed.**

(a) A penalty of up to $1,000 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalty shall be determined by application of the criteria in § 578.4.

(b) *Repeated violations.* An employer's violation of section 6 or section 7 of the Act shall be deemed to be "repeated" for purposes of this section:

(1) Where the employer has previously violated section 6 or 7 of the Act, provided the employer has previously received notice, through a responsible official of the Wage and Hour Division or otherwise authoritatively, that the employer allegedly was in violation of the provisions of the Act; or

(2) Where a court or other tribunal has made a finding that an employer has previously violated section 6 or 7 of the Act, unless an appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or unless the finding has been set aside or reversed by such appellate tribunal.

(c) *Willful violations.* (1) An employer's violation of section 6 or section 7 of the Act shall be deemed to be "willful" for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.

(2) For purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question if not lawful.

(3) For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer shall have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

**§ 578.4 Determination of penalty.**

(a) In determining the amount of penalty to be assessed for any repeated or willful violation of section 6 or section 7 of the Act, the Administrator shall consider the seriousness of the violations and the size of the employer's business.

(b) Where appropriate, the Administrator may also consider other relevant factors in assessing the penalty, including but not limited to the following:

(1) Whether the employer has made efforts in good faith to comply with the provisions of the Act and this part;

(2) The employer's explanation for the violations, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(3) The previous history of violations, including whether the employer is subject to injunction against violations of the Act;

(4) The employer's commitment to future compliance;

(5) The interval between violations;

(6) The number of employees affected; and

(7) Whether there is any pattern to the violations.

[FR Doc. 92-26199 Filed 10-28-92; 8:45 am]

BILLING CODE 4510-27-M

# Reader Aids

Federal Register

Vol. 57, No. 210

Thursday, October 29, 1992

## INFORMATION AND ASSISTANCE

**Federal Register**

| | |
|---|---|
| Index, finding aids & general information | 202-523-5227 |
| Public inspection desk | 523-5215 |
| Corrections to published documents | 523-5237 |
| Document drafting information | 523-3187 |
| Machine readable documents | 523-3447 |

**Code of Federal Regulations**

| | |
|---|---|
| Index, finding aids & general information | 523-5227 |
| Printing schedules | 512-1557 |

**Laws**

| | |
|---|---|
| Public Laws Update Service (numbers dates, etc.) | 523-6641 |
| Additional information | 523-5230 |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the Presidents | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**The United States Government Manual**

| | |
|---|---|
| General information | 523-5230 |

**Other Services**

| | |
|---|---|
| Data base and machine readable specifications | 523-3447 |
| Guide to Record Retention Requirements | 523-3187 |
| Legal staff | 523-4534 |
| Privacy Act Compilation | 523-3187 |
| Public Laws Update Service (PLUS) | 523-6641 |
| TDD for the hearing impaired | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, OCTOBER

45261-45558 ..... 1
45559-45708 ..... 2
45709-45972 ..... 5
45973-46078 ..... 6
46079-46294 ..... 7
46295-46476 ..... 8
46477-46746 ..... 9
46747-46948 ..... 13
46949-47252 ..... 14
47253-47398 ..... 15
47399-47554 ..... 16
47555-47754 ..... 19
47755-47974 ..... 20
47975-48160 ..... 21
48161-48304 ..... 22
48305-48434 ..... 23
48435-48556 ..... 26
48557-48710 ..... 27
48711-48928 ..... 28
48929-49130 ..... 29

## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
5437 (See Presidential Determination No. 93-3 of October 7, 1992) ..... 47557
5928 (See DOJ final rule of Sept. 21, 1992) ..... 47257
6482 ..... 45961
6483 ..... 45963
6484 ..... 45965
6485 ..... 46747
6486 ..... 46749
6487 ..... 47245
6488 ..... 47247
6489 ..... 47249
6490 ..... 47251
6491 ..... 47553
6492 ..... 47559
6493 ..... 47560
6494 ..... 47755
6495 ..... 47975
6496 ..... 48301
6497 ..... 48715
6498 ..... 48717

**Executive Orders:**
12479 (Revoked by EO 12816) ..... 47562
12722 (See EO 12817) ..... 48431
12724 (See EO 12817) ..... 48431
12735 (See Dept of Commerce interim rule of Oct. 15) ..... 48312
(See State Dept. final rule of Sept. 16) ..... 48315
12775 (Continued by Notice of September 30, 1992) ..... 45557
12779 (Continued by Notice of September 30, 1992) ..... 45557
12813 (Amended by EO 12815) ..... 45709
12815 ..... 45709
12816 ..... 47562
12817 ..... 48431
12818 ..... 48713

**Administrative Orders:**
Notices:
September 30, 1992 ..... 45557
October 25, 1992 ..... 48719

Presidential Determinations:
No. 92-26 of May 20, 1992 ..... 48711
No. 92-48 of September 30, 1992 ..... 46751
No. 92-49 of September 30, 1992 ..... 46753
No. 93-1 of October 2, 1992 ..... 47253
No. 93-2 of October 5, 1992 ..... 47555
No. 93-3 of October 7, 1992 ..... 47557

**5 CFR**

630 ..... 45261
890 ..... 48161
2635 ..... 48557

**Proposed Rules:**
335 ..... 47279
831 ..... 46512
835 ..... 45753
837 ..... 46512
841 ..... 46512
842 ..... 46512
844 ..... 46512
846 ..... 46512

**7 CFR**

51 ..... 48929
55 ..... 47565
56 ..... 47565
59 ..... 47565
70 ..... 47565
275 ..... 47163
319 ..... 47977
354 ..... 46949
400 ..... 46295
729 ..... 46477
905 ..... 47255, 48435
907 ..... 48437
908 ..... 48437
915 ..... 48557, 48930
916 ..... 45559
917 ..... 45559, 48438
920 ..... 45973, 46243
945 ..... 48931
946 ..... 48439
948 ..... 45560
955 ..... 45974
966 ..... 48441
967 ..... 48931
979 ..... 48442
981 ..... 48931
984 ..... 48443
987 ..... 45975, 48934
989 ..... 48445, 48448
993 ..... 48931
998 ..... 48936
1065 ..... 45562, 45563
1097 ..... 48449
1099 ..... 48449
1106 ..... 48938

1124 ... 47568
1126 ... 46079
1137 ... 45564
1421 ... 46477
1494 ... 45262
1951 ... 47257
1980 ... 45968
**Proposed Rules:**
56 ... 48569
59 ... 48569
319 ... 47573, 48851
735 ... 45993
736 ... 45993
737 ... 45993
738 ... 45993
739 ... 45993
740 ... 45993
741 ... 45993
742 ... 45993
907 ... 48340
910 ... 45581, 48023
944 ... 45754
958 ... 45993
1001 ... 48575
1004 ... 48575
1030 ... 45995
1098 ... 45996
1106 ... 45583
1108 ... 48025
1124 ... 48575
1260 ... 47576
1413 ... 48748

**8 CFR**
287 ... 47257
**Proposed Rules:**
242 ... 47011
287 ... 47011

**9 CFR**
**Proposed Rules:**
94 ... 47578

**10 CFR**
30 ... 45566
35 ... 45566, 48305
50 ... 47978
**Proposed Rules:**
20 ... 48474
21 ... 48474
30 ... 48474
31 ... 48474
32 ... 48474
34 ... 46345
35 ... 46522, 48474
40 ... 48474, 48479
50 ... 47802
52 ... 47802
61 ... 48474
100 ... 47802
170 ... 46818
171 ... 46818

**11 CFR**
102 ... 47258
**Proposed Rules:**
110 ... 46346
114 ... 46346

**12 CFR**
4 ... 48450
5 ... 46081
11 ... 46081
16 ... 46081
207 ... 48939
210 ... 46950
220 ... 48939
221 ... 48939
224 ... 48939
229 ... 46956
230 ... 46480
308 ... 48426
325 ... 48426
327 ... 45263
328 ... 45977
506 ... 45977, 48942
545 ... 48942
563 ... 45977, 46085
563g ... 46085
611 ... 46480
614 ... 46755
615 ... 46480, 46755
619 ... 46755
627 ... 46480
700 ... 47983
1615 ... 48949
**Proposed Rules:**
1 ... 45756
5 ... 47280
16 ... 47280
220 ... 47580
330 ... 49026
545 ... 46098
563 ... 46098
567 ... 45757, 46098
571 ... 46098
607 ... 47288
612 ... 46819
617 ... 46819
618 ... 47288
710 ... 47999
935 ... 45338
940 ... 45338

**13 CFR**
102 ... 48306
122 ... 48309
**Proposed Rules:**
120 ... 46523

**14 CFR**
21 ... 46243, 47986
29 ... 47986
36 ... 46243
39 ... 46755-46772, 47399-47406, 47569, 47570, 47757, 47762, 47987, 47991, 48957, 48959, 48961-48963, 48966, 48967
71 ... 45981-45983, 46089, 46975-46977, 47175, 47764, 47765, 47992
73 ... 46979, 46980, 47765
91 ... 46944
93 ... 47993
97 ... 46774, 46776
121 ... 48658
135 ... 48658
**Proposed Rules:**
21 ... 46821, 47295
25 ... 46821
29 ... 47295
33 ... 47934, 49034
35 ... 47297
39 ... 45584-45586, 46348, 47299-47302, 47414, 47580, 48002, 48003, 48474, 48478, 48754, 48755, 49036, 49038
71 ... 45660, 45997
135 ... 48666
207 ... 48193
208 ... 48193
212 ... 48193
221 ... 47303
294 ... 48193
298 ... 48193
380 ... 48193
389 ... 47303, 48193
1260 ... 47944

**15 CFR**
4 ... 48969
770 ... 48312
799 ... 48312
1150 ... 48451
**Proposed Rules:**
Ch. VII ... 46838

**16 CFR**
1500 ... 46624
**Proposed Rules:**
4 ... 45676
435 ... 45998
1500 ... 46349
1505 ... 46349
1700 ... 47020

**17 CFR**
180 ... 46090
200 ... 48970
210 ... 45287, 47408
228 ... 48125
229 ... 47408, 48125
230 ... 47408, 48721, 48970
239 ... 48970
240 ... 45287, 47408, 48125, 48276, 48970
249 ... 45287, 47408, 48125, 48276, 48970
259 ... 45287
260 ... 47408
274 ... 45287
**Proposed Rules:**
1 ... 45999, 46101, 47896, 48480
4 ... 47821
30 ... 46101
33 ... 46101
180 ... 46101
190 ... 46101
240 ... 48581, 49039

**18 CFR**
2 ... 46487
11 ... 48454
284 ... 46487, 46496
**Proposed Rules:**
346 ... 48005
381 ... 48005
401 ... 46354

**19 CFR**
10 ... 46502
19 ... 47409
111 ... 48978
113 ... 47409
122 ... 47163
144 ... 47409
**Proposed Rules:**
10 ... 45758, 46112, 47582
101 ... 47583
112 ... 49049
125 ... 49049
146 ... 49049
152 ... 48347
191 ... 46113

**20 CFR**
404 ... 45878
416 ... 46431, 48559
**Proposed Rules:**
404 ... 47415, 47584, 48851
416 ... 47415, 48851

**21 CFR**
5 ... 45294
178 ... 48723, 48978
310 ... 45310, 46067
510 ... 45984, 48162
520 ... 45984, 48162
558 ... 46504
**Proposed Rules:**
Ch. I ... 48008
10 ... 47314
101 ... 47319
201 ... 47423
808 ... 47314
864 ... 46068
872 ... 46068
1401 ... 45353

**22 CFR**
121 ... 48315
514 ... 46676
**Proposed Rules:**
514 ... 46679, 47585

**24 CFR**
91 ... 46068
203 ... 46980, 47966
204 ... 46980
888 ... 45468
**Proposed Rules:**
10 ... 47166
880 ... 49120
881 ... 49120
882 ... 49120
883 ... 49120
884 ... 49120
886 ... 49120
888 ... 49120

**25 CFR**
101 ... 46470
103 ... 46470

**26 CFR**
1 ... 45568, 45660, 45711, 45878, 46243, 47373, 47994, 48163, 48426, 48562, 48722, 48851, 48980, 49117
5c ... 47373
5f ... 47373
5h ... 47373
6 ... 47373
7 ... 47373
7a ... 47373
10 ... 47373
13 ... 47373
14 ... 47373
18 ... 47373
19 ... 47373
31 ... 48163, 48724
40 ... 48174
43 ... 45713, 48174
44 ... 48174
46 ... 48174
48 ... 48174
49 ... 48174
51 ... 48174
145 ... 48174
148 ... 48174

150 ... 48174
301 ... 47373
602 ... 45711, 46243, 47373, 48174, 48980, 49117
**Proposed Rules:**
1 ... 45587, 46355, 46525, 47373, 47427, 47428, 48193, 48194, 48487, 48584, 48757
5h ... 48584
301 ... 45759, 46355
602 ... 48487

**27 CFR**

**Proposed Rules:**
4 ... 48487
9 ... 45588
17 ... 45357
19 ... 45357
70 ... 45357
170 ... 45357
194 ... 45357
197 ... 45357
250 ... 45357, 47319
251 ... 47319
252 ... 47320

**29 CFR**

541 ... 46742, 47163
578 ... 49128
1602 ... 45570
2550 ... 46906
2602 ... 45713
2610 ... 47258
2615 ... 48317
2622 ... 47258
2644 ... 47260
2676 ... 47260
**Proposed Rules:**
34 ... 47690, 48009
103 ... 47023
1910 ... 47746
1926 ... 47746
2647 ... 48348

**30 CFR**

914 ... 45985, 48724
917 ... 45295
918 ... 48726
938 ... 48733
950 ... 48984
**Proposed Rules:**
18 ... 48350
56 ... 47524
57 ... 47524
75 ... 48350
256 ... 47824
724 ... 47431
772 ... 47431
816 ... 47431
817 ... 47431
846 ... 47431
913 ... 48757
914 ... 48759, 48761
916 ... 49051
920 ... 48762
931 ... 48764
935 ... 48765
948 ... 49052

**31 CFR**

**Proposed Rules:**
10 ... 46356
203 ... 48584

**32 CFR**

67 ... 48187
179 ... 48187
317 ... 48992
619 ... 47572
706 ... 46299
**Proposed Rules:**
287 ... 48768
505 ... 47825
623 ... 46246

**33 CFR**

1 ... 48319
100 ... 45570, 45985, 46300, 47766
117 ... 46301, 46302, 46505
147 ... 48456
165 ... 46506-46508, 47261, 47766, 47768, 48188
334 ... 46303
**Proposed Rules:**
110 ... 47431, 47432
117 ... 46361, 47321, 48488
151 ... 45591
155 ... 48489
164 ... 45662-45667
165 ... 45596

**34 CFR**

300 ... 48694
301 ... 48694
600 ... 47752
668 ... 47752

**36 CFR**

51 ... 46509
1254 ... 46304
1258 ... 46304

**37 CFR**

202 ... 45307

**38 CFR**

1 ... 47262
21 ... 46984
**Proposed Rules:**
3 ... 48350
21 ... 47023, 47024
36 ... 47433

**39 CFR**

20 ... 45570
111 ... 45882, 47264

**40 CFR**

35 ... 45311
52 ... 45715, 46306, 46778, 46780, 48457, 48459
60 ... 48563
61 ... 48563
80 ... 46316, 47769
81 ... 48461
146 ... 46292
180 ... 47994, 48327, 48736, 48737
186 ... 47994
261 ... 47376
268 ... 47772
271 ... 45514, 45717-45722, 47376, 47996
272 ... 45575, 47265
300 ... 47180
302 ... 47376
721 ... 46458
**Proposed Rules:**
Ch. I ... 45597, 48490, 49054
51 ... 46114, 48492
52 ... 45358, 45360, 47896, 48352, 48492
58 ... 46003
63 ... 45363
180 ... 48009, 48769
264 ... 48195
265 ... 48195
270 ... 48195
271 ... 48195
300 ... 45597, 45599, 46527, 47204, 47585
308 ... 46527
372 ... 48706

**41 CFR**

101-16 ... 46317
101-26 ... 47726
101-37 ... 48328
**Proposed Rules:**
60-741 ... 48084

**42 CFR**

57 ... 45725
Ch. 101 ... 46985
412 ... 46509, 47779
413 ... 46509
466 ... 47779
435 ... 46093
447 ... 46431
**Proposed Rules:**
100 ... 49055
Ch. IV ... 47587
417 ... 46119
531 ... 46362
440 ... 46362
442 ... 46362
488 ... 46362
489 ... 46362
498 ... 46362

**43 CFR**

**Public Land Orders:**
1567 (Revoked in part by PLO 6948) ... 45325
5712 (Revoked by PLO 6946) ... 45322
6944 ... 45321
6946 ... 45322
6948 ... 45324
6949 ... 45576
6950 ... 45725
6951 ... 47410
**Proposed Rules:**
426 ... 47437

**44 CFR**

64 ... 47266, 47268
65 ... 47787, 47788
67 ... 47790
**Proposed Rules:**
67 ... 47825

**45 CFR**

205 ... 46782, 46988
250 ... 46988
302 ... 46988
304 ... 46988
307 ... 46988
1224 ... 45325
1305 ... 46718

**46 CFR**

1 ... 48320
35 ... 48320
77 ... 48320
96 ... 48320
108 ... 48320
160 ... 48320
167 ... 48320
169 ... 48320
195 ... 48320
514 ... 46318, 49019
581 ... 46318, 49019
**Proposed Rules:**
15 ... 48544
28 ... 48670
35 ... 45667
197 ... 46126
514 ... 47589
525 ... 47025
530 ... 47025
540 ... 47830
552 ... 48770
572 ... 47600
580 ... 47589
581 ... 47589, 47600
583 ... 47589

**47 CFR**

0 ... 48332
1 ... 47006, 47410, 48333
2 ... 49020
21 ... 49020
22 ... 49020
68 ... 48333
73 ... 45577-45579, 46325, 46812, 46813, 47006, 47007, 48332
87 ... 45748
90 ... 45751, 47793, 48191, 48738
94 ... 49020
**Proposed Rules:**
2 ... 48353, 48775, 48776
13 ... 47027
21 ... 48353, 48776
22 ... 48353, 48776
63 ... 46366
73 ... 45601, 46132, 46367-46369, 46839, 47027, 47028, 48494, 49055-49058
90 ... 47601, 49058
94 ... 48353, 48776

**48 CFR**

25 ... 48470
30 ... 45422, 47373
52 ... 45878
202 ... 45422
204 ... 45422
208 ... 45422
210 ... 45422
214 ... 45326
215 ... 45422
216 ... 45422
219 ... 45422, 47270
223 ... 45422
225 ... 45422
226 ... 45422
227 ... 45422
228 ... 45422
231 ... 45422
232 ... 45422
236 ... 45422
237 ... 45422
239 ... 45422
242 ... 45422
245 ... 45422
252 ... 45422, 47270
253 ... 45422
900 ... 48471
923 ... 48471

970.....48471
**Proposed Rules:**
1512.....46007
1516.....46007
1552.....46007
1837.....47602
1852.....47602
5415.....45759
5452.....45759
9903.....47438

**49 CFR**

71.....48336
107.....45446, 48739
171.....45442, 45446, 47412, 47513, 48739
172.....45446, 46624, 47513, 48739
173.....45446, 47513, 48739
174.....45446, 48739
175.....48739
176.....45446, 48739
177.....45446, 47513, 48739
178.....45446
179.....45446
180.....45446
214.....45446
571.....45327, 45422, 47007, 47793
572.....47009
665.....46814
1023.....45751
**Proposed Rules:**
217.....47603
218.....48494
220.....47603
391.....48011
531.....48777
552.....45759
571.....45760
572.....48779
604.....48924
1039.....45602, 49354
1145.....48354

**50 CFR**

17.....45328, 46325, 46340, 48741
217.....46815
222.....46815
227.....45986, 46815, 47276
285.....45579, 47412
603.....47800
611.....48564
642.....47998
651.....48473
661.....45751
662.....48191
663.....45987, 46097, 47413
672.....45580, 45988, 46344, 46510, 46816, 47010, 47277, 47572, 48568
675.....46511
685.....45989, 48564
**Proposed Rules:**
17.....45761, 45762, 46007, 46528, 46840, 47028, 47833, 48495
216.....47606
218.....47606
222.....47606
611.....47040
651.....46840
652.....48589
663.....49060
672.....46133, 47321
675.....45602, 46133, 46139, 48426
685.....47040

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

**H.R. 5006/P.L. 102-484**

National Defense Authorization Act for Fiscal Year 1993. (Oct. 23, 1992; 106 Stat. 2315; 456 pages)

**H.R. 6050/P.L. 102-485**

Depository Institutions Disaster Relief Act of 1992. (Oct. 23, 1992; 106 Stat. 2771; 5 pages)

**Last List October 28, 1992**

## ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** Service for Public Law Numbers is available on 202-275-1538 or 275-0920.