11-19-92
Vol. 57 No. 224
Pages 54485-54676

# Federal Register

Thursday
November 19, 1992

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

### ALBUQUERQUE, NM

**WHEN:** December 8, at 9:00 am
**WHERE:** University of New Mexico
Continuing Education Bldg., Room I
1634 University Blvd., NE
Albuquerque, NM
**RESERVATIONS:** Julie Stone
505–768–3532

### WASHINGTON, DC

**WHEN:** November 30, at 9:00 am
**WHERE:** Office of the Federal Register
Seventh Floor Conference Room
800 North Capitol Street, NW, Washington, DC
**RESERVATIONS:** 202–523–4534

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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.

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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 300 and 319

[Docket No. 88-143-2]

RIN 0579-AA12

### Importation of Fruits and Vegetables

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world, and to allow seven kinds of currently imported fruits and vegetables to enter the United States from certain parts of the world under less restrictive conditions. Some of the fruits and vegetables will be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. In addition, all of the fruits and vegetables, as a condition of entry, will be subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. This action will provide the United States with additional kinds of sources of fruits and vegetables, while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8295.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 7 CFR 319.56 *et seq.* (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within the United States.

On June 15, 1992, we published a document in the **Federal Register** (57 FR 26620-26629, Docket No. 88-143-1) in which we proposed to revise the regulations by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We proposed to allow these importations at the request of various importers and foreign ministries of agriculture, and after determining that the fruits or vegetables could be imported under certain conditions without significant pest risk.

We also proposed to revise the regulations to allow seven currently imported fruits and vegetables to enter the United States from certain parts of the world under less restrictive conditions. These fruits and vegetables were avocado, grapefruit, lemon, and sweet orange from Bermuda, snow pea from Colombia, cucurbits from Grenada, and globe artichoke from Guatemala.

A correction was published in the **Federal Register** on August 4, 1992 (57 FR 34349, Docket No. 88-143-1) to rectify several typographical errors in the proposed rule.

We solicited comments on the proposed rule for a 45-day period ending on July 30, 1992. We received 13 letters of comment by the closing date, eight from the United States and five from Central America. The letters were sent by State departments of agriculture, a fruit-growers' group, an agricultural marketing and consulting firm, a fruit and vegetable grower, and produce importers, exporters, and shippers. Ten of the letters expressed support for the provisions of the proposed rule. The three remaining commenters had specific concerns regarding the proposal, which are addressed below.

We have made minor editorial changes in this final rule for the sake of clarity. Except for those changes, which have no bearing on the substance of the rule, we are adopting the provisions of the proposed rule as a final rule based on the rationale set forth in the proposed rule and in this document.

### Discussion of Comments

*Comment:* Because there is no large-scale production of avocados in Bermuda, the possibility exists that exporters in Bermuda will be shipping avocados grown in other nations to the United States and that such avocados would pose a risk of introducing pests.

*Response:* Bermuda's department of agriculture has assured the Animal and Plant Health Inspection Service (APHIS) that it intends to ship only avocados grown in Bermuda. Although Bermuda does grow avocados primarily for domestic consumption, production occasionally exceeds the domestic demand. It is that excess that Bermuda desires to export to the United States. These exports would be commercial shipments labeled in accordance with usual trade practices to indicate their origin in Bermuda. It is standard practice for APHIS inspectors at ports of entry to refuse the importation of produce when there is any evidence to suggest that a shipment originated in a country other than that in which it is claimed to have originated. In addition, Bermuda has requirements that prohibit the importation of avocados from countries where fruit flies are known to occur. Therefore, we believe that avocados can be imported from Bermuda without significant pest risk.

*Comment:* APHIS' reliance on inspection at the port of arrival to detect pests on imported fruits and vegetables is not sound quarantine policy because there is too great a chance that an inspector could miss something. As an additional safeguard, mechanisms such as trapping programs should be in place in the country of origin to ensure the pest-free status of fruits and vegetables exported to the United States.

*Response:* Inspection at the port of first arrival is only one aspect of APHIS' approach to pest exclusion. Before a fruit or vegetable is approved for importation into the United States, a

pest risk analysis is conducted for the commodity. One of the primary responsibilities of APHIS personnel stationed overseas is to develop and maintain systems for observing the effects of endemic plant pests and diseases and evaluating the impact of those pests or diseases on agriculture. APHIS also works closely with its foreign counterparts and encourages surveillance for both endemic and exotic plant pests, including fruit flies, through the use of trapping or other survey techniques. If a pest risk is found to be associated with a commodity proposed for importation, APHIS then determines what, if any, measures can be taken to allow the commodity to be imported without the risk of the pest being introduced into the United States. When appropriate, our regulations impose restrictions such as specific growing and shipping requirements or inspection in the country of origin. Certain commodities are required to be treated for pests at the point of origin, while in transit, or upon arrival in the United States. As a final precaution, all fruits and vegetables are subject to inspection at the port of first arrival. APHIS inspectors are aware of any potential pest risk associated with a particular commodity and conduct their inspections accordingly. The measures taken in the exporting countries, coupled with the safeguards required by APHIS, appear adequate to prevent the introduction of injurious plant pests into the United States.

*Comment:* Fruit flies of the genus *Anastrepha* occur in Bermuda, the Cook Islands, Dominica, Grenada, Guatemala, Haiti, Jamaica, and Panama and have been intercepted on a majority of the fruits proposed for importation from those countries. Therefore, the proposed importation of fruits from these countries should be contingent upon required treatments or evidence that no fruit fly pests exist in the areas in which specific fruits are grown.

*Response:* APHIS has determined that *Anastrepha* is not known to occur in Bermuda and the Cook Islands. By survey, Grenada is considered to be free of injurious species of *Anastrepha*. The fruits proposed for importation from Dominica, Guatemala, Haiti, Jamaica, and Panama are either not known to be hosts for fruit flies or are not known to be hosts for the particular *Anastrepha* species that occur in those countries.

*Comment:* Eggplant and green beans have been recognized as host plants for Mediterranean fruit fly, which is known to exist in Guatemala and Panama. The proposed importation of eggplant from Guatemala and green beans from Panama should, therefore, be contingent upon required treatments or evidence that no fruit fly pests exist in the areas in which those commodities are grown.

*Response:* APHIS considers eggplant to be a poor host for the Mediterranean fruit fly, as reports of field infestation are rare and may be attributable to overripe or bruised fruits. With regard to green beans, APHIS considers them to be a poor host or non-host plant for Mediterranean fruit fly. The inclusion of green beans on lists of potential hosts is not supported by available data. Additionally, eggplant and green beans are not listed in APHIS' domestic Mediterranean fruit fly quarantine regulations in 7 CFR 301.78–2 as regulated articles (i.e., potential host plants).

*Comment:* Fruit flies of the genus *Bactrocera* are known to infest eggplant and have been intercepted in fruit from Guatemala. *Bactrocera xanthodes* is known to be present in the Cook Islands and will readily infest cucurbits. Therefore, the proposed importation of eggplant from Guatemala and cucumbers from the Cook Islands should be contingent upon required treatments or evidence that no fruit fly pests exist in the specific areas in which those commodities are grown.

*Response:* APHIS has not records of *Bactrocera* species being established in Guatemala and thus does not regulate potential host material from Guatemala for *Bactrocera*. *Bactrocera xanthodes* is present in at least some of the Cook Islands, but only watermelon (*Citrullus lanatus*) has been reported as a host. Because cucumbers have not been reported as a host for *Bactrocera xanthodes*, they are not regulated for that fruit fly.

*Comment:* The bean pod borer, *Maruca testulalis*, is known to be a pest of leguminous crops and is likely to be present in produce from Columbia. For this reason, the proposed importation of snow pea pods from Columbia would present a risk of spreading the pest if the snow pea pods are not treated.

*Response:* We are proposing to allow the importation of only flat, immature snow pea pods from Colombia. There are no records of interceptions of bean pod borer in snow pea pods from Columbia, and there is no evidence to suggest that flat, immature pods are a host of the pest. The seeds in flat, immature snow pea pods are too small to provide enough food for developing larval forms of the bean pod borer.

*Comment: Stenoma catenifer* is a pest of avocados and is known to occur throughout the New World tropical regions. Without evidence that the pest does not occur in Bermuda, avocados from Bermuda would present too great a risk of spreading the pest in the United States if imported as proposed.

*Response: Stenoma catenifer* is restricted to locations in Central and South America and Mexico. A search of literature and interception records produced no evidence that the pest occurs in Bermuda. Without such evidence, there is no basis for quarantine restrictions.

*Comment:* The proposal to import fresh okra from Suriname incorrectly stated that California does not have the host material necessary to sustain an infestation of pink bollworm, *Pectinophora gossypiella* (Saunders), except during March 16 through December 31, inclusive. California does have host material present between January 1 and March 15 in the form of cotton growing in greenhouses and cotton biomass (stalks, and bolls) left in fields.

*Response:* Pink bollworm is not reported to occur in Suriname, although it does occur in two neighboring countries. Because APHIS does not have any recent survey data from Suriname, however, restrictions on the destinations and dates of movement of fresh okra from Suriname were included in the proposed rule. With those restrictions, which limit the importation of fresh okra from Suriname to certain States during months that the pest could not become established, the pest risk associated with the importation of fresh okra from Suriname is not considered to be significant. Additionally, the restrictions that we proposed regarding the dates of movement into California of fresh, edible fruits of okra from Suriname reflect the restrictions currently imposed on domestically grown okra in the domestic pink bollworm quarantine regulations (7 CFR 301.52).

*Comment:* Fresh okra from Suriname was proposed for entry into Texas without treatment at any time of the year. Pink bollworm is an economic pest only in certain areas of western Texas and is virtually non-existent in other parts of the State. Fresh okra from Suriname should not be permitted entry into those areas of Texas where the pink bollworm is not an economic pest.

*Response:* The entire State of Texas is considered to be a generally infested area for the purposes of the domestic pink bollworm quarantine regulations (7 CFR 301.52). As explained in the proposal, Texas is under Federal quarantine to prevent the spread of pink bollworm into uninfested areas of the United States. Therefore, the pink bollworm would present no new pest

risk, during any time of the year, if it were carried into Texas in okra from Suriname.

*Comment:* Because the cottonseed bug, *Oxycarenus hyalinipennis,* and the Peruvian cotton stainer, *Dysdercus peruviensis,* may occur in Suriname, the importation of fresh okra from Suriname could pose a pest risk to domestic cotton, okra, stone fruits, grapes, citrus, and eggplant.

*Response:* The cottonseed bug and the Peruvian cotton stainer were considered in APHIS' pest risk assessment of okra from Suriname, and neither pest was found to occur in Suriname. Therefore, the importation of okra from Suriname does not appear to present a pest risk in terms of these two insects.

*Comment:* Black parlatoria scale is known to be a pest of citrus in Greece and could be introduced into the United States through the proposed importation of tangerines from Greece.

*Response:* APHIS considers black parlatoria scale to be a negligible risk for fruit imports. Black parlatoria scale is already established in Florida and Texas and domestic shipments of citrus fruit are not treated for this scale insect.

*Comment:* The pear leaf blister moth, *Leucoptera malifoliella,* has been intercepted on apple fruit from countries adjacent to Israel, Jordan, and Lebanon. The proposed importation of fruit from Israel, Jordan, and Lebanon could present a pest risk if the pear leaf blister moth has spread into those three countries.

*Response:* The pear leaf blister moth is not known to occur in Israel, Jordan, or Lebanon, so the importation of loquat from Israel and apples from Jordan and Lebanon does not appear to present a pest risk in terms of this insect.

*Comment:* Mal secco, *Phoma tracheiphila,* is known to occur in Israel, so the proposed importation of tangerines from Israel would present an unacceptable risk of spreading the disease.

*Response:* APHIS has determined that fruit from countries in which mal secco exists present a negligible risk of introducing the disease into the United States. Mal secco is spread by water-borne conidia, which are asexual spores. These conidia serve as inocula and are produced in the bark and vascular elements of infected trees. There have been no substantiated reports of conidia. Citrus fruit has been imported from countries where mal secco exists for many years, and the disease has never been detected on that fruit.

*Comment:* The proposal to import mangoes from Taiwan includes a requirement that the mangoes be treated for oriental fruit fly, but there is no mention of treatments for the mango seed weevil, *Sternochetus mangiferae,* which is known to be present throughout that part of the world.

*Response:* Surveys conducted as part of APHIS' pest risk analysis for mangoes from Taiwan turned up no evidence of mango seed weevil in Taiwan.

*Comment:* The proposed importation of root vegetables, bulbs, and other plants imported with below-ground parts from various parts of the world, especially Latin America, presents a serious risk of introducing burrowing nematodes or reniform nematodes into the United States.

*Response:* APHIS considers the visual examinations conducted by its inspectors to be adequate to prevent the introduction of both types of nematodes.

*Comment:* The proposed importation of cantaloupe from Ecuador contained provisions that prohibited the movement of the cantaloupe into areas of the United States where the South American cucurbit fruit fly, *Anastrepha grandis,* could become established. Those movement prohibitions were to be supported by a requirement that the boxes in which the cantaloupe are packed by stamped "Cantaloupes not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI." However, fruit can be, and often is, repacked and transported into areas where it is not meant for distribution. For this reason, the importation of cantaloupe from Ecuador should remain prohibited until additional studies are conducted and Ecuador should remain prohibited until additional studies are conducted and evaluated to ensure that the South American cucurbit fruit fly will not be introduced into the United States.

*Response:* As stated in the proposal, there have been only unconfirmed reports of the South American cucurbit fruit fly in limited areas of Ecuador. To ensure that commercially produced cantaloupe for export is free of this pest, the Ecuadoran government, under the direction of APHIS, has conducted trapping for the South American cucurbit fruit fly for over a year in the area where cantaloupe for export is grown. To date, no South American cucurbit fruit flies have been found. In addition, APHIS is unaware of any report of infestation of commercially harvested cantaloupes. APHIS continues to believe that the importation of commercially produced Ecuadoran cantaloupe from the areas in which the trapping program is conducted, in conjunction with the inspection of the cantaloupe upon its arrival in the United States and the restrictions on its destinations, presents an acceptable level of risk.

**Effective Date**

Mr. Robert Melland, the Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making this rule effective upon signature. This rule relieves restrictions on the importation of fruits and vegetables from certain parts of the world. In addition, the shipping season for some of the fruits and vegetables is approaching, so prompt implementation is necessary for this rule to be effective in time to allow for their shipment. This rulemaking will benefit interested U.S. importers, distributors, and retailers by allowing them to import, distribute, and sell additional fruits and vegetables from certain parts of the world. It will also provide U.S. consumers with additional sources of fruits and vegetables.

**Executive Order 12291 and Regulatory Flexibility Act**

This rule amends the regulations governing the importation of fruits and vegetables into the United States by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. The importation of these fruits and vegetables had been prohibited because of the risk that the fruits and vegetables could introduce injurious plant pests into the United States. This final rule also amends the regulations by allowing seven currently imported fruits and vegetables to be entered into the United States under less restrictive conditions.

Some of the fruits and vegetables are required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. In addition, all of the fruits and vegetables, as a condition of entry, are subject to inspection at the port of first arrival and to such treatment as may be required by a U.S. Department of Agriculture inspector. This action will provide the United States with additional kinds and sources of fruits and vegetables, while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

This action is part of an ongoing process of updating the list of enterable fruits and vegetables, as data on pest risk changes and as we receive and evaluate requests to import new commodities.

As previously announced in the annual Regulatory Program of the United States Government, we are considering other changes to the regulations in order to improve our ability to prevent the introduction of plant pests. We have also reviewed the regulations in response to the President's regulatory review initiative. We will analyze the projected costs and benefits of any changes to the regulations that we propose; their potential economic impact is unknown at this time.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

In accordance with 5 U.S.C. 603, we performed an Initial Regulatory Flexibility Analysis (IRFA) regarding the impact of this rule on small entities. Because we are adopting the provisions of the proposed rule without change, and because we did not receive any documentation to the contrary, the IRFA also serves as our Final Regulatory Flexibility Analysis.

We estimated the economic impact of this rule using data for three of the 93 commodities included: apples, bananas, and mangoes. These were the only commodities for which retail price data, retail demand elasticities, and some information on national production and trading capabilities were available. The economic impact was estimated for the first year only, because there are many variables that cannot be adequately predicted over a longer time frame.

Based on our evaluation of these commodities, we project a net benefit to the United States of more than $19 million in the first year following the adoption of this final rule. We estimate that U.S. consumer gains will exceed $64 million in the first year, with most of these gains (70 percent) attributable to increased apple supplies. An estimated 27 percent of projected consumer gains will be due to increased supplies of mangoes.

We estimate that consumers will reap additional gains from importation of the remaining 90 commodities, with little or no losses to domestic producers, because many of the remaining 90 commodities are specialty crops that are either not produced in the United States, or are produced in limited quantities.

We estimate that U.S. producer losses for the three commodities will be about $45 million in the first year, with about 93 percent attributable to greater apple supplies. The projected first year loss for fresh apple producers represents about 1 percent of their annual revenue.

It is likely that U.S. demand for fresh fruits and vegetables will continue to increase, given the heightened interest in health and nutrition. In the long run, this growth in demand could allow the United States to absorb additional quantities of fresh imported fruits and vegetables without substantially affecting U.S. prices. Therefore, U.S. producers could face losses only in the short run, with growth in demand causing U.S. prices to return to their former levels or possibly even rise over time.

This rule could have economic consequences for some small U.S. producers. The following figures were taken from the 1987 Census of Agriculture. There are 36,718 apple producers in the United States. The top five apple producing States are Washington, California, Michigan, Pennsylvania, and New York. Ninety-four percent of the 563 U.S. banana producers are located in Hawaii. Seventy-two percent of the 379 U.S. mango producers are located in Florida.

The Census of Agriculture also provides data concerning the total market value of agricultural products sold by all fruit and tree nut producers. Approximately 14 percent of all U.S. fruit and tree nut producers sell agricultural products with a total average market value of $100,000 or more. About 23 percent of the fruit and tree nut producers have annual average sales between $20,000 and $99,999, while almost 31 percent have sales between $2500 and $19,999. Thirty-three percent of the total fruit and tree nut producers in the United States have annual sales of less than $2500. It appears, therefore, that a large number of small entities could be affected by the changes in this rule. However, it is important to note that the principal occupation for over 54 percent of all fruit and tree nut producers is something other than farming. This implies that while these small producers could face losses, sales of fruits and nuts may not be their primary source of income. While the Census of Agriculture does not provide similar information for specific fruits and nuts, it is assumed that a similar sales profile exists for the three commodities examined in this analysis.

It was not possible to determine how the estimated producer losses that may result from this rulemaking will affect producers' profit margins, because production costs were not available for the commodities examined in this analysis. It also was not possible to determine whether U.S. producers will lose 100 percent of the projected price decline or share a portion of the losses with fresh fruit and vegetable wholesalers and retailers.

As an alternative to this action, we considered taking no action to relieve restrictions on previously prohibited fruits and vegetables. This alternative was rejected because the Department's regulatory authority with respect to the importation of fruits and vegetables is limited to preventing the introduction of exotic plant pests and diseases. Pest risk assessments indicate that this action will not result in any significant pest or disease risk.

This rule will not result in any significant increase in reporting, recordkeeping, or compliance requirements.

Regulations governing the importation of fruits and vegetables are authorized under the Plant Quarantine Act (7 U.S.C. 151–165 and 167).

**Executive Order 12778**

This rule allows certain fruits and vegetables to be imported into the United States. State and local laws and regulations regarding the importation of fresh fruits and vegetables under this rule are preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. This final rule has no retroactive effect and does not require administrative proceedings before parties could file suit in court.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact were prepared for the proposed rule that preceded this final rule. The assessment provided a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this final rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant

impact, the Administrator of APHIS determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

### Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### List of Subjects

*7 CFR Part 300*

Incorporation by reference, Plant diseases and pests, Quarantine.

*7 CFR Part 319*

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending title 7, chapter III, of the Code of Federal Regulations as follows:

## PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

**Authority:** 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) is revised to read as follows:

**§ 300.1 Materials incorporated by reference.**

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through September 25, 1992, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

## PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In § 319.56–1, three definitions are added in alphabetical order to read as follows:

**§ 319.56–1 Definitions.**

*Above ground parts.* Any plant parts, such as stems, leaves, fruit, or inflorescence, that grow solely above the soil surface.

*Commercial shipment.* A shipment containing fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: quantity of produce, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

*Cucurbits. Benincasa hispida* (wax gourd), *Citrullus lanatus* (watermelon), *Cucumis* spp. (including, but not limited to cucumber, kiwano, cantaloupe, honeydew, muskmelon, and Indian gherkin), *Cucurbita* spp. (including, but not limited to squash, zucchini, crenshaws, pumpkin, and marrow), *Lagenaria* spp. (including, but not limited to the white-flowered gourds), *Luffa* spp. (including, but not limited to luffa and angled luffa), *Momordica balsamina* (balsam-apple), *Momordica charantia* (bitter gourd), and *Sechium edule* (chayote).

* * * * *

**§ 319.56–2p [Amended]**

5. In § 319.56–2p, paragraph (a)(1) is amended by adding the word "Suriname," immediately after the word "Peru,".

6. In § 319.56–2p, the heading to paragraph (c) is amended by removing the phrase "Mexico and the Dominican Republic" and by adding "the Dominican Republic, Mexico, and Suriname" in its place.

7. In § 319.56–2p, the introductory text to paragraph (c) is amended by removing the phrase "Mexico or the Dominican Republic" and by adding "the Dominican Republic, Mexico, or Suriname" in its place.

8. In § 319.56–2p, paragraph (c)(1) is amended by removing the phrase "the Dominican Republic or Mexico" and by adding "the Dominican Republic, Mexico, or Suriname" in its place.

9. Section 319.56–2t is revised to read as follows:

**§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.**

The following commodities may be imported into the United States from the places specified in accordance with § 319.56–6 and all other applicable requirements of this subpart:

| Country | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Argentina | Endive | *Cichorium endivia* | Leaf and stem. |
| Barbados | Banana | *Musa* spp | Flower. |
| Belgium | Pepper | *Capsicum* spp | Fruit. |
| Bermuda | Avocado | *Persea americana* | Fruit. |
| | Carambola | *Averrhoa carambola* | Fruit. |
| | Grapefruit | *Citrus paradisi* | Fruit. |
| | Guava | *Psidium guajava* | Fruit. |
| | Lemon | *Citrus limon* | Fruit. |
| | Longan | *Dimocarpus longan* | Fruit. |
| | Loquat | *Eriobotrya japonica* | Fruit. |
| | Natal plum | *Carissa macrocarpa* | Fruit. |
| | Orange, sour | *Citrus aurantium* | Fruit. |
| | Orange, sweet | *Citrus sinensis* | Fruit. |
| | Passion fruit | *Passiflora* spp | Fruit. |
| | Suriname cherry | *Eugenia uniflora* | Fruit. |
| Bolivia | Belgian endive | *Cichorium intybus* | Leaf. |
| Colombia | Rhubarb | *Rheum rhabarbarum* | Stalk. |

| Country | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| | Snow pea | *Pisum Sativum* subsp. *sativum* | Flat, immature pod. |
| Cook Islands | Banana | *Musa* spp | Green fruit.[1] |
| | Cucumber | *Cucumis sativus* | Fruit. |
| | Drumstick | *Moringa pterygosperma* | Leaf. |
| | Indian mulberry | *Morinda citrifolia* | Leaf. |
| Costa Rica | Basil | *Ocimum* spp | Whole plant. |
| | Chinese kale | *Brassica alboglabra* | Leaf and stem. |
| | Chinese turnip | *Raphanus sativus* | Root. |
| Dominica | Durian | *Durio zibethinus* | Fruit. |
| Great Britain | Basil | *Ocimum* spp | Leaf and stem |
| Grenada | Abiu | *Pouteria caimito* | Fruit. |
| | Bilimbi | *Averrhoa bilimbi* | Fruit. |
| | Breadnut | *Brosimum alicastrum* | Fruit. |
| | Cocoplum | *Chrysobalanus icaco* | Fruit. |
| | Cucurbits | Cucurbitaceae | Fruit. |
| | Durian | *Durio zibethinus* | Fruit. |
| | Jackfruit | *Artocarpus heterophyllus* | Fruit. |
| | Jambolan | *Syzygium cumini* | Fruit. |
| | Jujube | *Ziziphus* spp | Fruit. |
| | Langsat | *Lansium domesticum* | Fruit. |
| | Litchi | *Litchi chinensis* | Fruit. |
| | Malay apple | *Syzygium malaccense* | Fruit. |
| | Mammee apple | *Mammea americana* | Fruit. |
| | Peach palm | *Bactris gasipaes* | Fruit. |
| | Piper | *Piper* spp | Fruit. |
| | Pulasan | *Nephelium ramboutan-ake* | Fruit. |
| | Rambutan | *Nephelium lappaceum* | Fruit. |
| | Rose apple | *Syzygium jambos* | Fruit. |
| | Santol | *Sandoricum koetjape* | Fruit. |
| | Sapote | *Pouteria sapota* | Fruit. |
| Guatemala | Artichoke, globe | *Cynara scolymus* | Immature flower head. |
| | Eggplant | *Solanum melongena* | Fruit. |
| | Loroco | *Fernaldia* spp | Above ground parts. |
| | Mint | *Mentha* spp | Above ground parts. |
| | Oregano | *Origanum* spp | Leaf and stem. |
| | Rosemary | *Rosmarinus officinalis* | Above ground parts. |
| | Tarragon | *Artemisia dracunculus* | Leaf and stem. |
| | Yam bean | *Pachyrhizus tuberosus* or *P. erosus* | Root. |
| Haiti [2] | Jackfruit | *Artocarpus heterophyllus* | Fruit. |
| Honduras | Banana | *Musa* spp | Flower. |
| | Chicory | *Cichorium* spp | Leaf and stem. |
| | Radish | *Raphanus sativus* | Root. |
| Israel | Garden rocket | *Eruca sativa* | Leaf and stem. |
| | Mint | *Mentha* spp | Above ground parts. |
| | Watercress | *Nasturtium officinale* | Leaf and stem. |
| Jamaica | Jackfruit | *Artocarpus heterophyllus* | Fruit. |
| Japan | Mung bean | *Vigna radiata* | Seed sprout. |
| | Soybean | *Glycine max* | Seed sprout |
| Korea | Bonnet bellflower | *Codonopsis lanceolata* | Root. |
| | Chard | *Beta vulgaris* subsp. *cicla* | Leaf. |
| | Mugwort | *Artemisia vulgaris* | Leaf and stem. |
| | Onion | *Allium cepa* | Bulb. |
| | Shepherd's purse | *Capsella bursa-pastoris* | Leaf and stem. |
| | Watercress | *Nasturtium officinale* | Leaf and stem. |
| Liberia | Jute | *Corchorus capsularis* | Leaf. |
| | Potato | *Solanum tuberosum* | Leaf. |
| Mexico | Anise | *Pimpinella anisum* | Leaf and stem. |
| | Banana | *Musa* spp | Flower. |
| | Cucurbits | Cucurbitaceae | Inflorescence. |
| | Garden rocket | *Eruca sativa* | Leaf and stem. |
| | Piper | *Piper* spp | Leaf and stem. |
| | Porophyllum | *Porophyllum* spp | Above ground parts. |
| | Rosemary | *Rosmarinus officinalis* | Above ground parts. |
| | Thyme | *Thymus vulgaris* | Above ground parts. |
| New Zealand | Avocado | *Persea americana* | Fruit. |
| | Fig | *Ficus carica* | Fruit. |
| Panama | Basil | *Ocimum* spp | Above ground parts. |
| | Bean, green and lima | *Phaseolus vulgaris* and *P. lunatus* | Seed. |
| | Chervil | *Anthriscus cerefolium* | Above ground parts. |
| | Eggplant | *Solanum melongena* | Fruit. |
| | Lemon thyme | *Thymus citriodorus* | Leaf and stem. |
| | Mint | *Mentha* spp | Above ground parts. |
| | Oregano | *Origanum* spp | Above ground parts. |
| | Rosemary | *Rosmarinus officinalis* | Above ground parts. |
| | Tarragon | *Artemisia dracunculus* | Leaf and stem. |
| Peru | Basil | *Ocimum* spp | Leaf and stem. |
| | Dill | *Anethum graveolens* | Above ground parts. |
| | Oregano | *Origanum* spp | Leaf and stem. |
| | Parsley | *Petroselinum crispum* | Leaf and stem. |
| | Radicchio | *Cichorium* spp | Leaf. |
| | Thyme | *Thymus vulgaris* | Above ground parts. |

| Country | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Sierra Leone | Cassava | *Manihot esculenta* | Leaf. |
| | Jute | *Corchorus capsularis* | Leaf. |
| | Potato | *Solanum tuberosum* | Leaf. |
| Suriname | Amaranth | *Amaranthus* spp | Leaf and stem. |
| | Black palm nut | *Astrocaryum* spp. | Fruit. |
| | Jessamine | *Cestrum latifolium* | Leaf and stem. |
| | Malabar spinach | *Bassella alba* | Leaf and stem. |
| | Mung bean | *Vigna radiata* | Seed sprout. |
| | Pak choi | *Brassica chinensis* | Leaf and stem. |
| Sweden | Dill | *Anethum graveolens* | Above ground parts. |
| Taiwan | Wasabi (Japanese horseradish) | *Wasabia japonica* | Root and stem. |
| Thailand | Dasheen | *Alocasia* spp., *Colocasia* spp., and *Xanthosoma* spp. | Leaf and stem. |
| Tonga | Burdock | *Arctium lappa* | Root, stem and leaf. |
| Trinidad | Leren | *Calathea allouia* | Tuber. |

[1] The bananas must be green at the time of export. Inspectors at the port of arrival will determine that the bananas were green at the time of export if: (1) bananas shipped by air are still green upon arrival in the United States; and (2) bananas shipped by sea are either still green upon arrival in the United States or are yellow but firm.

[2] Executive Order 12779 of October 28, 1991 (56 FR 55975-55976, published October 30, 1991), prohibits the importation into the United States of any goods of Haitian origin, other than publications and other informational materials, or of services performed in Haiti. Importation of any Haitian produce will not be allowed as long as this Executive Order is in effect.

10. In Subpart—Fruits and Vegetables, new §§ 319.56–2x and 319.56–2y are added to read as follows:

**§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.**

(a) The following fruits and vegetables may be imported into the United States only if they have been treated as follows, in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

| Country | Fruit or vegetable | Treatment |
|---|---|---|
| Greece | Kiwi (fruit) *Actinidia deliciosa* | (1) Cold treatment—for the Mediterranean fruit fly or (2) Fumigation with methyl bromide plus refrigeration—for the Mediterranean fruit fly. |
| | Tangerine (fruit) *Citrus reticulata* | (1) Cold treatment—for the Mediterranean fruit fly or (2) Fumigation with methyl bromide plus refrigeration—for the Mediterranean fruit fly. |
| Israel | Loquat (fruit) *Eriobotrya japonica* | Cold treatment—for the Mediterranean fruit fly. |
| Jordan | Apple (fruit) *Malus domestica* | Cold treatment—for the Mediterranean fruit fly. |
| | Persimmon (fruit) *Diospyros* spp. | Cold treatment—for the Mediterranean fruit fly. |
| Lebanon | Apple (fruit) *Malus domestica* | Cold treatment—for the Mediterranean fruit fly. |
| Panama | Bean, green and lima (pod) *Phaseolus vulgaris* and *P. lunatus.* | Fumigation with methyl bromide—for pod-boring insects. |
| Taiwan | Mango (fruit) *Mangifera indica* | Vapor heat treatment—for the Oriental fruit fly. |

(b) Fruits and vegetables listed above and required to be treated for fruit flies may arrive in the United States only at a North Atlantic port if treatment has not been completed before the fruits and vegetables arrive in the United States. North Atlantic ports are: Atlantic ports north of and including Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC (including Baltimore-Washington International and Dulles International airports).

**§ 319.56–2y Administrative instructions; conditions governing the entry of cantaloupe from Ecuador.**

(a) Cantaloupe (*Cucumis melo*) may be imported into the United States from Ecuador only under the following conditions:

(1) The cantaloupe may be imported in commercial shipments only;

(2) The cantaloupe must have been grown in an area where trapping for the South American cucurbit fruit fly has been conducted for at least the previous 12 months by the plant protection service of Ecuador, under the direction of APHIS,[1] with no findings of the pest.

(3) The following area meets the requirements of paragraph (a)(2) of this section: The area within 5 kilometers of either side of the following roads:

(i) Beginning in Guayaquil, the road north through Nobol, Palestina, and Balzar to Velasco-Ibarra (Empalme);

(ii) Beginning in Guayaquil, the road south through E1 26, Puerto Inca, Naranjal, and Camilo Ponce to Enriquez;

(iii) Beginning in Guayaquil, the road east through Palestina to Vinces;

(iv) Beginning in Guayaquil, the road west through Piedrahita (Novol) to Pedro Carbo; or

(v) Beginning in Guayaquil, the road west through Progreso, Engunga, Tugaduaja. and Zapotal to El Azucar; and

(4) The cantaloupe may not be moved into Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. The boxes in which the cantaloupe is packed must be stamped "Cantaloupes not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI."

(b) [Reserved]

[1] Information on the trapping program may be obtained by writing to the Administrator, c/o International Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Done in Washington, DC, this 12th day of November 1992.

Lonnie J. King,

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

[FR Doc. 92–28069 Filed 11–18–92; 8:45 am]

BILLING CODE 3410–34–M

## 7 CFR Part 301

[Docket No. 92–139–1]

## Pine Shoot Beetle

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are quarantining a total of 42 counties in the States of Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania because of infestations of the pine shoot beetle, and are restricting the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees, into noninfested areas of the United States.

**DATES:** Interim rule effective November 13, 1992. Consideration will be given only to comments received on or before January 19, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–139–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Milton C. Holmes, Senior Operations Officer, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.50, "Pine Shoot Beetle" (referred to below as the regulations). These regulations quarantine portions of Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania, because of the pine shoot beetle. They also restrict the interstate movement of regulated articles from the quarantined areas.

On July 22, 1992, a scolytid beetle, *Tomicus piniperda* (Linnaeus), commonly known as the pine shoot beetle, was identified from a Christmas tree farm in Lorain County, Ohio. Immediately after the identity of that specimen was confirmed, APHIS began working with other plant protection agencies to determine the extent of the infestation. The pine shoot beetle was probably introduced into the United States through ship dunnage. Dunnage is rough-sawn lumber used to brace and stabilize cargo on large ocean vessels.

The pine shoot beetle is a highly destructive pest of pine trees that can also attack felled spruce, larch, and fir. Many species of pine can serve as host for any life stage of this pest, but Scotch pine is preferred. Spruce, larch, and fir sometimes serve as breeding and reproduction sites. The pine shoot beetle breeds in felled logs and in standing trees weakened by fire, disease, or prior attack by defoliating insects. Adults usually overwinter in short tunnels in and under the bark at the base of trees, but may also overwinter in hollowed-out pine shoots. In spring, they emerge from these sites and select sites for breeding and reproduction, causing damage in the dying trees and recently cut logs where reproduction and immature stages occur. Healthy trees are also at risk, when pest population densities are high. After the larval stage, which is spent in feeding galleries under the bark, the new adults emerge from the bark and begin "maturation feeding." Maturation feeding takes the form of boring up the center of pine shoots (usually of the current year's growth), and causes stunted and distorted growth in host trees.

In addition to causing serious damage to the new growth of healthy trees, as well as to weak and dying trees, the pine shoot beetle is also an important vector of several diseases of pine, spruce, larch, and fir trees.

Once established in an area, the pine shoot beetle has a great potential to spread. Adults can fly at least one kilometer, and the wood, nursery stock, and Christmas trees they infest are often transported long distances. The pine shoot beetle is the second most destructive forest pest in Europe and the most destructive pest of pines. It will damage urban trees and cause economic losses to the timber, Christmas tree, and nursery industries. Assuming the pine shoot beetle requires felled, dead, or dying trees in which to bread, the preliminary estimate of the present value of potential losses and increased production costs in the United States over the next 30 years attributable to this pest is $742 million. Should it be able to breed in and kill healthy living pines, as recent observations in China suggest, potential losses would be significantly greater.

Recent visual surveys conducted by inspectors of State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), a unit within the U.S. Department of Agriculture (USDA), reveal that counties in Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania are infested with the pine shoot beetle. Therefore, we are placing portions of these six States under quarantine. The pine shoot beetle is not known to occur anywhere else in the United States.

Due to the extended distribution of this new pest, no eradication actions are being planned. Pest control strategies used buy the Christmas tree and nursery industries appear to be keeping the pine shoot beetle below the economic threshold. The same strategies, if properly implemented throughout the currently infested areas, should continue to suppress the population of the pine shoot beetle. To date, the economic damage caused by this pest has been minimal. Damage will continue to be minimal unless the pine shoot beetle becomes established in the millions of acres of commercial pine forests to the north, south, and west of the current infestations. In Europe, from northern Scandinavia to southern Italy, this pest causes severe losses in pine timber production; it also attacks the lodgepole pine, a species native to North America. To date, the pine shoot beetle has been found to attack Scotch pine, Red pine, White pine, Jack pine, Mugo pine, and Austrian pine in the United States. We believe this pest will attack most, if not all, species of pine grown in North America. Scientific research conducted in Europe indicates that, even with adequate controls, annual yields of pulpwood and commercial timber could be reduced by as much as 25 percent. For this reason, Federal and State quarantines are needed on an emergency basis to retard its spread and to protect noninfested areas. Therefore, this interim rule establishes regulations, which are described below by section, to prevent the spread of the pine shoot beetle.

### Restrictions on Interstate Movement of Regulated Articles (Section 301.50)

Section 301.50 prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote

(number 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, or otherwise dispose of, regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

**Definitions**

Section 301.50–1 contains, for informational purposes, definitions of the following terms: "Administrator," "Animal and Plant Health Inspection Service," "Certificate," "Compliance Agreement," "Infestation," "Inspector," "Interstate," "Limited permit," "Pine nursery stock," "Pine shoot beetle," "Moved (Move, Movement)," "Person," "Quarantined area," "Regulated article," and "State."

**Regulated Articles**

The regulations impose conditions on the interstate movement of those articles that present a significant risk of spreading pine shoot beetle, if moved without restrictions from quarantined areas into or through noninfested areas. These articles, which are designated as regulated articles, may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.50–4 through 301.50–10.

Section 301.50–2(a) designates the following as regulated articles: pine Christmas trees; pine nursery stock; pine, spruce, larch, and fir logs with bark attached; and pine, spruce, larch and fir lumber with bark attached. Based on a review of scientific literature and on research and experience in infested areas in Europe and China, this list includes all articles that are likely to cause the spread of the pine shoot beetle.

Interstate movement of seedlings less than 24 inches tall is allowed, because these seedlings can be certified as pest-free on the basis of a visual inspection. Greenhouse-grown ornamental pines, such as bonsai trees, can be certified for interstate movement, if an inspector finds that the premises are free of the pine shoot beetle and are screened or otherwise protected to prevent entry of the pine shoot beetle.

Further, § 301.50–2(b) allows designation of any other article, product, or means of conveyance as a regulated article if an inspector determines that it presents a risk of spreading the pine shoot beetle, and notifies the person in possession of the article, product, or means of conveyance that is subject to the restrictions in the regulations. This provision for "any other article, product, or means of conveyance" allows an inspector who discovers evidence of the pine shoot beetle in another article (e.g., in tree trimmings from landscape companies and tree surgeons or in a truck's floorboard) to regulate the affected articles immediately by informing the person in possession of the article, product, or means of conveyance, that it is being regulated.

**Quarantined Areas**

As stated in § 301.50–3(a), it is necessary to quarantine areas in which the pine shoot beetle has been found by an inspector, areas in which the Administrator has reason to believe the pine shoot beetle is present, and areas the Administrator considers necessary to quarantine because of their inseparability for quarantine enforcement purposes from localities where the pine shoot beetle has been found.

Section 301.50–3(a) further provides that less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire State will prevent the interstate spread of the pine shoot beetle. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

In accordance with these criteria, we are designating 1 county in Illinois, 18 counties in Indiana, 4 counties in Michigan, 2 counties in New York, 14 counties in Ohio, and 3 counties in Pennsylvania as quarantined areas. These quarantined areas are listed in § 301.50–3(c).

§ 301.50–3(b) provides that the Administrator or an inspector may designate an area as a quarantined area temporarily, without publication in the **Federal Register**, if there is a basis for listing the area as a quarantined area under § 301.50–3(a) and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary to prevent spread of the pine shoot beetle before restrictions can be published in the **Federal Register** concerning the interstate movement of regulated articles from the designated area.

**Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas**

Section 301.50–4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.50–5 and 301.50–8, unless they are moved as prescribed in § 301.50–4(b) or (c).

Section 301.50–4(b) allows a regulated article that originates outside a quarantined area to be moved interstate from a quarantined area without a certificate or limited permit under the following conditions: (1) If the article is moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10° C (50° F); if the article is moved through the quarantined area without stopping except for drop-off loads, for refueling, or for traffic conditions, such as traffic lights and stop signs; and if the point of origin of the article is indicated on the waybill; or (2) if, during the period of January through September, the article is moved through the quarantined area when the temperature is 10° C (50° F) or higher, it is shipped in an enclosed vehicle or completely covered so as to prevent access by the pine shoot beetle; and if the point of origin of the article is indicated on the waybill.

Because the major flight periods of the pine shoot beetle occur during the months of January through September, and because the pine shoot beetle is unlikely to fly when ambient temperatures fall below 10° C (50° F), the requirement that the regulated article be in an enclosed vehicle, or completely covered, when moved through a quarantined area at higher temperatures during the months of January through September, will ensure that regulated articles originating outside of a quarantined area and moved interstate through a quarantined area present no risk of spreading this pest.

Section 301.50–4(c) allows the Department to move regulated articles interstate for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a limited permit issued by the Administrator, under conditions that prevent the spread of the pine shoot beetle.

Section 301.50–4 contains a footnote to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for the interstate movement of regulated articles.

**Issuance and Cancellation of Certificate and Limited Permits**

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of the pine shoot beetle), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector has determined that, because of a possible pest risk, such articles may only be safely moved interstate subject to further restrictions, such as movement to specified areas and movement for specified purposes. Section 301.50–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.50–5(a) provides that an inspector will issue a certificate for the movement of a regulated article upon determining that the article: (1) Is free of the pine shoot beetle, has been treated under direction of an inspector in accordance with § 301.50–10, or comes from a premises of origin free from the pine shoot beetle; (2) will be moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10 °C (50 °F); or, during the period of January through September, when the ambient air temperature is higher than 10 °C (50 °F), will be moved through the quarantined area in a enclosed vehicle or completely covered to prevent access by the pine shoot beetle; (3) will be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the pine shoot beetle; and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

A footnote explains that the Secretary of Agriculture may, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions.

Section 301.50–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for movement of a regulated article if: (1) The inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing (such as movement in an enclosed container for immediate export or immediate chipping and cooking at an approved pulp mill), and that the movement will not result in the spread of the pine shoot beetle; or (2) the article will transit a non-quarantined area during interstate movement, and is in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle.

Because it is impossible to certify, on the basis of a casual visual inspection, that pine Christmas trees are free of the pine shoot beetle, limited permits will be issued for these regulated articles on the basis of a biometrically based inspection procedure. The number of trees to be inspected depends on the size of the shipment and on whether the trees have been painted ("color-enhanced"). Paint camouflages the yellowing that is often observable in the needles of an infested tree, making it more difficult to detect the pine shoot beetle's presence in a painted tree than in one that is natural. Therefore, to detect an infestation rate of 5 percent or higher with a confidence level of 95 percent, the number of trees requiring inspection for a shipment of painted trees is higher than for a shipment of natural (unpainted) trees. If a shipment includes both painted and natural trees, the inspection table for painted trees will be used (as provided in § 301.50–5(c).) Trees to be inspected will be selected at random from each shipment.

If no pine shoot beetle is detected, interstate movement of the regulated articles will be allowed. The limited permit issued for a shipment of pine Christmas trees will state that all trees unsold by December 25 of the same year must be either fumigated or destroyed by chipping or burning prior to January 1.

Section 301.50–5(c) contains tables indicating the number of painted pine Christmas trees and the number of natural (unpainted) pine Christmas trees that must be inspected per shipment, based on shipment size. Inspections based on these tables will detect infestation rates of 5 percent or higher with a confidence level of 95 percent. We have determined this to be an acceptable level of risk because Christmas trees that are sold will be used in interior spaces, where the pine shoot beetle will die of natural causes, and unsold trees will be destroyed or fumigated.

Section 301.50–5(d) allows any person who has entered into, and is operating under, a compliance agreement to execute a certificate or limited permit for the interstate movement of a regulated article after an inspector has made a determination that the article is eligible for a certificate or limited permit in accordance with § 301.50–5 (a) or (b).

Also, § 301.50–5(e) contains provisions for the withdrawal of a certificate or limited permit by an inspector upon a determination by the inspector that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

**Compliance Agreements and Cancellation (Section 301.50–6)**

Section 301.50–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in growing, handling, or moving regulated articles who agrees, in writing, to comply with the provisions of the pine shoot beetle regulations in subpart 301.50. Compliance agreements are provided for the convenience of persons who are involved in shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of subpart 301.50 and have agreed to comply with them.

Section 301.50–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact, pursuant to rules of practice adopted by the Administrator. This section contains a footnote to explain where compliance agreement forms can be obtained.

**Assembly and Inspection of Regulated Articles (Section 301.50–7)**

Section 301.50–7 provides that any person who desires a certificate or limited permit to move regulated articles interstate must request the services of an inspector to issue a certificate or limited permit at least 48 hours in advance of the desired movement. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote explains how to contact the inspectors for inspection and how to obtain additional information from offices of the Animal and Plant Health Inspection Service.

**Attachment and Disposition of Certificates and Limited Permits (Section 301.50–8)**

Section 301.50–8 requires the certificate or limited permit, issued for the movement of the regulated article, to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This section also provides that the certificate or limited permit may be attached to the consignee's copy of the waybill only if the certificate or limited permit and the waybill contain a sufficient description of the regulated article to identify the regulated article. This provision is necessary for enforcement purposes.

**Costs and Charges (Section 301.50–9)**

Section 301.50–9 explains the APHIS policy that the services of an inspector that are needed to comply with the provisions of the regulations in subpart 301.50 are provided without cost during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

**Treatments (Section 301.50–10)**

Section 301.50–10 provides that logs with bark attached, lumber with bark attached, and Christmas trees may be treated by fumigation with methyl bromide at normal atmospheric pressure. This is a treatment known to be efficacious for wood-borers and bark beetles, including the pine shoot beetle. Fumigation causes premature needle-fall, so the treatment is not advised for Christmas trees, except as a means of killing the pine shoot beetle in unsold Christmas trees, as an alternative to chipping or burning. Additional treatments will be added when supported by efficacy data.

**Emergency Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule restricts the interstate movement of pine Christmas trees; pine nursery stock; pine, spruce, larch, and fir logs with bark attached; and pine, spruce, larch, and fir lumber with bark attached from quarantined areas in six States.

Affected small entities include pine Christmas tree farms with annual sales of less than $500,000, commercial timber companies that harvest logs worth less than $1 million annually, and landscape nurseries with annual sales of less than $150,000. Of the estimated 982 small entities that grow and harvest regulated articles in the quarantined areas, most market their products locally. With fewer than 143 of these shipping regulated articles interstate, the estimated value of shipments affected by this rule represents less than 1 percent of the total value of production in the quarantined areas.

Farmers in the quarantined areas produce about 698,490 pine Christmas trees annually, accounting for 5.8 percent of the 12.1 million Christmas trees harvested each year in the six States affected by this rule. About 98 percent of the 426 Christmas tree farms in the quarantined areas produce for the local market; many are choose-and-cut operations, which sell trees to local residents, who harvest and transport their own trees. Twenty-seven Christmas tree operations produce trees for both local and interstate wholesale markets. These entities ship about 32,810 cut pine Christmas trees out of the quarantined counties each year. Current prices range from $9 to $17 per cut pine tree, depending on quality, size, and market location. Total estimated losses for these producers could be between $15,000 and $26,000 annually if tree shipments cannot be diverted from interstate markets to alternative markets within the quarantined areas.

Spruce and fir trees are not harvested by commercial timber companies in the quarantined areas. Commercial harvests of larch vary from year to year; the current standing larch inventory in the quarantined areas is estimated to be about 1.4 million board feet. Pine accounts for about 1 percent of the annual sawlog harvest and about 16 percent of the annual pulpwood harvest. The pine timber harvest in pine shoot beetle-infested areas totaled about 4.7 million board feet in 1990. Timber harvests in the six affected States total more than 1,000 million board feet annually. Approximately 21 of the 83 commercial timber harvesting companies in the quarantined areas harvest and ship an estimated 247,000 board feet of pine and larch logs to noninfested areas each year. Prices for pine and larch timber range from $89 to $174 per thousand board feet, depending on quality. Timber producers will be minimally affected by this rule because relatively inexpensive fumigation treatments for logs and lumber permit certification for unrestricted movement. In addition, regulated shipments of pine logs could readily be processed at saw and pulp mills within the quarantined areas, mitigating the negative economic impact of this rule.

Approximately 473 landscape nurseries are located within the quarantined areas. Exact figures are unavailable, but we estimate lost markets of between $52,000 and $74,000 annually for miscellaneous pine nursery products, as a result of interstate shipping restrictions imposed by this rule. However, the affected shipments could be diverted to areas within the quarantined areas, mitigating any negative economic impact of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of logs with bark attached and lumber with bark attached, under the conditions specified in this rule, will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Pine Shoot Beetle" (§§ 301.50 through 301.50–10) to read as follows:

**Subpart—Pine Shoot Beetle**

Sec.



**Subpart—Pine Shoot Beetle**

**§ 301.50 Restrictions on interstate movement of regulated articles.**

(a) Interstate movement of mature, field-grown pine nursery stock (*Pinus* spp.) from any quarantined area is prohibited.

(b) Regulated articles may be moved interstate from any quarantined area only in accordance with this subpart.[1]

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance; and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act 7 U.S.C. 150dd, 150ff).

**§ 301.50–1 Definitions.**

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Certificate.* A document in which an inspector, or person operating under a compliance agreement, affirms that a specified regulated article is free of pine shoot beetle and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

*Infestation.* The presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, or other individual, authorized by the Administrator to enforce this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit (permit).* A document in which an inspector, or person operating under a compliance agreement, affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.50–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Moved (Move, Movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Pine nursery stock.* All *Pinus* spp. woody plants, shrubs, and rooted trees, including ornamental pine, such as bonsai.

*Pine shoot beetle.* The insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.50–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.50–3(b) of this subpart.

*Regulated article.* Any article listed in § 301.50–2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.50–2(c) of this subpart.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

**§ 301.50–2 Regulated articles**

The following are regulated articles:

(a) Pine Christmas trees and nursery stock (*Pinus* spp.); logs of fir (*Abies* spp.), larch (*Larix* spp.), pine (*Pinus* spp.), and spruce (*Picea* spp.), with bark attached; and lumber of fir (*Abies* spp.), larch (*Larix* spp.), pine (*Pinus* spp.), and spruce (*Picea* spp.), with bark attached.

(b) Any article, product, or means of conveyance not covered by paragraph (a) of this section, that presents a risk of spread of the pine shoot beetle and that an inspector notifies the person in possession of it is subject to the restrictions of this subpart.

**§ 301.50–3 Quarantined areas.**

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area, in paragraph (c) of this section, each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe that the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of these articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the pine shoot beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section, or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

**Illinois**

*Kane County.* The entire county.

**Indiana**

*Allen County.* The entire county.
*Elkhart County.* The entire county.
*Fulton County.* The entire county.
*Jasper County.* The entire county.
*Kosciusko County.* The entire county.
*Lagrange County.* The entire county.
*Lake County.* The entire county.
*La Porte County.* The entire county.
*Marshall County.* The entire county.
*Newton County.* The entire county.
*Noble County.* The entire county.
*Porter County.* The entire county.
*Pulaski County.* The entire county.
*St. Joseph County.* The entire county.
*Starke County.* The entire county.
*Steuben County.* The entire county.
*Wells County.* The entire county.
*Whitley County.* The entire county.

**Michigan**

*Berrien County.* The entire county.
*Cass County.* The entire county.
*Monroe County.* The entire county.
*St. Joseph County.* The entire county.

**New York**

*Erie County.* The entire county.
*Niagara County.* The entire county.

**Ohio**

*Ashland County.* The entire county.
*Ashtabula County.* The entire county.
*Cuyahoga County.* The entire county.
*Geauga County.* The entire county.
*Huron County.* The entire county.
*Lake County.* The entire county.
*Lorain County.* The entire county.
*Mahoning County.* The entire county.
*Medina County.* The entire county.
*Portage County.* The entire county.
*Richland County.* The entire county.
*Summit County.* The entire county.
*Trumbull County.* The entire county.
*Wayne County.* The entire county.

**Pennsylvania**

*Crawford County.* The entire county.
*Erie County.* The entire county.
*Lawrence County.* The entire county.

**§ 301.50–4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area [2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.50–5 and 301.50–8 of this subpart;

(b) Without a certificate or limited permit, if:

(1)(i) The regulated article originates outside any quarantined area and is moved through the quarantined area without stopping (except for dropoff loads, refueling, or traffic conditions, such as traffic lights or stop signs) during October, November, or December, or when ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article originates outside any quarantined area and, during the period of January through September, is moved through the quarantined area at a temperature higher than 10 °C (50 °F), if the article is shipped in an enclosed vehicle or completely covered (such as with plastic, canvas, or other closely woven cloth) so as to prevent access by the pine shoot bettle; and

(2) The point of origin of the regulated article is indicted on the waybill.

(c) With a limited permit issued by the Administrator if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Under conditions, specified on the permit, which the Administrator has found to be adequate to prevent the spread of the pine shoot beetle; and

(3) With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or attached to the regulated article itself, if the regulated article is not in a container.

**§ 301.50–5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate will be issued by an inspector [3] for the interstate movement

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[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Services of an inspector may be requested by contacting the local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, PPQ, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, 20782.

of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.50–10 of this subpart; or

(ii) Based on inspection of the premises of origin, if the regulated article is a greenhouse-grown ornamental pine (such as bonsai), that the greenhouse is free from the pine shoot beetle and is screened to prevent entry of the pine shoot beetle; or

(iii) Based on inspection of the regulated article, if the regulated article is a pine seedling less than 24 inches tall, that it is free of the pine shoot beetle; and

(2)(i) The regulated article will be moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article will be moved through the quarantined area during the period of January through September, if the ambient air temperature is 10 °C (50 °F) or higher, in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[4] to prevent the spread of the pine shoot beetle; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector [5] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the pine shoot beetle. If the regulated article is part of a shipment of pine Christmas trees, the inspector will make a pest-risk determination on the basis of an inspection conducted in accordance with § 301.50–5(c) of this paragraph; or

(ii) The regulated article is to be moved interstate from a quarantined area to a quarantined area and will transit any non-quarantined area in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; and

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose, under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), to prevent the spread of the pine shoot beetle; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) The number of pine Christmas trees randomly selected for inspection is determined by the size and type of shipment, in accordance with the following tables. If a shipment mixes painted and natural trees, the inspection procedure for painted trees will apply.

TABLE 1.—PAINTED (COLOR-ENHANCED) PINE CHRISTMAS TREES [1]

| No. of trees in shipment | No. of trees to sample | No. of trees in shipment | No. of trees to sample |
|---|---|---|---|
| 1–72 | All | 701–800 | 120 |
| 73–100 | 73 | 801–900 | 121 |
| 101–200 | 96 | 901–1,000 | 122 |
| 201–300 | 106 | 1,001–2,000 | 126 |
| 301–400 | 111 | 2,001–3,000 | 127 |
| 401–500 | 115 | 3,001–5,000 | 128 |
| 501–600 | 117 | 5,001–10,000 | 129 |
| 601–700 | 119 | 10,001 or more | 130 |

[1] If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1."

TABLE 2.—NATURAL (UNPAINTED) CHRISTMAS TREES [1]

| No. of trees in shipment | No. of trees to sample | No. of trees in shipment | No. of trees to sample |
|---|---|---|---|
| 1–57 | All | 501–600 | 80 |
| 58–100 | 58 | 601–700 | 81 |
| 101–200 | 69 | 701–1,000 | 82 |
| 201–300 | 75 | 1,001–3,000 | 84 |
| 301–400 | 77 | 3,001–10,000 | 85 |
| 401–500 | 79 | 10,001 or more | 86 |

[1] If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1."

(d) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(e) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally, or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

**§ 301.50–6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.[6]

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may—under certain conditions—seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested, infected by, or contain plant pests.

[5] See footnote 3 to § 301.50–5(a).

[6] Compliance agreement forms are available without charge from the Administrator, c/o Permits Unit, PPQ, APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of Plant Protection and Quarantine, which are listed in telephone directories.

the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

**§ 301.50–7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.50–5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,[7] at least 48 hours in advance of the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

**§ 301.50–8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article must be attached, at all times during the interstate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

**§ 301.50–9 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

[7] See footnote 3 to § 301.50–5(a).

**§ 301.50–10 Treatments.**

Fumigation is authorized for use on pine, larch, spruce, or fir logs with bark attached and pine, spruce, larch, or fir lumber with bark attached, or pine Christmas trees, as follows: Logs, lumber, and trees may be treated with methyl bromide at normal atmospheric pressure with 48 g/m$^3$ (3 lb/1000 ft$^3$) for 16 hours at 21 °C (70 °F) or above, or 80 g/m$^3$ (5 lb/1000 ft$^3$) for 16 hours at 4.5–20.5 °C (40–69 °F.)

Done in Washington, DC, this 13th day of November 1992.

**Lonnie J. King,**

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

[FR Doc. 92–27995 Filed 11–18–92; 8:45 am]

BILLING CODE 3410–34–M

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 11

**[Docket No. 92–21]**

**RIN 1557–AA58**

### Securities Exchange Act Disclosure Rules

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule; correction.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is correcting its final rule regarding its Securities Exchange Act Disclosure Rules which appeared in the **Federal Register** on October 7, 1992. These corrections are necessary to ensure that sections of those rules (12 CFR part 11) rendered superfluous by OCC's incorporation through cross reference of Securities and Exchange Commission regulations are removed from the *Code of Federal Regulations*. These technical corrections merely accomplish the intended goal of the final rule as previously stated.

**EFFECTIVE DATE:** November 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jeff Mace, Attorney, Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 874–5210.

**SUPPLEMENTARY INFORMATION:** These corrections will insure that part 11 is fully revised as intended. The text of §§ 11.1 through 11.4 is unchanged from that in the final rule as published on October 7, 1992, and material rendered obsolete by the incorporation through cross reference is removed. Therefore, the following corrections are made to OCC's final rule, FR Doc. 92–23996, published on October 7, 1992 (57 FR 46081).

1. On page 46083, third column, the words of issuance are corrected to read as follows: "For the reasons set out in the preamble, 12 CFR part 11 is revised and 12 CFR parts 5 and 16 are amended to read as follows:"

2. On page 46083, third column, the heading "PART 11—[AMENDED]" and amendatory instruction 3 are removed.

3. On page 46084, first column, the first two lines at the top of the column are removed.

4. On page 46084, first column, amendatory instruction 4 is renumbered as amendatory instruction 3 and revised, and the part heading, table of contents, and authority citation for part 11 are added immediately preceding § 11.1 to read as follows:

3. Part 11 is revised to read as follows:

### PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

Sec.



**Authority:** 12 U.S.C. 93a; 15 U.S.C. 781, 78m, 78n, 78p, and 78w.

Dated: November 12, 1992.

**Stephen R. Steinbrink,**

*Acting Comptroller of the Currency.*

[FR Doc. 92–28107 Filed 11–18–92; 8:45 am]

BILLING CODE 4810–33–M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

### Organization and Operations of Federal Credit Unions; Reimbursement, Insurance and Indemnification of Officials and Employees

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** This rule permits federal credit unions (FCUs) to reimburse FCU officials for expenses related to credit union travel for an official and one immediate family member, in accordance with written policies and procedures, including documentation requirements, established by each FCU's board of directors. Each board of directors may define the term

"immediate family member" for purposes of this rule. Each board of directors is responsible to ensure that its policies allow only for payments that are necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU.

**EFFECTIVE DATE:** December 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Fenner, General Counsel, or Martin E. Conrey, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682–9630.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In accordance with its policy to review existing regulations every three years, the NCUA Board proposed an amendment to § 701.33 of its Rules and Regulations to allow FCUs to reimburse travel costs of officials and one immediate family member, under specified conditions. The NCUA Board issued a notice of proposed rulemaking on May 1, 1992 (57 FR 18837) and the sixty-day comment period ended on June 30, 1992.

The rule, as proposed, would have permitted FCUs to reimburse FCU officials for expenses related to travel costs for an official and one immediate family member (which would be defined by each FCU) in accordance with written policies established by each FCU's board of directors. Payment of these costs would have been conditioned upon a determination by the board of directors that the payment was necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU. The reimbursements would have required a recorded vote of the board of directors. The total amount of all such payments for each year would have been disclosed to members. Comments were specifically requested regarding whether all proposed conditions were necessary, items to be included in the proposed written policies, and on the definition of key phrases in the proposal.

In response to the comments received, the Board amends § 701.33 of the NCUA Rules and Regulations to permit FCU boards of directors to reimburse officials for expenses related to travel costs for the official and a family member as set forth below.

**B. Comments**

A total of 276 comments were received. One hundred and eighty-five of the commenters were FCUs. Eighteen of the commenters were federally insured state-chartered credit unions ("FISCUs"). Forty-eight commenters were individuals (often FCU board officials); thirteen were state credit union leagues (some leagues sent more than one comment); four were national trade associations; two were states; three were law firms; and one was an accounting firm. One hundred and sixty-seven or 61% of the commenters were in favor of the proposed rule, albeit often with conditions different from those proposed; ninety-two or 33% of the commenters were against the proposed rule; seventeen or 6% of the commenters expressed no opinion about the rule (most of these limited their comments to the issue of lost wages).

As noted above, sixty-one percent of the commenters approved of the proposed rule. These commenters consisted of 114 FCUs, twelve FISCUs, twenty-four individuals, four national trade associations, two law firms, the accounting firm, and the eight state leagues. Reasons cited by commenters for supporting the rule are as follows: (1) It encourages needed education of volunteers, which is reflected in stronger, better managed FCUs; (2) it returns FCUs to the pre-1989 NCUA policy of permitting such expenses; (3) it encourages members to become volunteers; (4) it recognizes the sacrifices made to FCUs by officials and their families; (5) it removes the drain on officials' personal finances; (6) it could lessen exposure to NCUSIF by encouraging better managed FCUs; and (7) the existing rule has not been uniformly enforced, and is difficult to enforce.

Thirty-three percent of the commenters disapproved of the proposed rule. These commenters consisted of sixty-five FCUs, six FISCUs, fourteen individuals, two states, one law firm, and three state leagues. Reasons cited by commenters for opposing the rule are as follows: (1) The proposed rule permits payments not necessary or appropriate to carry out FCU official business; (2) since the reimbursement of family member expenses will be taxable income it will "make the bankers' case for taxation [of FCUs] stronger"; (3) it will impact volunteerism and make the FCUs more like banks; and (4) it is an unwarranted expense of the FCU and will be reflected in lower returns to members; (5) it will be abused by some FCUs and reflect poorly upon all FCUs; (6) spouses usually do not participate in FCU-related activities at conferences and seminars; and (7) FCUs would spend money for administration and staff in complying with the regulation.

Three commenters cited the President's regulatory moratorium and regulatory burden as reasons to oppose the proposed regulation. One commenter suggested that, instead of allowing travel compensation for a family member, large credit unions institute a scholarship fund to award training and travel costs to officials of smaller credit unions.

**C. Discussion**

The NCUA Board believes that as long as expenditures are reasonable and safety and soundness concerns are met, FCU payment for an official and one family member should be within the discretion of the individual FCU. In order to pay or reimburse officials for these costs, two basic conditions were proposed and are adopted in the final rule. First, payments would need to be made in accordance with written policies established by the FCU's board of directors. Second, the board of directors must determine that the payments are necessary or appropriate to carry out FCU official business and reasonable in amount in relation to the resources and financial condition of the FCU. A separate board vote on each payment or reimbursement is not required in this regard, as long as the written policies or other board resolutions reflect that the board made the required determinations.

The reimbursement permitted by this rule is discretionary on the part of an FCU board of directors, not mandatory. The rule is not intended to foreclose an FCU board of directors from adopting a more stringent reimbursement policy, or from prohibiting such payments entirely. Such decisions would be left to the FCU board of directors, within the parameters of the rule.

One hundred and forty-six commenters responded to NCUA's request for comments regarding "whether one or more of the conditions is unnecessary and, if so, what combination should remain in the final rule." The three conditions set forth in the proposed rule were that the FCU: (1) Have written reimbursement policies; (2) hold a recorded board vote for each reimbursement; and (3) disclose the amount spent at the annual meeting. Sixty-six commenters stated that NCUA should require only written reimbursement policies, and not the recorded vote or annual meeting disclosure requirements. The Board has adopted only the written policy requirement in the final rule.

Twenty-four commenters stated that NCUA should require all three stated conditions; fifteen stated that NCUA

should require the written reimbursement policies and recorded vote conditions, but not the annual meeting disclosure condition [twenty-eight more stated that they objected to the annual meeting disclosure, but remained silent on the other conditions]; eight stated that NCUA should not require any conditions; and three stated that the conditions should apply solely to those FCUs which planned to reimburse family member expenses. Of these, 115 comments contained expanded discussion regarding the annual meeting disclosure requirement. Ninety were strenuously against; ten were for the disclosure only if it were disclosed solely as a line item on the annual financial report; five were in favor; four were against unless the amount were "material" or "exceeded peer"; two would disclose only to members requesting the information; two would disclose it monthly by lobby postings; and two would disclose it quarterly by a statement insert. Some commenters correctly stated that the travel and conference expenses of officers and directors are disclosed in general ledger account no. 232 in the Accounting Manual for FCUs. (Employees' travel and conference expenses are disclosed in general ledger account no. 231). FCUs already disclose these figures to members in the annual financial report. Many commenters felt the level of signature authority, supervisory committee audits, internal auditor audits, public accounting firm audits, and NCUA examinations were more appropriate methods for review rather than annual disclosure to members. Many stated that members would feel something was wrong with the expenditures if they were singled out for special treatment, and that it would lead to members infringing upon board authority issues. The NCUA Board agrees with the commenters and has deleted the requirement for annual meeting disclosure in the final rule.

Several commenters also stated that recorded votes for each reimbursement were not necessary, as it was common practice for the board to budget an amount for travel of officials once a year. Along these same lines, other commenters stated that a vote for all reimbursements would be a great burden upon an FCU board and, at the very least, NCUA should allow the board to delegate these authorizations to either a board committee, director or FCU manager. The Board finds that many credit unions follow travel reimbursement standards adopted by their boards of directors, and has deleted the requirement for a recorded vote for each reimbursement.

NCUA also solicited comment on whether it would be useful to provide regulatory guidance as to the meaning of other key phrases of the proposed rule.

NCUA requested comment on whether FCUs should adopt some form of "reasonableness test" or "common business practice test" containing specific common examples of what does and does not meet such tests in defining the term "travel costs." Comment was also requested on whether these issues should be addressed in the regulation itself, or, alternatively, be handled as a management decision of individual FCUs, subject to NCUA's supervisory oversight. Thirty-one commenters responded to NCUA's request for comments regarding the definition of "travel costs." Of these, twenty-six suggested that no further definition was necessary, and that the term should be defined by each FCU's board; three suggested that the NCUA define it further; two suggested that the NCUA use the IRS definition. The NCUA Board has decided to leave the defintion of this term to each FCU's board of directors, within the boundaries of reasonableness and safety and soundness.

NCUA solicited comment regarding whether the phrase "necessary or appropriate in order to carry out the official business of the credit union" should be expanded, for example, to include the idea that the meeting or program attended by the volunteer official is related to current or planned FCU operations and will enhance the FCU and the capability of the FCU volunteer official. Of the thirty-one commenters responding to the definition of this phrase, all but one requested that the NCUA permit the FCU boards to define it. The NCUA Board has decided to allow the boards of directors of FCUs to define this term, but suggests that FCUs assess the need for travel and training before approving it.

NCUA requested comment regarding the need for a definition of the phrase "reasonable in amount in relation to the resources and financial condition of the credit union." Likewise, of the sixteen commenters that responded to NCUA's request for further definition of this phrase, all but two requested that the NCUA permit the FCU boards to define it themselves. The Board has decided to leave the definition to individual FCUs and their boards of directors. In addition, the regulation already states that reimbursement payments shall only be made for "reasonable and proper costs." This concept fully incorporates the "reasonable in amount in relation to the resources and financial condition of the credit union" in the judgment of the Board.

NCUA also requested comment on whether certain FCUs should automatically be excluded from utilizing reimbursement policies, such as: FCUs that are rated at CAMEL 4 or 5; FCUs with negative earnings, declining or low capital, low liquidity, or in weakened financial condition; or FCUs receiving assistance under Section 116 or 208 of the FCU Act. In response to NCUA's request for comments regarding whether certain FCUs in unsatisfactory condition should be permitted to partake of any family member reimbursement policy, thirty-one commenters responded. Sixteen stated that such credit unions should be excluded; thirteen stated that such credit unions should not be excluded; and three suggested that NCUA approval be required before a weak FCU could reimburse for family member expenses. NCUA has decided not to exclude any FCUs from coverage of the rule, but reserves the right to take exception to any such expense, especially when made by a credit union in weakened condition, if it finds them excessive, unsubstantiated, or otherwise unsound.

NCUA also solicited comment on the information to be included in written reimbursement policies. Such policies would presumably include: (1) Requirements for signed travel vouchers; (2) documented receipts; (3) disclosures of the consequences of filing incorrect or fraudulent claims; (4) examples of reimbursable and nonreimbursable costs (e.g., coach v. first class airfares); (5) maximum lodging and meal expenses; (6) maximum number of trips for which accompaniment is permitted; (7) proper reporting to the IRS; and (8) whether travel to and from meetings is eligible for a reimbursement. Twenty-three commenters responded to NCUA's request for items to be included in the written reimbursement policies. The commenters repeated the eight items noted above, without adding anything new. Some FCUs included their current travel policies. While the Board has not included specific policies and procedures standards to be followed by credit unions, it has added a requirement that the written policies established by an FCU's board of directors also include written procedures and proper documentation requirements.

NCUA proposed to use the term "immediate family member" rather than "spouse" in order to provide greater flexibility to individual FCUs to

determine the relationships that qualify for reimbursement. NCUA noted that the term "members of their immediate families" has been used for several years by credit unions in connection with field of membership and chartering policy. Thirty-eight comments focused on the definition of "immediate family." Fifteen stated that each FCU should make its own definition; ten stated that a guest (an adult over eighteen years of age, significant other, accompanying person, associated individual) should be included, as family member was too restrictive; six stated that a family member be defined as a person in the same household; five stated that it be defined as a spouse only; and two stated that it should include either a spouse or a nurse. NCUA has, without incident or controversy, allowed individual credit unions to define that term as deemed appropriate for field-of-membership purposes. The Board has decided to use this approach here as well, so long as reimbursement, if any, is limited to one family member per official and the other conditions of the regulation are met. Further, it would not be necessary for an FCU to use the same definition "immediate family member" for this regulation as it does for field of membership. However, the term "immediate family member" must be defined in the required written reimbursement policy.

Two commenters requested a clarification regarding how the NCUA would treat the one compensated board director, whether as an official or as an employee. The Board would treat the one compensated board director as an employee. This individual is not subject to restrictions limiting officials' compensation. However, safety and soundness considerations still apply.

Although no other amendments were proposed, NCUA requested comments on other aspects of Section 701.33. In 1988, NCUA proposed a change that would allow reimbursement of volunteer officials for pay or leave actually lost due to attendance at board or committee meetings. (See 53 FR 4592, 2/19/1988.) This proposal was soundly rejected by commenters (see 53 FR 29640, 8/8/1988). Fifty of the comments to this request strongly supported such reimbursements, mainly on grounds of equity, especially to hourly workers. One commenter requested permission to pay retainers to FCU officials. Another commenter asked if FCUs could pay honorariums to volunteers. Twenty-five of the comments opposed such reimbursements, mainly on grounds that the issue was settled in a previous rulemaking in 1988. The lost wages comments included those from the seventeen (or six percent) commenters who did not express an opinion regarding the proposed rule. These commenters most often commented in favor of lost wages and consisted of six FCUs, ten individuals, and one state league. Due to the lack of comment and consensus on this issue, the Board has decided not to pursue the lost wages issue in this rulemaking. No other issues within the scope of § 701.33 of the NCUA Rules and Regulations were commented upon.

Three commenters, including one trade association, requested that NCUA apply the same reimbursement standards permitted for officials and family members of FCUs to the officials and family members of credit union service organizations (CUSOs). The NCUA Board has determined that this comment is outside of the scope of this rulemaking and not considerable by the NCUA Board under the Administrative Procedures Act. This issue will, however, be considered during the next review of the CUSO regulation. 12 CFR 701.27.

NCUA intends that the reimbursement permitted by this rule would be discretionary on the part of an FCU board of directors, not mandatory. Once again, the Board cautions FCUs that this proposal has no effect on applicable IRS regulations regarding the reporting and taxing of any payments or reimbursements. For such information, NCUA recommends that FCUs consult their tax advisors or attorneys.

The Board also notes that nothing in this final rule affects the right of the NCUA to make exceptions in examination reports and to bring enforcement actions based upon any unsafe and unsound credit union reimbursement practices.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Analysis concerning the effect the proposed compensation rule will have on small credit unions indicates that no significant economic impact will result from the rule. Therefore, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required

*Paperwork Reduction Act*

The information collection requirements in the final rule have been submitted to, and approved by, the Office of Management and Budget. The control number assigned for this rule is 3133–0130, approved for use through September 30, 1995. Due to the reduction in paperwork requirements from the proposed rule, NCUA will file an amendment reflecting the reduction to the Office of Management and Budget.

*Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to FCUs and therefore will not affect state interests. Three commenters disputed NCUA's certification under E.O. 12612 that the rule would have no effect on state-chartered credit unions and state law. The reasoning seems to be that, since some states incorporate federal regulations by law or by practice, federal regulation has an effect on state-chartered credit unions. We note that the states decide for themselves whether or not to incorporate federal regulations and are free to establish their own policies concerning official reimbursement.

**List of Subjects in 12 CFR Part 701**

Credit unions; Reporting and recordkeeping requirements; Travel and transportation expenses; Travel restrictions.

By the National Credit Union Administration Board on November 12, 1992.

**Allan Meltzer,**

*Acting Secretary of the Board.*

For the reasons set forth in the preamble, 12 CFR part 701 is amended as follows:

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and P.L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. Section 701.33(b)(2)(i) is revised to read as follows:

**§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.**

* * * * *

(b) * * *

(2) * * *

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one immediate family member per official;

* * * * *

[FR Doc. 92-28041 Filed 11-18-92; 8:45 am]

BILLING CODE 7535-01-M

## RESOLUTION TRUST CORPORATION

### 12 CFR Part 1606

### Amended Statement of Policy on Contracting With Firms With Related Entity Defaults on Financial Obligations

**AGENCY:** Resolution Trust Corporation.

**ACTION:** Statement of policy.

**SUMMARY:** On July 23, 1992 (57 FR 32841), the Resolution Trust Corporation (RTC) published in the **Federal Register** a policy statement restricting RTC contracting with firms whose related entities are in default on financial obligations to the RTC, the Federal Deposit Insurance Corporation (FDIC), or the Federal Savings and Loan Insurance Corporation (FSLIC) in any of their capacities (the Default Policy).

After several months of operating experience under that policy, the RTC is revising the Default Policy to exclude from its coverage contractor firms whose affiliated business entities have defaulted on RTC post-intervention nonrecourse seller financing provided, in the sole discretion of the RTC, that no material dispute exists between the RTC and the contractor firm itself regarding the asset (the Exclusion). The RTC has also decided to revise the Default Policy and to publish the list of financial institutions under RTC or FDIC control in the **Federal Register** on a periodic rather than quarterly basis.

**EFFECTIVE DATE:** This policy statement is effective on November 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Martin Blumenthal, Supervisory Ethics Specialist, Office of Ethics, (202) 416-2029, Carl Gold, Counsel, Division of Legal Services, (202) 736-0728, or Richard J. Kurtz, Contractor Ethics Specialist, Office of Ethics, (202) 416-7088. (These are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and RTC regulations adopted under the authority of FIRREA (*see* 12 CFR 1606) establish a clear policy that, absent a compelling reason to the contrary, the RTC should not transact business with firms that have contributed to the nation's thrift crisis. The policy is primarily premised on the prevention of the conferral of financial profit to a party who caused a pre-intervention financial loss to an insured depository institution or federal regulatory entity, thereby increasing the burden on the taxpayer. See 12 U.S.C. 1441a(p)(6)(E); 12 CFR 1606.4(a)(2)-(6), (10)-(11). The RTC, however, is also charged with a statutory duty to preserve and conserve the assets and property of institutions under its control so as to minimize the burden on the American taxpayer. The RTC satisfies this duty through the sale of institution assets and the reduction of associated administrative costs.

Out of necessity, the RTC has exercised its statutory and regulatory authority on a case-by-case basis and contracted with firms whose related entities were in default on financial obligations, including obligations owed the RTC, FDIC or FSLIC. The Default Policy reflected a tightening of the general policy and announced the RTC's decision to further restrict contracting with firms whose related entities had defaulted on such obligations. Based on the experience gained since the publication of the Default Policy, the RTC has decided to further exercise its authority and create this Exclusion to the Default Policy.

Essentially, the RTC has identified certain hard-to-sell assets and determined that the best method of both facilitating their sale and maximizing their return is to offer prospective buyers RTC post-intervention nonrecourse seller financing. By facilitating the sale of these hard-to-sell assets, the RTC downsizes the institution through asset sales while simultaneously reducing the associated administrative costs, all in satisfaction of the conservator's obligation to the taxpayer.

Even where the buyer defaults on RTC post-intervention seller financing and voluntarily reconveys the asset, the reacquisition costs are de minimis and largely offset by the combination of the initial purchase price and the interim savings in administrative costs. Further, in the aggregate, RTC post-intervention seller financing defaults do not cause a loss to or contribute to the failure of financial institutions. On balance, therefore, this Exclusion minimizes taxpayer expense through the sale of assets and reduction of administrative costs and confers no profit to any party who either caused a loss or contributed to a failure of an insured depository institution. Accordingly, the RTC has determined that it is within its authority and in the best interests of the taxpayer to create this Exclusion.

However, where there is a material dispute between the RTC and the buyer/contractor over the nonrecourse seller financing, that dispute may result in substantial additional costs being incurred by the RTC. In such circumstances, the default on nonrecourse seller financing will be considered to be an affiliated business entity default (or related entity default).

The Default Policy, as revised, is as follows:

An affiliated business entity is defined to be a business organization (e.g., a corporation, partnership, etc.) that is controlled by the contractor, controls the contractor, or is under common control with the contractor. The term "control" is defined in the definition of "related entity" in 12 CFR 1606.2(n). For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

An unsatisfied RTC/FDIC obligation is either a "default" on an obligation to the RTC, FDIC, or FSLIC in any of their capacities, as "default" is defined in 12 CFR 1606.2(d) or an unsatisfied final judgment in favor of the RTC, FDIC, or FSLIC or any depository institution under RTC/FDIC control. See 12 CFR 1606.2(g)(2). The definition of unsatisfied RTC/FDIC obligation shall exclude contractors whose affiliated business entities have defaulted on RTC post-intervention nonrecourse seller financing provided, in the sole discretion of the RTC, that no material dispute exists between the RTC and the contracting firm itself regarding the asset. The definition shall include defaults on RTC post-intervention nonrecourse seller financing by the contractor itself.

When responding to a RTC solicitation of services, contractors will be expected to make a reasonable effort to comply with all RTC reporting, informational, and certification

requirements. In this context, a reasonable effort will be defined by the totality of the circumstances facing a contractor required to make these certifications, and the failure to report would not be grounds for institution of administrative proceedings to exclude the contractor from the RTC contracting program if the RTC determines that the contractor used its reasonable efforts in completing the certifications. To permit contractors to conduct the research necessary to fulfill these reporting requirements in conjunction with other RTC/FDIC information gathering projects, each contractor may select the dates of its reporting year. To further assist contractors in this effort, the RTC will periodically publish a list of financial institutions under RTC or FDIC control in the **Federal Register.**

By order of the Executive Committee.

Dated at Washington, DC, this 13th day of November 1992.

Resolution Trust Corporation.

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

*Secretary.*

[FR Doc. 92–27960 Filed 11–18–92; 8:45 am]

BILLING CODE 6714–01–M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 123

### Disaster—Physical Disaster and Economic Injury Loans

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Interim final rule.

**SUMMARY:** This rule implements a provision in SBA's fiscal year 1993 appropriations act (October 6, 1992), which prohibits the use of SBA disaster loan funds for direct loans to homeowners or businesses that wish to voluntarily relocate outside the business area in which a disaster has occurred. Because of the emergency nature of this rule, SBA is publishing it in final form, but is also soliciting public comments on the subject.

**DATES:** This Interim Final Rule is effective as of October 7, 1992. Comments are due on or before January 19, 1993.

**ADDRESSES:** Comments may be sent to Bernard Kulik, Assistant Administrator for Disaster Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Assistant Administrator for Disaster Assistance, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** On October 6, 1992, the President signed Public Law 102–395 (106 Stat. 1828, 1864), the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1992, which, among other things, prohibits borrowers from using SBA's direct disaster loan funds to relocate voluntarily outside the business area where the disaster occurred.

In the Conference Report accompanying Public Law 102–395, the Senate and House conferees expressed their expectation that SBA would promulgate regulations implementing this provision "under any expedited procedures available by law." (Cong. Rec. H 9566, September 28, 1992.) Congress has concluded that communities devastated by recent disasters need immediate reassurance that federal government funds will not be used to assist borrowers to move away from those communities and further delay restoration of essential services for individuals and businesses remaining in the area. In recognition of Congress' direction to SBA to proceed swiftly in implementing this law, SBA has determined, pursuant to 5 U.S.C. 553(b)(B) and in accordance with 13 CFR 101.9, that the notice and public comment procedures otherwise required by the Administrative Procedure Act would be impracticable and contrary to the public interest in the promulgation of this emergency interim final regulation. SBA is therefore availing itself of its authority to change the disaster regulations without advance notice by publishing this emergency regulation. Comments are, nevertheless, hereby solicited and will be taken into consideration in the publication of a final rule.

This interim final rule essentially tracks the language of the legislation it implements. Under this rule, effective October 7, 1992, SBA will no longer make direct disaster loans, whether for physical loss or economic injury, to businesses or homeowners who relocate voluntarily out of the business area in which the disaster occurred. In accordance with the Congressional intent expressed in the Conference Report, it is SBA's intention to strictly apply this prohibition to businesses, but to allow for more flexibility in the application of the provision to homeowners. Thus, in general, a relocation will not be considered voluntary if, for a business, it is made necessary by uncontrollable or compelling circumstances or, for a homeowner, it is caused by special or unusual circumstances impacting the homeowner.

SBA has also provided a definition of business area in the rule which is intended to restrict relocations to the municipality which provides general governmental services to the damaged business or home. In general, the municipality will be the city or town in which the borrower is located. For example, if Montgomery County, Maryland is declared a disaster area and the applicant business or homeowner is located in the City of Rockville within Montgomery County and the City of Rockville provides general governmental services, then Rockville is the business area and SBA will make a loan to the applicant only if the applicant does not relocate outside of the city borders. In unusual cases, where the municipality is comprised of more than one county (e.g., New York City), the business area will be the county in which the borrower is located and the borrower must remain within the county boundaries in order to receive a disaster loan from SBA. SBA does not intend to restrict the business area to divisions smaller than a city or town. In that regard, school, hospital and other special purpose districts, election wards and districts, precincts, and the like do not define the business area. In those cases where a borrower is not located in a municipality which provides general governmental services, business area shall mean the county or equivalent political entity in which the borrower is located.

In order to administer this new rule, as of October 7, 1992, SBA will require borrowers of direct SBA disaster assistance to certify that SBA loan funds will not be used to relocate out of the business area for reasons other than those permitted under this rule. This certification will be required at the time of the closing of the loan.

### Compliance with Executive Orders 12291, 12612 and 12778, and the Regulatory Flexibility and Paperwork Reduction Acts

*Executive Order 12291 and the Regulatory Flexibility Act*

SBA has determined that this emergency rule is exempt from the procedures described by Executive Order 12291 because consideration under the terms of such Order would conflict with deadlines imposed by statute. As discussed above, the Congressional intent as expressed in the Conference Report was for SBA to promulgate regulations under any expedited procedures available by law. SBA has determined that compliance with the procedures of the Order would thus be impracticable. In addition, pursuant to 5 U.S.C. 608(a), SBA has

determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because, as discussed above, it is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of such Act impracticable.

*Executive Order 12612*

SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

*Paperwork Reduction Act*

For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35, we hereby certify that this rule will impose no new recordkeeping or reporting requirements.

*Executive Order 12778*

SBA certifies that this rule has been drafted, to the extent practicable, in accordance with the standards of section 2 of E.O. 12778.

**List of Subjects in 13 CFR Part 123**

Disaster assistance, Loan programs—business, Small businesses.

For the reasons set forth above, part 123 of title 13, Code of Federal Regulations, is amended as follows:

**PART 123—[AMENDED]**

1. The authority citation for part 123 is revised to read as follows:

Authority: Sections 5(b)(6), 7 (b), (c), (f) of the Small Business Act (15 U.S.C. 634(b)(6), 636 (b), (c), (f)); and Pub. L. 102–395, 106 Stat. 1828, 1864.

2. Section 123.9 is amended by adding a new paragraph (c) to read as follows:

**§ 123.9 Terms and amounts of loans.**

* * * * *

(c) *Relocation restrictions.* (1) As of October 7, 1992, no direct loan may be made under this part to any borrower who voluntarily relocates outside the business area in which the disaster has occurred. See also § 123.24(g).

(2) For purposes of this paragraph (c), a business will not be deemed to "voluntarily relocate" if the relocation is made necessary by uncontrollable or compelling circumstances which would make it necessary for the business to relocate. Such circumstances may include, but are not limited to:

(i) The elimination or substantial decrease of the market for the business product or service as a consequence of the disaster;

(ii) A change in the demographics of the business area within 18 months prior to the disaster or as a result of the disaster which make it uneconomical to continue the business in the business area;

(iii) A substantial change in business costs as a result of the disaster which makes the continuation of the business in the business area not economically viable;

(iv) Location of the business in a hazardous area such as a special flood hazard area, an earthquake prone area or any other area prone to disaster (as defined in the Small Business Act);

(v) A change in the public infrastructure in the business area within 18 months prior to or as a result of the disaster that would result in substantially increased expenses for the business in the business area;

(vi) The implementation of decisions adopted and partially implemented within 18 months prior to the disaster to move the business out of the business area for good and sufficient business or personal reasons; or

(vii) Other factors which undermine the economic viability of the business area.

(3) For purposes of this paragraph (c), a homeowner will not be deemed to "voluntarily relocate" if the relocation is caused by special or unusual circumstances impacting the individual homeowner. Such considerations may include, but are not limited to:

(i) A risk of recurrence of a disaster (as defined in the Small Business Act) in the business area;

(ii) A change in employment status, such as employment transfers, relocation for a new job, lack of adequate job opportunities in the business area, or implementation of retirement plans within 18 months after the occurrence of the disaster;

(iii) Medical reasons; or

(iv) Special family considerations which necessitate a move outside of the business area.

(4) For purposes of this paragraph (c), "business area" means the municipality which provides general governmental services to the damaged business or home. If the damaged business or home is not located within a municipality which provides general governmental services, then "business area" means the county or equivalent political entity in which the damaged business or home is located.

3. Section 123.24 is amended by adding a heading and revising the first sentence in paragraphs (g) (1) and (2) to read as follows:

**§ 123.24 Conditions affecting all physical disaster loans.**

* * * * *

(g) *Relocation.* (1) *Unrestricted relocation.* If the disaster victim voluntarily elects to construct or buy another home or business facility in a new location outside the business area, the loan may be used for such purpose, subject to § 123.25(a), provided it was authorized and obligated prior to October 7, 1992. * * *

(2) *Mandatory relocation.* Where relocation inside or outside the business area becomes necessary because applicable law prevents rehabilitation of real property, damage to such property shall be deemed to amount to total loss.

* * *

* * * * *

5. Section 123.41 is amended by revising paragraph (h) to read as follows:

**§ 123.41 General provisions.**

* * * * *

(h) *Other requirements.* For application requirements, see § 123.18; for terms of loans, see § 123.9(a); for relocation restrictions, see § 123.9(c); for types of loans, see § 123.4; for services fees, see § 123.6 of this part.

Dated: November 13, 1992.

**Patricia Saiki,**

*Administrator.*

[FR Doc. 92–28208 Filed 11–17–92; 12:15 pm]

BILLING CODE 8025–01–M

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Part 576**

**[Docket No. R–92–1618; FR–3319–I–01]**

**RIN 2506–AB41**

## Reallocation of Unused Emergency Shelter Grants Amounts

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Interim rule.

**SUMMARY:** The Department is amending its regulations governing reallocations of unused grant amounts under the Emergency Shelter Grants (ESG) Program. Based on experience with the program, the Department has determined that the limited amount of funds involved could more efficiently and effectively be distributed through existing grant allocation formulas, rather than through the selection process provided in the current regulations. The

Department expects the change to simplify the administration of the program and promote better utilization of both Department and grantee resources.

**DATES:** *Effective date:* December 21, 1992.

*Comment due date:* January 19, 1993.

**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 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** James N. Forsberg, Director, Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., room 7262, Washington, DC 20410, telephone (202) 708–4300 or (202) 708–2565 (TDD). (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

**Justification for Interim Rulemaking**

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is impracticable and contrary to the public interest. The rule will permit the Department to take timely action on the reallocation of unused Emergency Shelter Grant (ESG) amounts in a manner that will greatly limit the bureaucratic requirements attached to these relatively small amounts. The current regulatory requirements are complicated and impose substantial administrative and application requirements on the Department and potential grantees. Thus, these requirements impede the effective use of reallocated funds and the efficiency of both the Department and the providers of services under the ESG Program. Through this interim rule, the Department is instituting a direct and equitable distribution of funds to entitlement grantees using the formula applicable to initial allocation of amounts appropriated for the ESG program.

The Department invites public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that would supersede this interim rule.

**Background**

The Emergency Shelter Grants (ESG) Program (42 U.S.C. 11371–11377) is intended to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. The ESG Program was originally established in section 101(g) of Public Law 99–500 (approved October 18, 1986, 100 Stat. 1783–242), making appropriations for Fiscal Year 1987 as provided for in H.R. 5313. The program was reauthorized, with amendments, in the Stewart B. McKinney Homeless Assistance Act, Public Law 100–77, approved July 22, 1987 (1987 McKinney Act), and was further amended as a result of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100–628, approved November 7, 1988) (1988 McKinney Act). Self-executing legislative changes to the ESG Program in section 832 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA) have been implemented by direct notice to grantees.

**Interim Rule**

Through its experience in administering the ESG Program, the Department has determined that money appropriated for the program could be made available for its intended purposes more efficiently and quickly in one specific area: the reallocation of unused funds. Currently, the low amount of unused grant funds available for reallocation does not justify the type of selection process provided for in 24 CFR 576.67. Under this rule the Department instead will add unused amounts to the next year's appropriation, to be distributed to entitlement grantees on the formula basis initially applicable to ESG appropriations. This method will provide a simpler and more efficient redistribution of these limited funds.

The definition of "unused" amounts is set out in § 576.67(f) and includes amounts that could not be reallocated under §§ 576.61 and 576.63 (governing reallocation of amounts that become available because an entitlement grantee fails to obtain timely approval of its Comprehensive Housing Affordability Strategy), or § 576.67(c) (governing reallocation of returned grant amounts).

The interim rule amends § 576.67(d), which governs the reallocation of unused amounts, to provide that unused amounts will be added to the next fiscal year's appropriation and distributed accordingly to entitlement grantees. The interim rule also removes paragraph (c)(4) in the current § 576.67, because that provision becomes obsolete in the context of the new reallocation process in paragraph (d). Similarly, a cross-reference to paragraph (d) is removed from § 576.67(e).

**Other Matters**

*Major Rule*

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation, 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.

*Regulatory Flexibility Act*

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 does not have a significant economic impact on a substantial number of small entities. The rule is limited to a change in the methodology for redistributing relatively small amounts of unused formula grant funds. This change is primarily expected to increase the efficiency of the administration of the program by the Department and the use of the appropriated funds by the providers of services.

*Environmental Review*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20

of the HUD regulations, the policies and procedures contained in this rule relate only to the performance of accounting, auditing and fiscal functions and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule is limited to providing a simpler and more efficient methodology of reallocating unused grant funds to the intended grantees.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs related to family concerns.

This rule was listed as item 1471 in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392, 51428), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.231.

**List of Subjects in 24 CFR Part 576**

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Homeless, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 576 of title 24 of the Code of Federal Regulations is amended as follows.

## PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWARD B. McKINNEY HOMELESS ASSISTANCE ACT

1. The authority citation for part 576 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

2. In § 576.67, paragraph (c)(4) is removed and reserved, and paragraph (d) and paragraph (e) introductory text are revised to read as follows:

**§ 576.67 Reallocation of grant amounts; returned or unused amounts.**

* * * * *

(d) *Reallocation—unused grant amounts.* Unused grant amounts will be added to the appropriation for the fiscal year immediately following the fiscal year in which the amounts become available to HUD for reallocation, and will be allocated in accordance with the provisions of subpart D of this part.

(e) *Selection criteria.* HUD will award grants under paragraph (c) of this section based on consideration of the following criteria:

* * * * *

Dated: September 15, 1992.

**Randall H. Erben,**

*Acting Assistant Secretary for Community Planning and Development.*

[FR Doc. 92–28015 Filed 11–18–92; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD14 92–05]

RIN 2115

## Safety Zone; Pacific Missile Range Facility (PMRF), Barking Sands, Island of Kauai, HI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a permanent safety zone in the waters near the Pacific Missile Range Facility (PMRF), Barking Sands, Kauai, HI. The rulemaking is needed to protect the public and property from the hazards related to the launching of Strategic Target System vehicles at PMRF. The safety zone is intended to ensure that all persons and vessels remain clear of the down-range area during launches of Strategic Target System vehicles.

**DATES:** This regulation is effective November 17, 1992.

**ADDRESSES:** Coast Guard Marine Safety Office, Honolulu, 433 Ala Moana Boulevard, Honolulu, HI 96813–4909.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) A.C. Curry, Port Safety and Security Branch, Marine Safety Office, Honolulu, HI, (808) 541–2068.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are Lieutenant (junior grade) A.C. Curry, Project Officer, Marine Safety Office Honolulu, and Lieutenant Commander H.A. Black, Project Attorney, Fourteenth Coast Guard District Legal Office.

**Regulatory History**

On August 6, 1992, the Coast Guard published a notice of proposed rulemaking entitled "Safety Zone; Pacific Missile Range Facility (PMRF), Barking Sands, Island of Kauai, Hawaii" in the **Federal Register** (57 FR 34741). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

**Background and Purpose**

This safety zone was requested by the PMRF and the U.S. Army Strategic Defense Command for the launching of Strategic Target System (STARS) vehicles from PMRF on the island of Kauai, HI. The program will involve approximately four launches per year over a ten year period. The launches involve rocket operations, with potential hazards to any vessels or persons along the launch ground path due to rocket blast and the possibility of falling debris.

Implementation of a permanent safety zone will enhance safe navigation off the Island of Kauai, HI, by defining an established, consistent area that must be kept clear during STARS launches. The permanently defined area will eliminate the need to create quarterly safety zones and will provide clear, consistent notice to all mariners of the affected danger areas.

**Regulatory Evaluation**

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and reviewed the environmental impact statement prepared by U.S. Army Strategic Defense Command which was found to be satisfactory. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

For the reason set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new section 165.1406 is added to read as follows:

**§ 165.1406 Safety Zone: Pacific Missile Range Facility (PMRF), Barking Sands, Island of Kauai, Hawaii.**

(a) *Location.* The following area is established as a safety zone during launch operations at PMRF, Kauai, Hawaii: The waters bounded by the following coordinates: (22° 01.2'N, 159° 47.3'W), (22° 01.2'N, 159° 50.7'W), (22° 06.3'N, 159° 50.7'W), (22° 06.3'N, 159° 44.8'W).

(b) *Activation.* The above safety zone will be activated during launch operations at PMRF, Kauai, Hawaii. The Coast Guard will provide notice that the safety zone will be activated through published and broadcast local notice to mariners prior to scheduled launch dates.

(c) *Regulation.* The area described in paragraph (a) of this section will be closed to all vessels and persons, except those vessels and persons authorized by the Commander, Fourteenth Coast Guard District, or the Captain of the Port (COTP) Honolulu, Hawaii, whenever Strategic Target System (STARS) vehicles are to be launched by the United States Government from the PMRF, Barking Sands, Kauai, Hawaii.

(d) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: October 23, 1992.

**Richard C. Vlaun,**

*Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.*

[FR Doc. 92–27836 Filed 11–18–92; 8:45 am]

BILLING CODE 4910–14–M

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**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**RIN 1018–AB43**

## Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D—1992–1993 Subsistence Taking of Fish and Wildlife Regulations; Correction

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

**ACTION:** Correction to final rule.

**SUMMARY:** This document contains corrections in the final Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D—1992–1993 Subsistence Taking of Fish and Wildlife which was published in the **Federal Register** on May 28, 1992 (57 FR 22530–22567). These amendments are made to correct errors and omissions in the original document.

**EFFECTIVE DATE:** July 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA. Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

**SUPPLEMENTARY INFORMATION:** The final regulations that are the subject of these revisions contain errors which require correction. The corrections are made in identical fashion in 36 CFR part 242 and 50 CFR part 100.

The Federal Subsistence Board (Board) finds these corrections to be exempt, under the Administrative Procedures Act (APA), from requirements that there be public notice and opportunity for the public to comment on these corrections prior to their publication. Specifically, the Board finds that such requirements in this instance are impracticable, unnecessary, and contrary to the public interest. The corrections listed herein accurately reflect action previously and publicly taken by the Board, and simultaneously conveyed to the public. During the Board's previous deliberations on the substance underlying each error addressed by these corrections, public notice and the opportunity for public comment was provided through the **Federal Register**, newspaper publication, and other means. Repetition of the notice and comment procedures at this time would impede the process generally, provide insignificant benefits in nature and impact, and fail to serve the public interest. Therefore, the Board has not reapplied the notice and comment procedures prior to publication of these corrections.

In addition, the Board finds good cause to implement these corrections as of July 1, 1992, the date on which they would have been effective had inadvertent oversight not occurred during review of the final rule. As stated previously, the Board, in public, deliberated over and acted upon the substance of each error addressed by the foregoing corrections. Minor errors in editing constitute the only reason that the concepts found herein were omitted from the final rule which was published on May 28, 1992 (57 FR 22530–22567). Therefore, the Board finds these corrections to be exempt, under the APA, from the requirement that these corrections be published thirty days prior to their effective date.

**Curtis V. McVee,**

*Chair, Federal Subsistence Board.*

**Robert W. Williams,**

*Deputy Regional Forester, USDA-Forest Service.*

**List of Subjects**

*36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National

Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

*50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, 36 CFR part 242 and 50 CFR part 100 are corrected as follows:

**TITLE 36**

**PART 242—[AMENDED]**

**TITLE 50**

**PART 100—[AMENDED]**

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3566; 43 U.S.C. 1733.

2. Subpart D is amended as follows:

**§ _____.25 Subsistence Taking of Wildlife.**

1. In the table in § _____.25(m)(1) the listing for "Goat" in columns 1 and 2 (Bag Limits and Open Season), add the following:

* * * * *

(m) * * *

(1) * * *

Unit 1(C) that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.—No open season.

Unit 1(D) that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.—No open season.

* * * * *

2. In the table in § _____.25(m)(13) for the listing "Wolverine" in the first column in the table (Bag Limits) the narrative under "Trapping" is revised to read:

* * * * *

(m) * * *

(13) * * *

Public lands are closed to hunting and trapping except by eligible rural Alaska residents.

* * * * *

3. Section _____.25(m)(17)(ii)(C), is revised to read:

* * * * *

(m) * * *

(17) * * *

(ii) * * *

(C) the Western Alaska Brown Bear Management Area consisting of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

* * * * *

4. Section _____.25(m)(18)(ii)(B), is revised to read:

* * * * *

(m) * * *

(18) * * *

(ii) * * *

(B) the Western Alaska Brown Bear Management Area consisting of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

* * * * *

5. Section _____.25(m)(19)(ii)(D) is revised to read:

* * * * *

(m) * * *

(19) * * *

(ii) * * *

(D) the Western Alaska Brown Bear Management Area consisting of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

* * * * *

6. Section _____.25(m)(25)(ii)(B) is revised to read:

* * * * *

(m) * * *

(25) * * *

(ii) * * *

(B) the Arctic Village Sheep Management Area encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of State Game Management Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain; the boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the divide to an unnamed peak, elevation 6,460, located north of the most southerly major fork of the headwaters of Cane Creek; then the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik. A map showing the Arctic Village Sheep Management Area may be obtained by contacting the U.S. Fish and Wildlife Service, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, Alaska 99503.

* * * * *

[FR Doc. 92–28004 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–55–M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL 4526–1]**

## Approval and Promulgation of Air Quality Implementation Plans Colorado: Diesel Opacity, Inspection, and Maintenance Regulations (CO1–1–5442 & CO12–1–5489)

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Colorado State Implementation Plan (SIP) as submitted by the Governor in letters dated October 25, 1989, and October 30, 1991. The revisions consist of amendments to Regulation No. 12,

"Reduction of Diesel Vehicle Emissions."

The 1989 revisions affect the opacity standards, expand the inspection program to all diesel vehicles, revise the test procedures, and change from a biannual to an annual self-certification opacity program for heavy-duty fleet vehicles. The 1991 revisions make minor changes to test procedures, require a windshield sticker, make the provisions applicable to vehicles which are principally operated in the program area, provide for one free retest and increase the stringency of the opacity limits.

EPA is acting on the 1989 and 1991 revisions together in this direct final **Federal Register** notice. These amendments are helpful for reducing smoke from diesel vehicles and reducing human health risks from diesel particulate exposure. EPA's approval serves to make the revisions federally enforceable and was requested by the State of Colorado. However, today's action does not constitute an approval of strategies to meet the 1990 Clean Air Act Amendments' requirements for particulate matter. Nor does this action reach any determination about the "credit" that should be attributed to Regulation No. 12. EPA intends to make such determinations in the context of reviewing specific control strategies for the affected nonattainment areas.

**EFFECTIVE DATE:** This action will become effective on January 19, 1993, unless notice is received within 30 days of publication that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Amy Platt, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 293–1769.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Colorado Air Quality Control Commission adopted Regulation No. 12, "The Reduction of Diesel Vehicle Emissions," on December 18, 1986, and it was effective on January 30, 1987. The regulation established a heavy-duty diesel fleet self-inspection and maintenance program requiring opacity inspections and adherence to prescribed maintenance procedures. The regulation was designed to ensure that affected fleet vehicles were complying with the State diesel opacity standards, which limit the amount of smoke exhausted from operating diesel vehicles. The regulation required a biannual opacity compliance testing at approximately six-month intervals for fleets located in the Colorado light-duty vehicle emission inspection area, which originally included Boulder, Douglas, and Jefferson Counties, the City and County of Denver, and portions of Adams, Arapahoe, El Paso, and Larimer Counties. Portions of Weld County were added to the inspection area on July 1, 1987. (Specific boundary locations can be found in Section 42–4–307(8) of the Colorado Revised Statutes.) The State estimated that particulate matter less than 10 micrometers in diameter would be reduced by approximately 10% in the inspection area due to this regulation.

The EPA revised the National Ambient Air Quality Standard (NAAQS) for particulate matter on July 1, 1987 (52 FR 24634) and eliminated the standard for Total Suspended Particulate (TSP). The revised standard is expressed in terms of particulate matter of 10 micrometers or less in diameter (PM–10). However, at the State's option, EPA continued to process TSP SIP revisions which were being developed at the time the new PM–10 standard was promulgated. In the policy published on July 1, 1987, p. 2469, EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM–10. Therefore, on December 21, 1987, the Governor of Colorado submitted Regulation No. 12, and on July 25, 1988, EPA approved a revision to the Colorado TSP SIP, which added the diesel vehicle emissions regulation (53 FR 27858).

**Revisions Submitted on October 25, 1989**

In a letter dated October 25, 1989, the Governor of Colorado submitted revisions to Regulation No. 12, which were adopted on July 20, 1989, by the Colorado Air Quality Control Commission, and were effective on August 30, 1989. EPA proposed to approve these revisions in the August 31, 1990, **Federal Register** (55 FR 35686). The 1989 revisions amended Part A (Diesel Fleet Self-Certification Program) and added new Parts B (Diesel Opacity Inspection Program) and C (Standards for Visible Pollutants from Diesel Engine Powered Vehicles—Operating on Roads, Streets and Highways). The inspection requirement was expanded to cover all diesel vehicles with enforcement through the vehicle registration program. Light-duty diesel vehicles (those less than 7,500 pounds empty weight) and non-fleet heavy-duty vehicles must be tested annually using a dynamometer at a licensed test station. The heavy-duty fleet vehicle inspection was changed from a biannual to an annual self-certification opacity program.

The maximum inspection fee per vehicle for the non-fleet program was established at $45, with one retest per vehicle allowed at a maximum fee of $35. The initial emission standard was set at 40% opacity, as measured by an approved smoke meter. If a vehicle fails, owners of light-duty vehicles must spend up to $750 in repair costs on the vehicle in order to comply with the opacity standard. Owners of heavy-duty non-fleet vehicles must spend up to $1,500 to comply with the standard. The State estimates that when the program has achieved a failure rate of 30–40%, it will reduce emissions from the affected diesel fleet by about 10%. The failure rate of the program with the initial 40% opacity limit has not yet been established. EPA does not intend to reach a determination on the State's 10% reduction estimate until the State submits the documentation of the failure rate, the test data which established the emission reduction estimate, and demonstrates whether or not the projection applies equally to all areas affected by the rule including affected PM–10 nonattainment areas.

The revisions to Regulation No. 12 are for the control of particulate matter. However, these 1989 revisions were submitted prior to the 1990 Clean Air Act Amendments (CAAA) and, therefore, were not intended to satisfy the specific CAAA SIP requirements applicable to PM–10 nonattainment areas in Colorado. EPA anticipates that, in the context of reviewing the specific PM–10 control strategies to be outlined for these nonattainment areas, it will determine the approvability of these provisions relative to specific nonattainment requirements as well as the credit that should be assigned to today's SIP revisions.

**Revisions Submitted on October 30, 1991**

In a letter dated October 30, 1991, the Governor of Colorado submitted revisions to Regulation No. 12. Revisions were made to Parts A, B, and C (see above for titles of each Part). Additional administrative items were submitted in letters dated March 10, and April 30, 1992, and the public hearing transcript was received on June 25, 1992.

The 1991 submittal further refines the previous amendments to the regulation. In general, the revisions make minor changes to the test procedures, require a windshield sticker, and make the provisions applicable to vehicles which are principally operated from a facility in the program area (in addition to vehicles which are registered or required to be registered in the program area). The revisions also provide for one free retest and change the opacity limits for vehicles subject to Part B. Previously, the smoke opacity standard for all diesel vehicles was 40% for five seconds. The 1991 revisions created a smoke opacity standard for categories separated by vehicle weight and engine type (*e.g.*, naturally aspirated light duty diesel vehicles: 40% opacity for five seconds, turbocharged light duty vehicles: 35% opacity for five seconds, naturally aspirated heavy duty vehicles: 35% opacity for five seconds, and turbocharged heavy duty vehicles: 20% opacity for five seconds).

The 1990 CAAA imposed additional SIP requirements for areas designated nonattainment and classified as moderate for PM–10 pursuant to sections 107(d)(4)(B) and 188(a) of the Act. Some of the requirements —including the requirement to submit provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented by December 10, 1993, and to demonstrate either that the PM–10 NAAQS will be attained by December 31, 1994, or that attainment by such date is not practicable—were due November 15, 1991 [see section 189(a) (1), (2)]. These 1991 revisions to Regulation No. 12 are being approved for the limited purposes of improving visual air quality, reducing smoke from diesel vehicles, reducing human health risks from diesel particulate exposure, and advancing the general objective of attaining and maintaining the PM–10 NAAQS in Colorado. EPA's action on these revisions by no means constitutes an approval of specific PM–10 nonattainment area requirements applicable to the PM–10 nonattainment areas in Colorado under the amended Act. Further, as noted above, EPA intends to determine the credit that should be given to these rules in the context of reviewing the specific PM–10 control strategies for the affected nonattainment areas.

EPA proposed to approve the October 25, 1989, revisions in the August 31, 1990, **Federal Register** (55 FR 35686). No comments were received pursuant to the proposal. EPA is publishing the October 30, 1991, revisions without prior proposal because the Agency views these amendments as noncontroversial and anticipates no adverse comments. This action will be effective January 19, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 19, 1993.

**Final Action**

EPA is today approving Colorado's SIP revisions, submitted by the Governor in letters dated October 25, 1989, and October 30, 1991. These revisions consist of amendments to Regulation No. 12. EPA approves these amendments because they are helpful for attainmg and maintaining the particulate standard, improving visual air quality, reducing visible smoke from diesel vehicles, and reducing human health risks from diesel particulate exposure.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements [see Section 307(b)(2)].

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

Air pollution control, Particulate matter, Incorporation by reference, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Dated: October 13, 1992.

**Jack W. McGraw,**

*Acting Regional Administrator.*

40 CFR part 52, is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.320 is amended by adding paragraph (c)(56) to read as follows:

**§ 52.320 Identification of plan.**

* * * * *

(c) * * *

(56) Revisions to the Colorado State Implementation Plan were submitted by the Governor in letters dated October 25, 1989, and October 30, 1991. The revisions consist of amendments to Regulation No. 12, "Reduction of Diesel Vehicle Emissions."

(i) Incorporation by reference.

(A) Regulation No. 12 revisions adopted on July 20, 1989, and effective on August 30, 1989, as follows: Part A (Diesel Fleet Self-Certification Program): I.B.2.; I.C.1.; I.D.; II.A.2.b., c.; all of IV. except those sections noted below; and add new Parts B (Diesel Opacity Inspection Program) and C (Standards for Visible Pollutants from Diesel Engine Powered Vehicles—Operating on Roads, Streets and Highways), except those sections noted below. Regulation No. 12 revisions adopted on September 19, 1991, and effective on October 30, 1991, as follows: Part A: I.A.; I.B.3–18.; I.C.2.; II.A.1.; II.A.2.d., f., g., III.A.; IV.A.2.; IV.C.1.c., g.; IV.C.2.c., h.; IV.C.3.f., i.;

IV.C.4.k.; IV.C.5.a.iv.; IV.C.5.b.; V.; VI.; VII.; VIII.; Part B: I.B.2., 7., 19., 30.–37., 40., 50., 51.; I.C.2.; I.D.; I.E.3.; II.C.1.b.iv.; II.E.2.c., e.; II.E.8.; III.A.; III.B.4.; III.C.4.b.viii.–ix.; III.D.3.b.vi., xi.; III.D.3.c.viii., xiii.; V.; VI.; and Part C: A.–F.

[FR Doc. 92–27955 Filed 11–18–92; 8:45 am]
BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA–7555]**

### List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the fourth column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, MD 20706, (800) 638–7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

#### Natinal Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

#### Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

#### Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127.

No regulatory impact analysis has been prepared.

#### Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

#### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

#### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

### PART 64—[AMENDED]

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

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

#### § 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| **New Eligibles—Emergency Program** | | | |
| Michigan: | | | |
| Colfax, Township of Mecosta County | 260903 | Oct. 2, 1992 | |
| Nebraska: | | | |
| Hay Springs, City of Sheridan County | 310213 | Oct. 7, 1992 | Nov. 7, 1975. |
| North Carolina: | | | |
| Dallas, Town of Gaston County | 370322 | do | June 27, 1975. |
| Ohio: | | | |
| Elida, Village of Allen County | 390656 | do | Dec. 13, 1974. |
| Indiana: | | | |
| Jennings County Unincorporated Areas | 180108 | Oct. 8, 1992 | Sept. 28, 1979. |
| Ohio: | | | |
| Buchtel, Village of Athens County | 390728 | Oct. 9, 1992 | Feb. 7, 1975. |
| Missouri: | | | |
| New Hampton, City of Harrison County | 290550 | Oct. 26, 1992 | Aug. 8, 1975 |

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| Illinois: | | | |
| Prairie Grove, Village of McHenry County | 170975 | .....do..... | Sept. 7, 1979. |
| Missouri: | | | |
| Norborne, City of Carroll County | 290059 | Oct. 28, 1992 | Sept. 12, 1975. |
| California: | | | |
| [1] Malibu, City of Los Angeles County | 060745 | Oct. 1, 1992 | |
| Westlake Village, City of Los Angeles County | 060744 | .....do..... | |
| North Carolina: | | | |
| [2] Leland, Town of Brunswick County | 370471 | Oct. 19, 1992 | |
| Indiana: | | | |
| Henry County Unincorporated Areas | 180437 | Oct. 26, 1992 | |
| **Reinstatements—Regular Program** | | | |
| Pennsylvania: | | | |
| Butler, Township of Schuykill County | 421999 | Sept. 15, 1975, Emerg; Nov. 16, 1990, Reg; Sept. 17, 1992, Susp; Oct. 5, 1992, Rein. | August 3, 1992. |
| Vermont: | | | |
| Shoreham, Town of Addison County | 500171 | May 5, 1975, Emerg; Aug. 1, 1979, Reg; June 18, 1990, Susp; Oct. 6, 1992, Rein. | July 25, 1980. |
| Pennsylvania: | | | |
| Franklin, Township of Huntingdon County | 422573 | Mar. 23, 1977, Emerg; Feb. 17, 1989, Reg; Feb. 17, 1989, Susp; Oct. 7, 1992, Rein. | Feb. 17, 1989. |
| State College, Borough of Centre County | 420270 | May 25, 1973, Emerg; June 30, 1976, Reg; Sept. 30, 1992, Susp; Oct. 12, 1992, Rein. | Sept. 30, 1992. |
| Missouri: | | | |
| Fisk, City of Butler County | 290045 | Aug. 8, 1975, Emerg; Sept. 16, 1981, Reg; Sept. 16, 1981, Susp; Oct. 26, 1992, Rein. | Apr. 2, 1991 |
| Mississippi: | | | |
| Oktibbeha County Unincorporated Areas | 280277 | Apr. 23, 1979, Emerg; June 19, 1989, Reg; June 19, 1989, Susp; Oct. 26, 1992, Rein. | June 19, 1989. |
| Wisconsin: | | | |
| Sheboygan Falls, City of Sheboygan County | 550431 | June 10, 1975, Emerg; Apr. 2, 1991, Rein; Apr. 2, 1991, Susp; Oct. 26, 1992, Rein. | Apr. 2, 1991. |
| Tennessee: | | | |
| Dowelltown, City of DeKalb County | 470043 | May 22, 1975, Emerg; Aug. 19, 1986, Rein; Aug. 19, 1986, Susp; Oct. 27, 1992, Rein. | Aug. 19, 1986. |

[1] Use Los Angeles County (065043) FIRM.
[2] The Town of Leland has adopted, by reference, Brunswick County's (370295) Flood Insurance Study and Flood Insurance Rate Map (FIRM) dtaed May 15, 1986 for flood insurance purposes. Note that the FIRM has been revised effective August 18, 1992.

*Code for Reading Fourth Column*

Emerg.—Emergency; Reg.—Regular; Susp.—Suspension, Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued November 13, 1992.

**C. M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 92-28106 Filed 11-18-92; 8:45 am]

BILLING CODE 6718-21-M

## 44 CFR Part 64

**[Docket No. FEMA-7556]**

## Suspension of Community Eligibility

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

**EFFECTIVE DATES:** The effective date of each community suspension is the third date ("Susp.") listed in the fourth column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of

the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Federal Insurance Administration has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date flood insurance will no longer be available in the communities unless they take remedial action.

**Regulatory Impact Analysis**

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Regular Program Conversions** | | | | |
| **Region II** | | | | |
| New York: | | | | |
| Sackets Harbor, Village of Jefferson County | 360351 | June 16, 1975, Emerg; Nov. 15, 1985, Reg; Dec. 2, 1992, Susp. | Dec. 2, 1992 | Dec. 2, 1992. |
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Peters, Township of Franklin County | 421654 | Aug. 14, 1975, Emerg; Sept. 1, 1986, Reg; Dec. 2, 1992, Susp. | Dec. 2, 1992 | Do. |
| **Region V** | | | | |
| Illinois: | | | | |
| Junction, Village of Gallatin County | 170245 | May 21, 1975, Emerg; May 5, 1984, Reg; Dec. 15, 1992, Susp. | Jan. 5, 1992 | Dec. 15, 1992. |
| **Region VII** | | | | |
| Missouri: | | | | |
| Cottleville, Village of St. Charles County | 290898 | Feb. 1, 1990, Reg; Dec. 15, 1992, Susp | Dec. 15, 1992 | Do. |
| O'Fallon, City of St. Charles County | 290361 | July 18, 1975, Emerg; Jan. 16, 1981, Reg; Dec. 15, 1992, Susp. | Dec. 15, 1992 | Do. |
| St. Charles County, Unincorporated Areas | 290315 | Aug. 6, 1971, Emerg; Sept. 15, 1978, Reg; Dec. 15, 1992, Susp. | Dec. 15, 1992 | Do. |
| St. Peters, City of St. Charles County | 290319 | June 30, 1972, Emerg; May 1, 1979, Reg; Dec. 15, 1992, Susp. | Dec. 15, 1992 | Do. |
| Wentzville, City of St. Charles County | 290320 | Apr. 18, 1975, Emerg; July 28, 1978, Reg; Dec. 15, 1992, Susp. | Dec. 15, 1992 | Do. |
| St. Charles, City of St. Charles County | 290318 | June 27, 1973, Emerg; Mar. 22, 1974, Reg; Dec. 15, 1992, Susp. | Dec. 15, 1992 | Do. |

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region VI** | | | | |
| Oklahoma: | | | | |
| Delaware Tribe of Western Oklahoma Caddo County. | 400512 | Aug. 2, 1988, Emerg; Jan. 18, 1988, Reg; Dec. 16, 1992, Susp. | Sept. 27, 1991..... | Dec. 16, 1992. |

*Code for Reading Fourth Column*

Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: November 13, 1992.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 92-28105 Filed 11-18-92; 8:45 am]

BILLING CODE 6718-21-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Parts 232 and 302

**RIN 0970-AA87**

### Special Provisions Applicable to Title IV-A of the Social Security Act; Standards for Program Operations

**AGENCY:** Office of Child Support Enforcement (OCSE), ACF, HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the timeframes for distributing the $50 pass-through payments made by either the State IV-A or IV-D agencies and other child support collections to families receiving Aid to Families with Dependent Children (AFDC), and certain collections to former AFDC recipients and title IV-E foster care cases. These changes will enable the States to operate their programs in a more efficient and effective manner.

**EFFECTIVE DATE:** November 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lourdes Henry, Fourth Floor, Aerospace Building, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 401-5440.

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

This final rule does not require information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

#### Statutory Authority

This final rule is published under the authority of sections 452(a) (1) and (2), and (i), 454(13), and 1102 of the Social Security Act (the Act).

Sections 452(a) (1) and (2) require the Secretary to establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child and spousal support as he determines to be necessary to assure that such programs will be effective, and to establish minimal organizational and staffing requirements for State units engaged in carrying out such programs. Section 452(i) of the Act, added by section 122 of Public Law 100-485, requires the Secretary to establish time limits governing the period or periods within which a State must distribute amounts collected as child support. Section 454(13) of the Act requires States to comply with such requirements and standards as the Secretary of HHS determines to be necessary for the establishment of an effective IV-D program. Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

#### Background

Since the inception of the Child Support Enforcement (IV-D) program in 1975, States have been required to locate absent parents, establish paternity, obtain support orders and collect support payments. However, despite Federal and State efforts in the 17 years since the inception of the IV-D program, the child support problem continues to grow. On October 13, 1988, the Family Support Act of 1988 (Pub. L. 100-485) was signed into law. This law addresses the injustice of parents failing to assume responsibility for their children's support. Section 121 of Public Law 100-485 required the Secretary of Health and Human Services (HHS) to establish time limits within which States must accept and respond to requests for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity and initiate proceedings to establish and collect support awards. Section 122 of Public Law 100-485 required the Secretary of HHS to establish time limits governing the period within which a State must distribute amounts collected as child support. Final regulations to implement these provisions were published in the **Federal Register** on August 4, 1989 (54 FR 32284).

Effective October 1, 1990, § 302.32(f) established timeframes within which States must send child support collections to families. Since publication of those regulations, States have expressed their strong belief that the requirement to distribute the first $50 of support within 15 calendar days of the date of the initial receipt in the State would place an unreasonable administrative burden on State agencies with no compelling benefit to families to warrant varying the longstanding practice which ties assistance payments, accounting, and distribution of collections in AFDC cases to a monthly cycle. They presented data gathered through a national survey conducted by the American Public Welfare Association substantiating their contention.

In response to this overwhelming reaction to the requirement in the program standards final rule, buttressed by the survey information, we have reexamined our position. From all indications, sending $50 pass-through payments to the family within a set number of days after the end of the month of collection is the most practical approach when sending the payment to the family. Therefore, we proposed, on August 28, 1991 at 56 FR 42581, to amend §§ 232.20(d) and 302.32(f) to tie sending payments to AFDC families and certain payments to title IV-E foster care agencies to the end of the month in which the support was initially received in the State.

#### Regulatory Provisions

Former § 232.20(d) stated that when the IV-A agency, on behalf of the IV-D agency, sends the $50 pass-through payment to the family under § 302.51(b)(1), the payment will be sent within 20 calendar days of the date of initial receipt in the State of the first $50

of support collected in a month, or if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support was collected. In the proposed rule, we proposed changing § 232.20(d) to require that when the IV–A agency, on behalf of the IV–D agency, sends to the family the $50 pass-through payment under § 302.51(b)(1), the payment will be sent within 25 calendar days of the end of the month in which the support was initially received in the State.

Federal regulations at § 302.32(f)(2)(i) previously required that when the IV–D agency sends payments to the family under § 302.51(b)(1), payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV–A agency sends payments to the family under § 302.51(b)(1), the IV–D agency must forward any amount due the family under § 302.51(b)(1) to the IV–A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. In the proposed rule, we proposed to change § 302.32(f)(2)(i) to require that when the IV–A agency sends payments to the family under § 302.51(b)(1), the IV–D agency must forward any amount due the family under § 302.51(b)(1) to the IV–A agency within 15 calendar days of the end of the month in which the support was initially received in the State.

In response to comments received on these proposals, this final rule amends §§ 232.20(d) and 302.32(f)(2)(i) to specify identical timeframes when either the IV–A or IV–D agency sends the pass-through payment to the family under § 302.51(b)(1). Under both §§ 232.20(d) and 302.32(f)(2)(i), pass-through payments must be sent to the family within 15 calendar days of the end of the month in which the support was initially received in the State.

Former regulations at § 302.32(f)(2)(ii) stated that, except as specified under paragraph (f)(2)(iv), collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b)(3) and (5) must be sent to the family within 15 calendar days of the date of initial receipt in the State of a collection for the first month of ineligibility. In the proposed rule, we proposed to change § 302.32(f)(2)(ii) to require that, except as specified under paragraph (f)(2)(iv) of this section: (A) Collections distributed under § 302.51(b)(3) and (5) must be sent to the family within 15 calendar days of the end of the month in which the amount of collection which represents payment on the required support obligation was used to redetermine the family's eligibility for an assistance payment under the State's title IV–A plan; and (B) Collections for the month after the month the family receives its last assistance payment must be sent to the family within 15 calendar days of the date of initial receipt in the State. This final rule amends § 302.32(f)(2)(ii) to require, except as specified under paragraph (f)(2)(iv), that: (A) When the IV–D agency sends collections to the family under § 302.51(b)(3) and (5), the IV–D agency must send collections to the family within 15 calendar days of the end of the month in which the support was initially received in the State; and (B) when the IV–D agency sends collections to the family for the month after the month the family becomes ineligible for AFDC, the IV–D agency must send collections to the family within 15 calendar days of the date of initial receipt in the State.

In addition, former regulations at § 302.32(f)(2)(iii) stated that, except as specified in paragraph (f)(2)(iv), collections in IV–E foster care cases under § 302.52(b)(2) and (4) must be distributed within 15 calendar days of the date of initial receipt in the State. As proposed, § 302.32(f)(2)(iii) would require that, except as specified under paragraph (f)(2)(iv), collections in IV–E foster care cases under § 302.52(b)(2) and (4) must be distributed within 15 calendar days of the end of the month in which the support was initially received in the State. Consistent with the proposed change, the final rule at § 302.32(f)(2)(iii) requires that, except as specified under paragraph (f)(2)(iv), when the IV–D agency sends collections to the IV–E foster care agency under § 302.52(b)(2) and (4), the IV–D agency must send collections to the IV–E agency within 15 calendar days of the end of the month in which the support was initially received in the State.

**Response to Comments**

We received over 50 comments on the notice of proposed rulemaking published in the **Federal Register** on August 28, 1991 (56 FR 42581) including comments from State and local IV–D agencies, child advocacy groups, and interested individuals. Comments and our responses are as follows:

*$50 Pass-Through Payments in AFDC Cases*

1. *Comment:* Many commenters, who generally supported the proposed timeframes, suggested various timeframes for sending the $50 pass-through payment to the family, for example, 10 working days, 15 or 25 calendar days from the end of the month of collection. They argued that the current regulation makes it difficult for clients to budget their household income since they cannot determine when to expect the $50 pass-through payment. They also argued that providing a timeframe from the end of the month allows sufficient time for necessary transfer of funds or data to the IV–A agency, issuance of pass-through payments with the AFDC grant, and is consistent with other timeframes for distribution. Another commenter recommended that the regulations should provide for a 15-day timeframe from the end of the month. This commenter contended that the current regulations have resulted in increased operating costs, minimal benefit to families who continue to receive the same net amount of money, and requests for information from consumers who do not understand the erratic receipt of their pass-through payments. Other commenters supported the proposed change regarding the $50 pass-through because they felt it was more realistic and should result in more efficient and accurate distribution. Other commenters indicated that a timeframe based on a monthly cycle of accounting and distribution of collections in AFDC cases is simpler and less costly to administer than the existing requirement and would be consistent with the issuance of AFDC benefits. They also indicated that, since the AFDC recipient receives an AFDC payment on or about the same date each month, the family could more easily determine when the pass-through payment is due.

*Response:* We are persuaded by commenters who suggested that the timeframes for issuing the pass-through payment should be consistent with the AFDC payment cycle because the pass-through payment could be issued with the AFDC grant. This approach would result in the AFDC family being able to readily determine when the pass-through payment could be expected every month. Under the previous rules, AFDC recipients who did not know if or when they would receive a pass-through payment frequently contacted the IV–D agency to request such information. This has resulted in many hours of staff time

spent responding to inquiries. Additionally, meeting the requirement to distribute pass-through payments within 15 calendar days of receipt of the first $50 of child support has necessitated issuances of pass-through payments to families on a daily basis. The cost and administrative burden involved in complying with this requirement far outweigh the benefits. Time and money spent administering the pass-through process diverts limited resources away from providing IV–D services.

Therefore, in response to comments, we are revising the regulations governing the IV–A program at § 232.20(d) to require that when the IV–A agency, on behalf of the IV–D agency, sends the family the sum disregarded under § 302.51(b)(1), it must do so within 15 calendar days of the end of the month in which the support was initially received in the State. Under § 302.32(f)(2)(i), when the IV–D agency sends payments to the family, such payments must be sent within 15 calendar days of the end of the month in which the support was initially received in the State.

2. *Comment:* Several commenters objected to the proposed rule because a family would have to wait as long as 45 to 55 days to receive its pass-through payment. They expressed concern that, as proposed, the rule would require a shorter timeframe for the distribution of title IV–E foster care collections than other collections. They argued that, if the proposal is adopted, the detriment to low income families would far outweigh any administrative benefits to the States. Several commenters urged that OCSE leave the present timeframe rules in place because they treat families in all States the same way. Several commenters endorsed the current regulations because under them an absent parent can see an immediate benefit to his children, the family promptly knows when the absent parent has paid support, and the family receives the pass-through payment in a timely manner.

*Response:* Under the former regulations at § 232.20(d) and § 302.32(f)(2)(i), the State was required to issue the $50 pass-through payments on a daily basis. This proved to be a costly and administratively burdensome process. The family did not receive the pass-through payment at the same time each month which often resulted in confusion and made it difficult to include the pass-through in the family budget. Also, the AFDC check received by the family at the same time each month could not include the pass-through payment. We do not believe that the benefit to the family of receiving pass-through payments under the prior timeframes outweighs the confusion of not knowing when such payments will be received or the cost and burden of daily distribution, or the inability to use the AFDC grant cycle. As indicated previously, the final regulations at §§ 232.20(d) and 302.32(f)(2)(i) require that when either the IV–A or IV–D agency sends the pass-through payment to the family, the payment must be sent to the family within 15 calendar days of the end of the month in which the support was initially received in the State.

3. *Comment:* Many commenters suggested that the IV–A and the IV–D agencies be held to the same timeframe regardless of whether the IV–A agency or the IV–D agency distributes the pass-through payment. They argued that two different timeframes (the proposed 25-calendar-day timeframe at § 232.20(d) for the payment of pass-through payments by the IV–A agency and the proposed 15-calendar-day timeframe under § 302.32(f)(2)(i)) would cause administrative inconvenience and general frustration with child support enforcement policies because different timeframes could apply in different States. Some commenters suggested that a more equitable approach would be to make the timeframe requirements consistent.

*Response:* We agree with the commenters that the same timeframes for issuance of pass-through payments should apply regardless of whether the IV–A or IV–D agency sends the payments to the family. Some State IV–A agencies enter into agreements under which the IV–D agency sends the $50 payment to AFDC families. Consistent with our policy of not establishing interim timeframes for different entities in the State, the IV–A and IV–D agencies must arrange to ensure that, when the IV–A agency sends the $50 payment to AFDC families, the IV–A agency receives the pass-through payment in sufficient time to meet the timeframes for distribution of the $50 pass-through. Therefore, we are eliminating from § 302.32(f)(2)(i) the separate timeframe for the IV–D agency to forward the payment to the IV–A agency when the IV–A agency sends the payment to the family. When the IV–A agency makes the payment, it must be sent to the family within 15 calendar days of the end of the month of initial receipt in the State in accordance with § 232.20(d) and the IV–D agency must ensure it transfers the collection in time for the IV–A agency to meet the requirement.

4. *Comment:* Some commenters suggested that the pass-through payment be made by the IV–D agency because only one agency would be involved in the payment process and the State would save on administrative costs.

*Response:* States have discretion to determine which agency makes the payment and may adopt this approach.

5. *Comment*: One commenter recommended that, when the IV–A and IV–D programs have automated systems, the $50 pass-through payments should be distributed within 10 days from the date of receipt of the first $50 of support. A few commenters suggested that the effective date of the change to the pass-through timeframe be delayed until 1995 when all States are required to have Statewide automated systems in place.

*Response*: We believe that any State, whether fully automated or not, should be able to meet the $50 pass-through payment timeframes contained in these final rules. In response to the suggestion for a shorter timeframe once all States are automated, we may revisit this issue at that time to determine if these timeframes should be shortened.

6. *Comment*: A few commenters recommended that the regulations at § 302.32(f)(2)(ii)(B) be revised to specify "the month in which the family becomes ineligible for AFDC" rather than "the month the family receives its last assistance payment" because the family may be eligible for AFDC but receive no payment due to the minimum grant standard or receive its last assistance payment at the end of one month which covers a portion of the next month and the IV–D agency is not notified of ineligibility until the 12th day of the next month.

*Response*: We agree that the regulations at § 302.32(f)(ii)(B) should specify "the month in which the family becomes ineligible for AFDC" rather than "the month the family receives its last assistance payment" because the family may be eligible for AFDC but receive no payment due to the minimum grant standard or receive its last assistance payment at the end of one month which covers a portion of the next month. Therefore, we have revised the regulation to reflect the suggested change.

7. *Comment*: One commenter recommended that the timeframe for use of child support payments in redetermining eligibility should be 20 days following the end of the month of receipt.

*Response*: The regulations at § 302.32(b) require the IV–D agency to notify the IV–A agency of the current

support payment within 10 working days of the end of the month in which the support was received by the IV–D agency responsible for distribution. Under § 232.20(b)(1), the IV–A agency must use such amount to redetermine the family's eligibility for AFDC no later than the second month after the month in which the IV–A agency is notified of the current support payment by the IV–D agency. It is beyond the scope of these regulations to address the time necessary to redetermine eligibility under the IV–D program.

8. *Comment*: Several commenters requested that the regulation substitute "no later than" for "within" 15 calendar days of initial receipt because this would provide IV–D agencies with a definitive outside limit for distributing support to families who become ineligible for AFDC and permit them to make those payments sooner.

*Response*: We disagree with the commenters' proposal to substitute "no later than" for "within" 15 calendar days of initial receipt because these terms have the same meaning. In addition, the term "within" is used consistently throughout the regulation in describing distribution timeframes. The term provides the IV–D agency with a definitive outside time limit and permits it to make payments earlier.

*Other Payments to Families in AFDC Cases*

1. *Comment*: One commenter indicated that the proposed rule would, for the first time, set a sensible time standard applicable to payment of excess child support that exceeds the AFDC grant plus the pass-through to families who continue to be eligible for AFDC. Another commenter supported the current language of § 302.32(f)(2)(ii) which requires that the support under § 302.51(b)(3) and (5) be distributed within 15 calendar days of the date of initial receipt by the State because these payments to the family are budgeted for the month of receipt and result in timely receipt of child support by the family. Another commenter suggested that § 302.32(f)(2)(ii) provide that payments under § 302.51(b)(3) and (5) be paid to the family only after they cease to receive AFDC because these payments must be used to redetermine eligibility and the amount of AFDC and could cause a reduction in the family's AFDC grant for a subsequent month.

*Response:* We believe that these payments must be sent to the family within a reasonable period of time which enables the States to issue them with the AFDC grant and/or pass-through payment. As proposed, changes to § 302.32(f)(2)(ii) would specify a timeframe for issuing these payments to the family which could result in the family not receiving such payments for several months. Therefore, we have revised § 302.32(f)(2)(ii) to specify that when the IV–D agency sends collections to the family under § 302.51(b) (3) and (5) of this part, the IV–D agency must send collections to the family within 15 calendar days of the end of the month in which the support was initially received in the State. This change is consistent with other timeframes in this regulation and will enable States to send payments to the family in conjunction with the AFDC payment cycle.

2. *Comment*: Some commenters suggested giving every AFDC client a $50 increase in benefits and discontinuing the pass-through program because it is extremely costly and time consuming.

*Response*: As we indicated in the preamble to a previous final rule, in response to a similar comment regarding the $50 pass-through payments (53 FR 21642, dated June 9, 1988), these regulations merely implement the requirements in the amended statute. The commenters' recommendation cannot be implemented under current law.

3. *Comment*: One commenter requested clarification regarding the timeframe allowed for disbursement of a pass-through payment when a prior month's payment is received (e.g., August and September payments received in October) and either the IV–A or the IV–D agency is disbursing the payment.

*Response*: The timeframes regarding payment of the $50 pass-through are the same regardless of whether the collection is received in the month in which it was paid or the payment was made on time but did not reach the agency until a subsequent month. Therefore, if a State receives a wage withholding collection in October which represents amounts withheld from the absent parent's wages in August and September, the months when due, the State must send a pass-through payment to the family for each month in which $50 or more was withheld no later than November 15 in accordance with § 302.32(f)(2)(i) regardless of whether the IV–A or the IV–D agency disburses the payment. If the payment was not made in the month when due, the family is not entitled to receive a $50 pass-through payment.

4. *Comment*: One commenter noted that a May 1990 letter from the Deputy Director of OCSE indicated that audit compliance would not be required until after this regulation was revised. The commenter suggested that we indicate when these regulatory changes are effective and when the State will be subject to an audit.

*Response*: States are required to comply with Federal regulations regarding timeframes for distribution of child support collections. These revisions are effective upon publication. State compliance with the provisions of the Family Support Act will be determined in accordance with audit regulations which incorporate those requirements.

*Payments in Title IV–E Foster Care Cases*

1. *Comment:* One commenter suggested that the proposed § 302.32(f)(2)(iii) is unclear because it does not specify which agency is responsible for distributing the collections, nor does it specify the type of collection being distributed.

*Response:* Under § 302.32(f)(2)(iii), the IV–D agency must distribute amounts collected on behalf of recipients of the State's title IV–E plan for whom an assignment of support rights is in effect. In addition, § 302.32(f)(2)(iii) refers to collections in title IV–E foster care cases under § 302.52(b) (2) and (4). These collections are identified in § 302.52(b) as support collections made by the IV–D agency on behalf of children receiving title IV–E foster care maintenance payments.

**Executive Order 12291**

In accordance with Executive Order 12291, we are required to prepare a Regulatory Impact Analysis for any "major rule". A major rule is one that is 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule meets none of these criteria. In addition, this rule would likely result in administrative cost savings to the Federal and State governments because the $50 pass-through payment and most collections made in title IV–E foster care cases would be distributed on a monthly basis rather than incrementally throughout the month.

**Regulatory Flexibility Analysis**

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory

Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

**List of Subjects**

*45 CFR Part 232*

Aid to Families with dependent children, Child Support, Grant programs—social programs.

*45 CFR Part 302*

Child support, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation.

(Catalog of Federal Domestic Assistance Program No. 93.023, Child Support Enforcement Program)

Dated: May 20, 1992.

**Jo Anne B. Barnhart,**

*Assistant Secretary for Children and Families.*

Approved: June 25, 1992.

**Louis W. Sullivan,**

*Secretary.*

For the reasons set forth in the preamble, 45 CFR parts 232 and 302 are amended as follows:

## PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

1. The authority citation for part 232 continues to read as follows:

**Authority:** 42 U.S.C. 1302.

2. Section 232.20(d) is revised to read as follows:

**§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV–A Program.**

* * * * *

(d) The State plan must provide that the IV–A agency, on behalf of the IV–D agency, will send to the family the sum disregarded under § 302.51(b)(1) within 15 calendar days of the end of the month in which the support was initially received in the State.

## PART 302—STATE PLAN REQUIREMENTS

3. The authority citation for part 302 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

4. Section 302.32 is amended by revising paragraphs (f)(2) (i), (ii) and (iii) to read as follows:

**§ 302.32 Collection and distribution of support payments by the IV–D agency.**

* * * * *

(f) * * *

(2) * * *

(i) When the IV–D agency sends payments to the family under § 302.51(b)(1) of this part, the IV–D agency must send payments to the family within 15 calendar days of the end of the month in which the support was initially received in the State.

(ii) Except as specified under paragraph (f)(2)(iv) of this section:

(A) When the IV–D agency sends collections to the family under § 302.51(b) (3) and (5) of this part, the IV–D agency must send collections to the family within 15 calendar days of the end of the month in which the support was initially received in the State.

(B) When the IV–D agency sends collections to the family for the month after the month the family becomes ineligible for AFDC, the IV–D agency must send collections to the family within 15 calendar days of the date in which the support was initially received in the State.

(iii) Except as specified under paragraph (f)(2)(iv) of this section, when the IV–D agency sends collections to the IV-E foster care agency under § 302.52(b)–(2) and (4) of this part, the IV–D agency must send collections to the IV–E agency within 15 calendar days of the end of the month in which the support was initially received in the State.

* * * * *

[FR Doc. 92–27861 Filed 11–18–92; 8:45 am]

BILLING CODE 4190–11–M

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## Office of Child Support Enforcement

## 45 CFR Part 304

**RIN 0970–AA86**

## Child Support Enforcement Program; Prohibition of Federal Funding for Costs of Guardians Ad Litem

**AGENCY:** Office of Child Support Enforcement (OCSE)/HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Federal regulations to specify that Federal funding under the Child Support Enforcement (IV–D) program is not available for the costs of guardians ad litem. This change makes clear in regulation longstanding OCSE policy that costs of guardians ad litem are not necessary expenditures under the IV–D program and, therefore, are not eligible for Federal financial participation (FFP) under title IV–D of the Social Security Act.

**EFFECTIVE DATE:** November 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Marilyn R. Cohen, OCSE Division of Policy and Planning, (202) 401–5366.

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

This regulation contains no information collection or reporting requirements. Thus, it is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

**Statutory Authority**

This regulation is published under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

**Background**

The Child Support Enforcement Program was established under Title IV–D of the Act for the purpose of establishing paternity and obtaining and enforcing support obligations owed by absent parents. Each State must have in effect an approved State IV–D plan which complies with the Federal standards incorporated in the Act and in OCSE regulations. Federal funding at the applicable matching rate is available for services and activities made pursuant to an approved Title IV–D State plan which are determined by the Secretary to be necessary expenditures.

Federal regulations at § 304.10 provide that, as a condition for FFP, the provisions of 45 CFR part 74, which establish uniform administrative requirements and cost principles, shall apply to all grants made to States under the IV–D program. Section 74.171 states that the rules for determining which services and activities meet the necessary expenditure test are provided by the Office of Management and Budget's (OMB) Circular A–87, "Cost Principles for State and Local Governments." Attachment A, Section C.1.a provides that allowable costs must "[b]e necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State [or] local * * * governments." As discussed below, we do not believe the costs of

guardians ad litem are necessary and reasonable costs of the IV–D program. In addition, OMB has proposed changes to Circular A–87 Cost Principles (Notice published on October 14, 1988, 53 FR 40359). Attachment B, section 21.a of these proposed revisions specifies that general costs of government interagency services for which FFP is not available include "(c)ost of the judiciary branch". While such an explicit reference to "cost of the judiciary branch" is not contained within the existent version of Circular A–87, currently in use, the proposed language indicated Federal intent in the treatment of such costs.

Finally, the Senate Committee on Finance, in its report on H.R. 4325, which became the Child Support Enforcement Amendments of 1984, Public Law 98–378, stated that "(i)t is not the intent of the Congress to match all costs that might be related to operating a child support enforcement program. For example, the Committee believes Federal matching should not be available for expenditures related to incarceration of delinquent obligors and providing defense counsel for absent parents." (See S. Rep. No. 387, 98th Cong., 2d Sess. 23 reprinted in 1984 U.S. Code Cong. & Admin. News 2397, 2419)

**General State Expenses**

In the context of the IV–D program, expenditures are considered general State expenses if they are incurred as a result of general State requirements which are neither dependent on nor confined to the IV–D program. In the past, requests for reimbursement of costs for legislative expenditures, certain judicial costs, and costs for incarceration of delinquent obligors were denied because these costs are general State expenses. Similarly, costs for guardians ad litem are neither dependent upon nor confined to the IV–D program.

In enacting Title IV–D of the Act in 1975, as part of P.L. 93–647, Congress did not intend that every expense incurred by the State in enforcing child support obligations would be reimbursable by Federal funding. In fact, Congress expected "the States to continue to devote to this purpose at least as much non-Federal funding as they currently provide." (S. Rep. No. 1356, 93rd Cong., 2nd Sess. 50 as reprinted in 1974 U.S. Code Cong. & Admin. News 8133, 8153). We believe that payment for costs of guardians ad litem is entirely a responsibility of State and local governments and not eligible for Federal funding under Title IV–D of the Act.

If a parent or general guardian is unavailable to fulfill the role of guardian ad litem or has interests which conflict with those of the child, the court may appoint, in accordance with statutory or common law practice, someone to represent the interests of the child in the grievance or cause of action. For example, in child custody disputes between parents, most States, either by statute or case law, afford the court discretion to appoint a guardian ad litem to represent the children, who, although not named parties, have a substantial stake in the outcome of the case. Examples of circumstances in which a court may appoint a guardian ad litem include actions in which a child sues his parent, such as for injuries sustained due to the parent's negligent operation of a motor vehicle; cases involving sterilization of a mentally retarded minor on a parent's petition; or cases to determine visitation rights.

Other common examples of when courts typically appoint guardians ad litem are when a minor child has an interest in an insurance policy, an inheritance, a workers' compensation claim, or the ownership of a bank account. Additionally, courts have appointed guardians ad litem to protect the interests of children called as witnesses in their parents' divorce action.

In nearly every State, child abuse and neglect laws mandate that a guardian ad litem be appointed for the child in all civil judicial proceedings arising from a report of abuse or neglect. Hence, juvenile and family courts, before whom these issues are adjudicated, routinely appoint guardians ad litem to represent the minor children involved. Many of such laws were enacted in response to a Federal requirement that as a condition for receiving Federal grant funds under the Child Abuse Prevention and Treatment Act of 1974 (Pub. L. 93–247), guardians ad litem must be appointed for maltreated children. However, there is no Federal funding for reimbursing the costs of guardians ad litem in such cases. Rather, according to the National Study of Guardian Ad Litem Representation published in October 1990, funding for such guardians ad litem is either by direct appropriation from the State legislature, court budget or public defender budget.

These examples illustrate that the use of guardians ad litem is broad and certainly not limited to child support matters. In fact, States customarily engage guardians ad litem on a routine basis in a variety of contexts where the interests of children may be affected by the actions taken or results accomplished. These are general State expenses which arise from a basic recognition that the child's interests in many actions may differ from those of its parents or the State. As a result, laws provide that children are entitled to legal counsel when a vital interest of theirs is being litigated. Therefore, the costs of guardians ad litem would be incurred in the absence of the IV–D program. In addition, where interests of the State and child are identical, it is a duplicative expense to provide FFP for a guardian ad litem in addition to funding counsel for the IV–D agency.

**Possible Conflicting Roles**

In the vast majority of IV–D actions, the interests of the State IV–D agency, custodial parent, and children for whom support is sought are similar and not contradictory. Those States which have adopted laws which mandate that the child be a party and/or that a guardian ad litem be appointed to protect a minor child's interests, generally prohibit the mother or father from serving as the guardian ad litem. However, such statutes often specify that the court may appoint the appropriate State agency as the guardian ad litem. Thus, in IV–D cases initiated by a State or local IV–D agency, the IV–D agency can advocate the interests of the child in addition to those of the State. Additionally, although some States have statutes mandating the appointment of a guardian ad litem which predate the IV–D program, they may have also adopted separate statutes covering paternity actions brought by the State or other governmental entities which provide that the general requirement that an independent guardian be involved do not apply to these State-initiated actions. Courts have rejected claims that a county could not properly represent a child in paternity proceedings due to an alleged conflict of interest based on the county's financial interest in establishing paternity [See: Annot., Necessity or Propriety of Appointment of Independent Guardian for Child Who is Subject of Paternity Proceeding, 70 ALR4th 1033 (1989)]. Consequently, independent representation for each party to advocate and protect such interests may be unnecessary and duplicative in most cases.

Because guardians ad litem are typically appointed because of a judicial determination that the child requires independent representation to advocate on the child's behalf due to divergent interests, it would be improper for the IV–D program to underwrite the costs of both interests. If, by nature of the appointment, a guardian ad litem must function independently of the IV–D agency, the guardian ad litem cannot be bound by or subject to Federal or State IV–D rules and policies governing the

program. Furthermore, the IV–D agency would have no ability to exercise necessary oversight with respect to the guardian ad litem's activities, procedures, records, or billing for work performed. If FFP is permitted for costs of a guardian ad litem, then the guardian ad litem would be obliged to follow IV–D guidelines.

**Not Necessary and Reasonable Expenses**

Recently, a few States have requested FFP for the costs of guardians ad litem appointed to represent minors in IV–D litigation. In the context of child support establishment and enforcement, the appointment of guardians ad litem generally may arise in either of two ways: (1) Guardians ad litem for a minor father or an alleged father, or (2) guardians for minor children on whose behalf a paternity action is filed.

First, some State laws mandate that in any legal actions instituted against a minor defendant, a guardian ad litem be appointed to represent such minor. In such capacity, the guardian ad litem functions as defense counsel. This type of appointment could occur in a paternity action where the alleged father has not reached the age of majority or "adult" status or under circumstances where enforcement action such as a contempt action could result in incarceration.

In many States such an appointment is not mandatory, but is discretionary with the court. In any event, this function is not required by Federal laws governing the IV–D program but arises from State law or court rule. In fact, a guardian ad litem's function is to promote the best interests of the minor, which may actually be to limit or avoid imposition of support liability. Payment for the defense of a case instituted for the establishment of paternity is not within the purview of providing IV–D services. Congress did not intend every attendant cost directly or indirectly arising from an action brought under the auspices of IV–D be eligible for funding.

Secondly, a guardian ad litem may be involved in a IV–D case due to a requirement in a few States that a child who is the subject of a paternity action must be named as a party plaintiff and have a guardian ad litem appointed. Federal law does not dictate that independent counsel be appointed for any necessary plaintiff other than the State. 45 CFR 303.20(f) indicates the types of staff required in sufficient numbers to achieve the standards for an effective program, paragraph (1) requires "(a)ttorneys or prosecutors to represent the agency in court or administrative proceedings with respect to the establishment and enforcement of orders of paternity and support." In most paternity cases, the interests of the State and those of the mother and child are not contradictory. One attorney to advocate these interests may generally be sufficient. If those interests digress such that independent counsel may be appropriate, payment for such counsel is not something for which IV–D funds are available because it would be payment to finance two opposing positions or conflicting interests.

The generally understood purpose of a guardian ad litem is to provide legal counsel. Black's Law Dictionary defines a guardian ad litem as a person "appointed by the court to prosecute or defend, in behalf of an infant or incompetent, a suit to which he is a party, and such guardian is considered an officer of the court to represent the interests of the infant or incompetent in the litigation." Although we agree that a guardian ad litem may perform a necessary duty in the general sense, the primary issue to consider in the context of IV–D funding is whether the costs of guardians ad litem are necessary to achieve the purpose of the IV–D program and, therefore, are appropriately the responsibility of that program. OCSE's policy since the inception of the program has been that costs of guardians ad litem are not necessary and reasonable costs associated with the proper and efficient administration of the Title IV–D program. Therefore, this regulation adds these costs to the list of expenditures for which Federal Financial Participation is not available.

**Description of Regulatory Provision**

Section 304.23 is amended by adding and new paragraph (k) to specify that Federal financial participation for the costs of guardians ad litem in IV–D actions is not available.

The language in this rule differs slightly from that of the proposed regulation. The proposed rule would have prohibited FFP for the appointment of guardians ad litem to represent minors. This final rule clarifies our intent that Federal funding is not available for any guardians ad litem (to represent adults or minors, either as plaintiffs or defendants) in IV–D cases.

Nowhere in the Act nor in any legislative history explaining the IV–D program is there language providing funding for costs incurred in connection with the defense of absent parents who have failed to support their children or with the defense of a paternity claim. This omission has made the provision of FFP for costs of guardians ad litem an issue in the past. This final regulation codifies long-standing OCSE policy that costs of guardians ad litem are not reimbursable through the Title IV–D program. Furthermore, costs associated with the provision of independent counsel for part plaintiffs in child support actions are not reasonable and necessary expenditures for which Federal funding through the IV–D program is available.

**Response to Comments**

We received comments on the proposed rule published June 17, 1991 in the **Federal Register** (56 FR 27723) from 24 commenters representing national organizations, State and local IV–D agencies, child advocacy groups and private citizens. Comments and our responses appear below:

*Appointment of Guardians Ad Litem in Paternity Establishment*

*1. Comment:* We received many comments indicating that State law requires that a guardian ad litem be appointed for either children for whom paternity establishment is necessary, minor alleged fathers, or both. The Commenters contend that since paternity establishment is a requirement of the IV–D program, FFP must be available. According to the commenters, some States require appointment of a guardian ad litem under certain circumstances such as: (1) Where a child must be a named party plaintiff; (2) if the mother was married at the time of conception or birth; (3) for a minor alleged father; (4) for cases in which there is a legal father and a natural father or multiple possible fathers; and (5) where a parent is non-cooperative. One commenter noted that since no State would pursue paternity against minor fathers, absent the IV–D program, a special category of need is created in the Federal paternity program which would not otherwise exist at the State level.

*Response:* Our research indicates that only five States have statutes expressly mandating the appointment of an independent guardian ad litem for a child who is the subject of paternity proceedings. Two States require the appointment of a guardian ad litem under common law. Some States specify that a guardian ad litem may be appointed under certain circumstances [See: Annot., Necessity or Propriety of Appointment of Independent Guardian for Child Who is Subject of Paternity Proceeding, 70 ALR4th 1033 (1989)]. However, at least three States have legislation pending or are considering legislation regarding appointment of a guardian ad litem. One State is

proposing enactment of legislation that specifies that appointment of a guardian ad litem in a paternity action is not necessary in order to make a child a party to a paternity action. Another State is considering proposing legislation deleting the State statutory requirement for guardians ad litem in child support matters. A third State has legislation pending to clarify and reinforce an existent law that when parents cannot afford a guardian ad litem, the court has the authority to pay for one from county funds.

Generally, courts that have determined that a guardian ad litem is necessary have premised such decisions on the fact that the child's right to have an accurate determination of paternity was not adequately protected by counsel for the State or the mother. We believe that the extent to which these situations may arise may be significantly reduced or even eliminated through the use of genetic testing. The results of such tests are objective evidence which can be used to assist the agency or the court in accurately determining parentage. Federal regulations require that upon request of any party in a contested paternity case, the IV–D agency, if the agency lacks authority to order genetic testing, shall petition the court to require all parties to submit to genetic tests. FFP, at the 90% rate, is available for laboratory costs incurred in determining paternity on or after October 1, 1998.

Attorney's fees for the defense of a paternity action, including representing a minor defendant, do not contribute to the establishment or enforcement of support. Furthermore, defending child support obligors or accused fathers serves no legitimate IV–D purpose, and therefore, funding for such costs is not an allowable IV–D expense. We disagree with the comment on the activity of the State absent the IV–D program. Children should have a right to paternity establishment regardless of whether it takes place within or without the IV–D program.

*2. Comment:* Many commenters questioned how the State requirement of appointment of a guardian ad litem could be fulfilled if Federal financial participation (FFP) is prohibited.

*Response:* Although the State may certainly make appointments in the absence of Federal funding, the expenses incurred for the State-required services of guardians ad litem is the responsibility of State and local governments. This regulation clarifies that Federal funds are not available for such purposes.

OCSE endorses the accurate identification of fathers of children born out-of-wedlock in accordance with principles of equity and due process of law. Several States, by statute or judicial decision, have determined that the assistance of counsel should be provided for indigent paternity defendants who seriously question their liability or need advice concerning their rights and obligations. However, assuring adequate representation of indigents is not a responsibility of the IV–D program, but rather, a matter of concern for the courts and State and local governments.

The National Study of Guardian Ad Litem Representation (DHHS, October 1990, p. 15) reported that 14 States and the District of Columbia have statewide guardian ad litem programs in child abuse and neglect proceedings. All of these programs are funded by direct appropriation from the State legislature, the court budget or the public defender budget. If a State law requires the appointment of guardians ad litem, it should be carried out. The study indicates that even in a program where Federal law requires the appointment of a guardian ad litem (for child abuse and neglect proceedings), there is no Federal funding available.

Unavailability of FFP through the IV–D program for guardians ad litem should not forestall paternity establishment.

*3. Comment:* Several commenters interpreted the proposed rule as prohibiting the appointment of guardians ad litem. One commenter expressed concern that the Child Support Agency would no longer be able to petition the circuit court judge to appoint a guardian ad litem in required cases if FFP was prohibited.

*Response:* This regulation does not prohibit or question the propriety of the appointment of guardians ad litem under State law. It prohibits FFP through the IV–D program for the costs of such guardians ad litem.

*4. Comment:* One commenter was concerned about resulting audit penalties if they do not comply with paternity establishment requirements. The commenter suggested that OCSE eliminate the requirement to establish paternity if FFP is prohibited for costs of guardians ad litem as these costs are clearly related to the administration of the IV–D program.

*Response:* Any requirement for appointment of a guardian ad litem is a State, not Federal, requirement. The existence of this additional State requirement does not relieve States of the responsibility to substantially comply with Federal requirements governing paternity establishment under the IV–D program. OCSE cannot eliminate the Federal law requiring establishment of paternity.

*General State Expense, Not Direct Program Cost*

*1. Comment:* One commenter suggested that we cannot prohibit costs of guardians ad litem as "general costs" since meeting other general requirements in the course of performing IV–D activities are federally funded, such as service of process to satisfy basic requirements of jurisdiction and due process.

*Response:* Under 45 CFR 304.21(b)(1), Federal funding is not available for service of process fees unless the court or law enforcement agency would normally be required to pay the cost of such fees. In the notice of proposed rulemaking on Standards for Program Operations published April 19, 1989 (54 FR 15891), we discussed proposed timeframes for completing service of process in child support cases. Members of the committee we consulted in developing timeframes for providing services urged us to state clearly in this discussion the fact that, if IV–D agencies encounter difficulty in obtaining adequate and timely responses to requests for service of process, Federal funding at the applicable matching rate is available for the costs of hiring process servers or otherwise purchasing such services as necessary expenditures under the IV–D program.

Service of process in a child support proceeding is essential for accomplishing IV–D goals, while guardians ad litem are not. In many States service of process is a prerequisite to any action taken to establish a support obligation and cases are not under administrative or judicial jurisdiction until the absent parent has been served with notice. Because service of process must be accomplished to ensure that absent parents are under the court or administrative agency's jurisdiction, Federal regulations governing timeframes for paternity establishment, establishment of support obligations, enforcement of support obligations, and expedited process are measured from successful service of process as the starting point.

For reasons articulated earlier in this document, in response to comments, the costs of guardians ad litem are not essential to accomplish IV–D program goals and, therefore, are not necessary costs for which funding under the IV–D program is available.

*2. Comment:* Several commenters explained that since costs of a guardian ad litem are direct IV–D costs, not general costs, FFP should be permitted.

One commenter offered that the costs of guardians ad litem are necessary and reasonable costs associated with the administration of the title IV–D program.

*Response:* In the context of the IV–D program, expenditures are considered general State expenses if they are incurred as a result of general State requirements which are neither dependent on nor confined to the IV–D program. Costs for guardians ad litem are neither dependent upon nor confined to the IV–D program. The use of guardians ad litem is broad and certainly not limited to child support matters. There is no Federal requirement of the IV–D program requiring guardians ad litem. The costs of a guardian ad litem are not direct IV–D costs since the costs of guardians ad litem would be incurred in the absence of the IV–D program. In fact, States customarily engage guardians ad litem on a routine basis in a variety of contexts where the interests of children may be affected by the actions taken or results accomplished. These are general State expenses which arise from State requirements which reflect a basic recognition that the child's interests in some actions may differ from those of its parents or the State.

*3. Comment:* One commenter pointed out that the OMB Circular A–87 is being revised to omit the "general expense" language from the test for eligibility of a particular cost for FFP and that the amended language states that "allowable costs must be necessary and reasonable for proper and efficient performance and administration of Federal awards and be allocable thereto under these principles."

*Response:* The excerpt from the OMB Circular A–87 cited by the commenter is a proposed change which has not been finalized. Although the language may be different than that presently required, it would have no impact on this rule. Even if the test for FFP eligibility changes as proposed, the expenses of guardians ad litem would still not meet the test, and FFP for such costs would remain unallowable. If the proposed change is implemented, it will specify that "costs of the judiciary" are not allowable so FFP for costs of guardians ad litem would remain unallowable, since appointment is a judicial function.

*4. Comment:* One commenter agreed that appointment of guardians ad litem is a general State activity. The commenter noted that the appointment of a guardian ad litem is not restricted to IV–D cases, and is not a necessary IV–D activity. In the commenter's State, the court, not the IV–D agency, bears the cost and responsibility of providing a guardian ad litem for cases in which a minor or incompetent person may be affected.

*Response:* For the reasons expressed by the commenter, and this preamble, we are publishing this final rule to clarify that FFP is not available for the expenses of guardians ad litem in IV–D cases.

*5. Comment:* Several commenters questioned whether this ruling can be finalized in light of the Kentucky court ruling that guardian ad litem fees are necessary expenditures to be allowed under the IV–D program. The commenters noted that the ruling indicated that the expense of a guardian ad litem is a direct cost associated with the IV–D program, not a general government expense.

*Response:* The court decision involving Kentucky was based on the fact that there were no Federal regulations prohibiting FFP for guardians ad litem. Therefore, we are clarifying this policy by publishing this final rule that expenses of guardians ad litem are not an expense for which FFP is available under the IV–D program.

*Guardian Ad Litem Role May Differ From Title IV–D Mission*

*1. Comment:* Several commenters cited the importance of appointing guardians ad litem to prevent conflicts of interest. One commenter indicated that Federal regulations create numerous conflicts of interest for program attorneys, and that such appointments to represent a child's interest enables States to avoid ethical problems in fulfilling IV–D expectations. The commenter argued that the Federal government's interest in obtaining reimbursement for AFDC expenditures sometimes conflicts with the interest of children. Another commenter suggested that a guardian ad litem is necessary for minor children where the IV–D agency is seeking a downward modification. The commenter indicated that under some guardian ad litem practices, if the judge determines that the interest of the custodial parent, the non-custodial parent and the IV–D agency are not identical to the interests of the child, the judge must appoint a guardian ad litem. As the commenter noted, where the court orders a guardian ad litem, the case cannot proceed without the guardian ad litem.

One commenter, however, suggested that this final rule will prevent conflicts of interest as it should lend itself well to those agencies who find themselves at odds and in somewhat precarious situations with those courts who demand that the IV–D agency "represent" someone as opposed to presenting a finding and recommendation to the court of law. The commenter stated that this rule should underscore the importance and necessity for local support enforcement agencies to adopt and promote the essence of their mission. In addition, the commenter noted that both the public and private sectors should be made aware of the fact that administrative agencies do not "take sides," but hopefully, report circumstances to courts of law that may have an impact on the "best interests of the child(ren)."

*Response:* This rule does not question the appointment of guardians ad litem; it only prohibits FFP under the IV–D program for the costs of such services. The main purpose of the Child Support Enforcement program are establishment of paternity and child support orders and enforcement of child support obligations. Every aspect of the program is designed to facilitate these proceedings. The employment of attorneys for defendants who contest these claims is clearly antithetical to any purpose or function of the IV–D program, and is not encompassed under §§ 304.20 and 304.24. Where there is a perceived conflict of interest between the government and a private party, then clearly the IV–D agency should not fund counsel to represent competing interests. Any attorney who accepts government reimbursement is obliged to follow regulations, policy transmittals, and directions, and make files available for State and Federal audit or review.

Actions of guardians ad litem on behalf of the individual interests they represent may not always be consistent with the purpose of Title IV–D. Because a guardian ad litem's first allegiance is to the child, limited instances may arise in which the actions of the IV–D agency in pursuing establishment of paternity or enforcement or establishment of support may be contrary to what the guardian advocates. If FFP was permitted for the costs of guardians ad litem, then the guardians ad litem would be obliged to follow IV–D guidelines. However, since a guardian ad litem would not be paid through FFP from the IV–D program, they would not be bound by or subject to Federal rules and policy.

*2. Comment:* One commenter suggested that the IV–D agency is less likely to request appointment of a guardian ad litem if the agency must absorb the cost in cases of conflict of interest with the custodial parent or child. The commenter cited the example of cases where a presumed father exists, a mother may insist that a man other than her husband be established as the child's biological father while the IV–D agency may be pursuing imposition of a

support obligation upon the husband as the legal father based on the presumption. The commenter stated that although the appointment of a guardian ad litem may become necessary when a conflict arises between the interest of the child and the IV–D agency, there will be an inherent disincentive for the agency to seek such appointments if the agency is required to bear the cost.

*Response:* We are not prohibiting or limiting the appointment of a guardian ad litem as allowed or required by State law, but only prohibiting FFP for expenses of guardians ad litem in IV–D cases. We believe that payment for the costs of both interests would be a disincentive for the guardian ad litem to maintain the appropriate degree of independence from IV–D dictates. If we pay costs, the guardian is bound to follow IV–D policy instead of freely exercising the degree of independence the child deserves.

*3. Comment:* Several commenters supported the regulation as helpful in determining which agency or branch of government has the responsibility of appointment of guardians ad litem, and liability for costs. One of these commenters reported that in his State, it is the court's responsibility to bear the cost and provide the guardian ad litem.

*Response:* States have discretion for funding guardian ad litem costs. For example, in cases in which a guardian ad litem represents a child plaintiff, costs could also be taxed to the alleged father as part of the disposition of the case. Since the appointment of a guardian ad litem is a judicial function, the courts could assume the financial responsibility.

*4. Comment:* Several commenters pointed out that appointment of guardians ad litem may also be required for matters other than child support such as custody, visitation, insurance claims, child abuse and neglect. One commenter mentioned that Federal regulations do not prohibit representation by the prosecutor's office on these issues and as a result a prosecutor may experience difficulty in withdrawing as counsel in those situations. The commenter indicated that courts would be more willing to sever the issues and allow the prosecutor to withdraw with regard to custody and visitation if a guardian ad litem were appointed to represent the interests of the child. Another commenter suggested that other issues such as custody and visitation should be dealt with during adjudication of the paternity case. Another commenter indicated that when a guardian ad litem is appointed in a child support matter, the guardian is appointed solely to consider the issue of child support and does not consider other issues.

*Response:* While a guardian ad litem may be required for various issues, it is a general State cost rather than a direct IV–D cost. Such issues as custody, visitation and child abuse and neglect are separate issues, not child support enforcement issues, and any costs associated with these issues are not eligible for FFP through the IV–D program. A decision to address child support and other issues in a joint action or a separate action, and whether a guardian ad litem is appointed, is a matter of judicial discretion. This rule will not limit such discretion. However, costs associated with guardians ad litem appointed for any reason are a general State cost. We recognize that local prosecutors may be responsible for handling a wide variety of cases including the establishment and enforcement of support and related issues. However, FFP under the IV–D program is available only for those functions properly allocable to the IV–D program.

*5. Comment:* One commenter expressed concern for Federal funding for local prosecutors' efforts in child support enforcement. According to this commenter, without continued funding, prosecutorial efforts will be severely jeopardized.

*Response:* This regulation codifies the long-standing policy that the costs of guardians ad litem are costs for which Federal funding is not available. This regulation has no effect on the extent of Federal funding to reimburse State expenditures under the IV–D program, including funding of costs for IV–D prosecutors' efforts to accomplish IV–D program goals.

*6. Comment:* One commenter was particularly concerned that a guardian ad litem be appointed in cases where a review indicates a lower amount of support and also for certain cases with no upward adjustment.

*Response:* The necessity of a guardian ad litem to protect the interests of children when an absent parent requests a review and a downward adjustment of the support order depends on State requirements and/or judicial discretion. However, we believe that a guardian ad litem may be unnecessary with the advent of support award guidelines in each State and the rebuttable presumption that the guidelines result is a correct and appropriate computation of the support award amount.

*Economic Impact of Prohibition of FFP for Guardians Ad Litem*

*1. Comment:* Several commenters remarked that, if FFP is not provided, the cost of guardians ad litem would be too great for their States or counties so children would not be able to have their paternity established. A few commenters claimed that unfunded mandates already exist and are concerned that we are adding another unfunded mandate. One commenter noted that their State does not appoint guardians ad litem in Title IV–D cases so there would be no impact on the IV–D program.

*Response:* Appointment of a guardian ad litem is a State, not a Federal mandate. States may provide for such appointments according to their laws. This final rule clarifies and codifies long-standing OCSE policy that the costs of guardians ad litem are not eligible for FFP.

*2. Comment:* One commenter argued that this rule constitutes a "major" rule under Executive Order 12291 as it would have an annual effect on the economy in excess of $100 million and would result in a major increase in costs to taxpayers, States and counties. Also, the commenter noted that the proposed rule violates the Regulatory Flexibility Act because it creates a significant impact on counties.

*Response:* This ruling would not have a significant economic impact since only five States require appointment of guardians ad litem in child support and/or paternity cases. Furthermore, OCSE does not mandate appointment of guardians ad litem; it is a State mandate in those States with such a requirement. Our rule codifies Federal policy that there is no Federal financial participation in the costs to States of meeting such State mandates. Therefore, the rule has no direct economic impact. Given the shrinking resources at the State and Federal level, States should consider recovering costs of services provided within and outside the IV–D program.

*3. Comment:* One commenter supported our position indicating that if responsibility for payment of guardians ad litem is shifted to the IV–D agency, appointment may be overused and operating costs would increase. For reasons of fairness and judicial economy, the commenter indicated, courts must retain the authority to appoint guardians ad litem. The commenter noted that a court is likely to temper its judicial discretion with a certain fiscal awareness. Also, the commenter reported, the IV–D agency would have no control over the costs of guardian ad litem appointments resulting in inflated litigation fees and increased operating costs; whereas courts can expedite litigation to keep

costs low and reduce large fees at their discretion.

*Response:* We agree that these issues are matters of State jurisdiction. If a State law requires the appointment of guardians ad litem, the court has the authority to appoint and fund guardians ad litem. Costs of the services of a guardian ad litem are generally borne by the court and are often taxed to one or both parties at the time of case disposition.

*Delay of Adjudication of Paternity Cases*

*1. Comment:* Several commenters indicated that this rule would delay adjudication of paternity cases. One commenter indicated that instead of using experienced IV–D caseworkers, inexperienced personnel from other departments would serve as guardian ad litem which would lengthen the period of time it takes to adjudicate a paternity case. One commenter interpreted the proposed rule to mean that guardians ad litem would no longer be appointed so processing of the case would be slowed. Another commenter indicated that support cases would be needlessly delayed by the appearance of appointed counsel as courts would not restrict appointments of guardians ad litem as would the State IV–D agency.

*Response:* This rule should not delay the adjudication of paternity cases. It does not prohibit the appointment of a guardians ad litem; it codifies the long-standing Federal policy that makes the expenses of such ineligible for Federal funding. It is up to the appropriate appointing authorities such as the court or a bar association, to establish criteria for selection of guardians ad litem. IV–D caseworkers act on behalf of the State IV–D agency for whom they are employed and may represent a child's interests when they are consistent with those of the State, which is generally the case. The court should decide when appointment of an independent guardian ad litem is necessary.

*Guardian Ad Litem Role*

*1. Comment:* One commenter indicated that this rule appears to ignore the Federal role in promoting children's health and prevention of child abuse and neglect and that a guardian ad litem represents what may be the only voice of reason to protect and benefit the child.

*Response:* Congress established the Child Support Enforcement Agency in 1975 under Title IV–D of the Social Security Act to ensure that children are supported by their parents. Enforcing child support laws conveys a message to children that they are valued by the parents who support them and by the society that exacts fair treatment on their behalf. By securing support, we secure the involvement of both parents in their children's lives and reduce the need for those children to become dependent upon public assistance.

Congress created the IV–D program for a very specific purpose. The IV–D program is a cooperative Federal-State program to establish and enforce child support orders, locate absent parents, and establish paternity. There are certainly numerous other aspects of delivering services to families which are not encompassed by the IV–D program. Other public programs have been established and designed to address these other issues, e.g., the work of the National Center on Child Abuse and Neglect within the Administration for Children and Families, HHS, is devoted to child abuse and neglect prevention.

The IV–D program is primarily oriented toward ensuring families' fiscal security and helping promote self-sufficiency. We are not preventing the appointment of a guardian ad litem whenever appropriate under State law, but are merely prohibiting FFP through the IV–D program for such costs.

*Appointment of a Guardian Ad Litem for Incompetents*

*1. Comment:* One commenter asked whether the use of the term "minors" in the proposed rule would permit FFP for guardians appointed in IV–D cases to represent incompetent adults who do not have formal legal guardians. Another commenter pointed out that there is no difference between the need for a guardian ad litem for a minor who is incompetent or in a nursing home and the need for one for an adult who is mentally incompetent or in a nursing home.

*Response:* In order to clarify our intent to prohibit Federal funding for any guardians ad litem in IV–D cases, we have deleted in the final rule the phrase, "appointed to represent minors" contained in the proposed § 304.23(k).

**Executive Order 12291**

The Secretary has determined, in accordance with Executive Order 12291, that this final rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy would be less than $100 million;

(2) This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and

(3) This rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although this final rule prohibits Federal funding for certain costs, those costs result from State, not Federal mandates. In addition, the rule merely codifies the long-standing Federal policy in this area. Thus, we expect the additional costs to States to be less than $100 million.

**Regulatory Flexibility Analysis**

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this final regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments which are not considered small entities under the Act.

**List of Subjects in 45 CFR Part 304**

Child support, Grant programs/social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.023, Child Support Enforcement Program)

Dated: May 18, 1992.

**Jo Anne B. Barnhart,**

*Assistant Secretary for Children and Families.*

Approved: June 30, 1992.

**Louis W. Sullivan,**

*Secretary.*

## PART 304—[AMENDED]

For the reasons set out in the preamble, 45 CFR part 304 is amended to read as follows:

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

**Authority:** 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

2. 45 CFR 304.23 is amended by adding a new paragraph (k) to read as follows:

**§ 304.23 Expenditures for which Federal financial participation is not available.**

Federal financial participation at the applicable matching rate is not available for:

* * * * *

(k) The costs of guardians ad litem in IV–D actions.

[FR Doc. 92–27862 Filed 11–18–92; 8:45 am]

BILLING CODE 4190–11–M

## FEDERAL MARITIME COMMISSION

**46 CFR Part 572**

**[Docket No. 92-16]**

### Conference Independent Action Provisions

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission ("FMC" or "Commission") is amending its regulations governing the filing of agreements submitted to the Commission pursuant to the Shipping Act of 1984 ("1984 Act" or "Act"), for the purpose of clarifying independent action ("IA") provisions. The final rule interprets the term "adopt" as it pertains to the filing of IAs that match an originating carrier's IA; specifies the conditions under which conference members may adopt another member's IA time/volume rate ("TVR"); prohibits conferences from establishing notice periods, other than the notice period required by section 5(b)(8) of the 1984 Act, for taking initial IAs; prohibits conference provisions that provide authority for the allocation of costs on a usage basis for publishing and maintaining member lines' IAs; and allows conference provisions that authorize automatic expiration dates for IAs contingent upon the member line's consent.

**EFFECTIVE DATE:** December 21, 1992.

**FOR FURTHER INFORMATION CONTACT:** Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC, 20573-0001, (202) 523-5787.

**SUPPLEMENTARY INFORMATION:** The Commission initiated this proceeding by an Advance Notice of Proposed Rulemaking ("ANPR") published in the **Federal Register**, 57 FR 14551 (April 21, 1992), requesting comment on certain conference policies and procedures concerning IA. The FMC received twenty-one comments. Subsequently, a Notice of Proposed Rulemaking ("NPR") was published in the **Federal Register**, 57 FR 31481 (July 16, 1992). The proposed rule: (1) Interpreted the term "adopt" as it pertains to the filing of IAs that match an originating carrier's IA; (2) specified conditions under which conference members could adopt another member's IA TVR; (3) prohibited conferences from establishing notice periods, other than the notice period required by section 5(b)(8) of the 1984 Act, for taking initial IAs; (4) prohibited conference provisions that provide authority for the allocation of costs on a usage basis for publishing and maintaining member lines' IAs; and (5) prohibited conference provisions that authorize automatic expiration dates for IAs.

The Commission received eighteen comments in response to the NPR. Comments were submitted by the following conferences: The Asia North America Eastbound Rate Agreement, the "8900" Lines and the Mediterranean North Pacific Coast Freight Conference ("ANERA et al."); the South Europe/USA Rate Agreement ("SEUSA"); the North Europe-USA Rate Agreement and the USA-North Europe Rate Agreement ("North Europe Conferences" or "NEC"); the Venezuelan American Maritime Association, Atlantic and Gulf/West Coast South America Conference, United States/Central America Liner Association, Central America Discussion Agreement, United States Atlantic & Gulf/Hispaniola Steamship Freight Association, Hispaniola Discussion Agreement, United States Atlantic and Gulf/Southeastern Caribbean Steamship Freight Association, Southeastern Caribbean Discussion Agreement, Jamaica Discussion Agreement, United States/Panama Freight Association, PANAM Discussion Agreement, Puerto Rico/Caribbean Discussion Agreement, the Caribbean and Central American Discussion Agreement, Ecuador Discussion Agreement, and United States Atlantic and Gulf/Ecuador Freight Association ("Latin American Agreements"); the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference ("Japan Conferences"); the Inter-American Freight Conference ("IAFC"); and the Transpacific Westbound Rate Agreement ("TWRA").

Shipper comments were submitted by the Agriculture Ocean Transportation Coalition ("AgOTC"); the American Paper Institute, Inc. ("API"); Calcot, Ltd.; International Paper; the National Industrial Transportation League ("NIT League"); the National Forest Products Association ("NFPA"); the Society of the Plastics Industry, Inc. ("SPI"); Sun-Diamond Growers of California; and Union Camp Corporation. The United States Department of Justice ("DOJ") and Department of Transportation ("DOT") also submitted comments. A number of commenters take essentially similar positions. Accordingly, we will make representations without individual attribution, unless otherwise appropriate.

Before addressing the specific comments regarding particular provisions of the proposed rule, it is necessary to address two general issues raised by the comments. First, TWRA opposes the proposed rule on the basis that it allegedly imposes requirements beyond the scope of the Commission's statutory authority. It argues that the proposed rule is contrary to the statutory requirements governing the filing, effectiveness, and modification of agreements, and the opportunity for hearing as set forth in sections 5(a), 6 (b) and (c), and 11(c) of the 1984 Act, 46 U.S.C. app. 1704(a), 1705 (b) and (c), and 1710(c). The rule is said to mandate deletion of agreement provisions currently on file and in effect with the Commission which were allowed to become effective pursuant to the standards of section 5, which have not changed. In other words, TWRA believes that the Commission is adding standards for agreement rejection or modification that are not found in section 5 or in any other section of the Act. It alleges that the proposed rule reflects a Commission determination to modify agreements by adopting rulemaking standards, after it proved impossible for the Commission to reject or modify the same provisions by applying the statute itself.

The proposed rule does not add new standards for rejecting agreements. Rather, it seeks to clarify the Commission's requirements for conference agreement IA provisions in accordance with the language and intent of section 5(b)(8) of the Act. We recognize that certain conference agreements currently contain IA provisions that would conflict with the requirements of the proposed rule. These provisions raised issues of inconsistency with the intent of section 5(b)(8) at the time of their filing, but were permitted to become effective since the Commission contemplated an overall review of conference IA provisions. Nothing precludes the Commission from refining its regulations on agreement requirements as conditions warrant and issues arise, even if agreement provisions reflecting those issues are currently in place and may require modification once the amended regulations are in effect. Further, section 17(a) of the Act, 46 U.S.C. app. 1716(a), specifically provides the Commission with the authority to prescribe rules and regulations as necessary to carry out the 1984 Act. Additionally, TWRA's concern that the subject rule would require changes to its agreement while depriving it of an opportunity for a hearing under section 11 is unwarranted. Should a conference fail to conform its agreement to the rule within the time prescribed and the Commission were to initiate action to obtain compliance, the conference

would have an opportunity for hearing under section 11.

Second, the North Europe Conferences request oral argument limited to those provisions of the proposed rule that concern a conference member's adoption of, and participation in, another member's IA TVR. No other commenter has requested oral argument. Scheduling of oral argument would delay the Commission's consideration of this proceeding, and the Commission does not believe that oral argument would add significantly to the extensive record already developed. For these reasons, NEC's request is denied. Further comments and discussion on the specific issues of the proposed rule are addressed below.

*Issue 1: The Meaning of "Adopt"*

The Commission proposed the addition of § 572.801(f)(1) requiring that any adoption of an independent action rate or service item or a particular portion of such rate or service item must be identical to the initial independent action. Any change made to the original independent action by another member line would be a new IA subject to the filing provisions of the applicable agreement. The Commission proposed that in order to comply with section 5(b)(8) of the 1984 Act, conference agreement provisions must use the term "adopt" when referring to the adoption of one member's independent action by another member line. The term adopt would refer to the filing of independent action by carriers who wish to offer a rate or service item which matches exactly the independent rate or service item of the originating carrier, with the exception that in the case of an IA TVR, the actual dates offered by an adopting carrier may vary from the dates offered by the originating carrier, so long as the duration of the adopting IA is the same as the originating IA.

All shippers, except one, support the proposed rule. SPI argues that the proposed definition is too restrictive because permitting carriers to modify IAs to accommodate a shipper's needs is pro-competitive and, therefore, consistent with the purpose of the 1984 Act. In addition to the partial adoption of an IA which the proposed rule would permit, SPI suggests allowing minor modifications to transit time and service standards. SPI contends that it is inconsistent to read section 5(b)(8) as allowing partial adoption while prohibiting slight modifications to an IA because the adoption of either results in a slightly different IA than the initial IA. Both types of IA allegedly do not have detrimental effects on the initiating carriers when the rate terms are not changed.

DOJ, DOT, and most conferences comment favorably on the proposed rule's treatment of "adopt." NEC support the proposed rule as it applies to the meaning of adopt, but oppose that part which requires that the adoption of an IA TVR must be for an equal duration, even if this requires such an adoption to have a later termination date. This issue will be addressed later in the section on adoption of IA TVRs.

The Japan Conferences, SEUSA, and the Latin American Agreements also support our interpretation of "adopt' in the proposed rule. The Latin American Agreements believe that the proposal would simplify conference administration of independent actions, eliminate questions on applicable notice periods and "adopting" IA, and increase competition in the IA process to the benefit of the conferences, member lines and shippers. Alleged potential benefits to member lines include the ability to take IA without the fear of losing business to another member line due to the competitor's evasion of the conference's waiting period. It also is argued that shippers would benefit from the lack of ambiguity in the rate and service item being offered, and the increased incentive of a member line to take independent action.

TWRA and ANERA *et al.* do not support the proposal. TWRA believes that conference agreement provisions which allow for the adoption of an IA at a rate level above the original IA is a permissible option which allows additional flexibility. It argues that the Act does not prohibit such provisions as long as an agreement provides for adoption as specified in section 5(b)(8)—*i.e.*, when agreements afford the adoption of an IA at rates higher or lower than the original IA, the requirements of section 5 are satisfied. TWRA states that no statement of policy in the Act of its legislative history requires the FMC to promote the taking of IA or prohibit any disincentive to IA.

ANERA *et al.* argue that the Congressional intent of the 1984 Act was for minimal regulation so that carriers and shippers could be given the most possible leeway in structuring their commercial relationships. By requiring that each conference include what ANERA *et al.* consider a commercially inflexible definition of adopt, the FMC allegedly will have abandoned the overall structure and spirit of the Act. ANERA *et al.* suggest that this part of the proposed rule would in fact restrict the right of IA. This argument is based on the assumption that allowing a member to alter the terms of an adopting IA for its own use is functionally similar to what the 1984 Act permits in allowing a member to take a new IA on a rate or service item on which an IA had already been taken. ANERA *et al.* contend that the Commission can no more prohibit the former than can it prohibit the latter.

ANERA *et al.* and TWRA argue that the Commission's concerns underlying its interpretation of "adopt" are wholly speculative. ANERA *et al.* argue that altering an IA fosters competition and provides shippers with greater rate and service options. They contend that any disincentive to the original IA taker is a result of commercial factors rather than the conference's IA provisions. TWRA rejects any possible adverse effects, suggesting that there might be greater disincentive to taking an original IA when the adopting IA is identical rather than higher.

The Commission is not persuaded by the arguments made by ANERA *et al.* and TWRA in opposition to this section of the proposed rule. Section 5(b)(8) provides that any conference member may adopt "* * * *the* independent rate or service item * * *" (emphasis added). Use of the word "the" in conjunction with "rate or service item" suggests that the original and the adopted IA rate or service item must be the same. If a following carrier alters an IA, it is not adopting the rate or service item of the initiating carrier, but is merely copying the initiating carrier's action of breaking from the conference price. In such circumstances, whether the following carrier establishes a higher or lower IA than the initiating carrier, a new IA rate or service item is created and should be subject to the conferences' notice provisions. We agree with ANERA *et al.* that a new IA on a rate or service item upon which an IA has been taken is functionally similar to adopting and modifying an IA. For that reason, we believe that the altered adopted IA creates a new IA, subject to the same conferences' notice periods. The proposed rule closes the option of adopting an IA at a higher rate without the required notice. A carrier with superior service who wishes to take IA from the same rate or service item but at a higher rate may do so by simply taking a new IA subject to the conference notice periods. We would point out in this regard that nothing in the Act or Commission regulations prohibits a conference from reducing the notice period for new IAs from the statutorily imposed 10 days if it so chooses.

SPI contends that the proposed rule is inconsistent because it allows for partial adoption of an IA but not for the slight

modification of adopting IAs. The proposed rule allows the partial adoption of IAs to provide carriers with some permissible degree of flexibility. Without this flexibility, the originator and the adopter of the IA would have to operate identically, serving within the same port range, using the same size containers, etc. A partial adoption does not create a disincentive to taking IA, as alleged by SPI, because the portion adopted is identical to the original IA. Rather, it enhances the ability of carriers to adopt IA.

With due consideration given to the comments received, the Commission shall proceed with a final rule on this issue. However, a slight modification to the proposed rule is necessary to allow an adopting IA to have a different expiration date than the original IA, in cases where member lines adopt IAs less than 30 days before their expiration. Section 8(d) of the Act, 46 U.S.C. app. 1707(d), requires carriers to give 30 days' notice prior to the effective date of any rate increase. If the expiration date of the original IA was not extended, then member lines could never adopt an IA that is lower than the conference rate within 30 days of its expiration, because of the statutory notice requirement for rate increases. For example, if a member line, on October 3, adopts an IA that is lower than the conference rate and that originally was filed on October 1 with an expiration date of October 31, sufficient time would not exist for the adopting carrier to keep the adopted IA in effect for 30 days to comply with the required notice. Therefore, the final rule will allow an adopted IA to remain in effect beyond the original IA in order to comply with the statutory 30-day notice requirement.

*Issue 2: Adoption of and Participation in Time/Volume Rates*

Section 572.801(f)(2) of the proposed rule specifies the conditions under which conference members can adopt another member's IA TVR. It allows a member line to adopt an initiating member's IA TVR before its effective date, in its entirety, without change to the original rate offering. Adoption of an initiating member's IA TVR after its effective date would be permitted, provided the adopting carrier appropriately adjusted the beginning and ending date of its adopting IA TVR to make the duration the same as the originating IA TVR. The proposal would prohibit member lines from participating in an IA TVR already filed by another member line. Member lines could, however, offer joint TVRs if permitted to do so under the terms of their conference agreement. The proposed rule also allows any TVR participated in by another conference member prior to any final rule in this proceeding to remain in effect until 90 days after the effective date of such final rule.

Comments received from shippers, shippers' associations, DOJ and DOT support the proposal in its present form. Favorable comments also were received from the Japan Conferences.

One of the shippers' associations supporting the proposed rule requests that the language be modified to specifically require the shipper's consent on TVRs jointly filed by member lines. We are not adopting this suggestion. A carrier may file a TVR rate whether or not it has an agreement with a specific shipper for that shipper to use the rate. While a carrier TVR rate may have been initiated for a certain shipper, there is no requirement that a carrier have the shipper's consent prior to publishing the rate. A TVR rate would be available to any shipper who can meet the applicable requirements. Additionally, the shipper's consent would not appear to be necessary since the shipper is aware that the TVR is jointly offered beforehand, and would give its consent upon agreeing to the joint TVR.

Comments submitted by various conferences favor the proposed rule to the extent that it provides for the adoption of an initial IA TVR. The main issue of contention among the conferences, except the Japan Conferences, is the prohibition of member lines from participating in an IA TVR already filed by another member line. The conferences oppose this prohibition and disagree that participation could create a disincentive in the initiation of IA TVRs. In general, the conferences argue that prohibiting participation infringes upon a member line's statutory right to adopt an initial IA and is contrary to the Congressional intent of the 1984 Act. They contend that the effects of prohibiting participation would reduce shippers' options and dampen competition.

SEUSA and ANERA, *et al.* present similar arguments. They claim that prohibiting participation prevents the adopting carrier from getting cargo under its adopting IA TVR because IA TVRs are generally shipper specific, and it is unlikely that a shipper will have enough cargo for two TVRs of the same commodity (i.e., the original IA TVR and the adopting (non-participating) IA TVR). Thus, they conclude that a member line must be able to adopt and participate in an original IA TVR or forego carrying certain cargo.

The intent of mandatory IA and adoption of IA is to enhance competition by giving member lines and shippers the option to establish their own tariff rates independent of the collective rate actions of the conference. The proposed rule would provide for the adoption of IA TVRs in accordance with section 5(b)(8). However, it is our opinion that participation in original IA TVRs already filed by a member line should be prohibited for two major reasons.

First, the adopting IA language in the statute would appear to cover a rate offering that is materially identical to the original IA offering. A rate offering that has material differences should be treated as a new IA rate. Since a TVR has two fundamental components—rate and volume—any change to either component would make a substantially different, and thus new, TVR. When another carrier seeks to participate in a previously filed IA TVR, it changes the original IA TVR making it a new rate offering, not an adopting IA. It is a new rate offering because the volume component of the original IA–TVR offering has changed. The participating IA–TVR carrier, unlike the originating IA–TVR carrier, does not offer a rate discount conditioned upon a certain volume of cargo being tendered only to itself. The participating IA–TVR carrier offers a rate discount conditioned upon a certain volume of cargo being tendered to itself, the originating IA–TVR carrier, or any combination thereof. The participating IA–TVR carrier severs the inextricable link between rate and volume that is fundamental to the original IA–TVR offering. The participating IA–TVR carrier would be prepared to give the discount, even if it is tendered a single container, so long as the shipper gives the remaining requisite containers to the originating IA–TVR carrier. This certainly is not the same rate offering made by the originating IA–TVR carrier. The statute does not appear to sanction such an interpretation of adopt.

Second, we believe that the prospect of member lines participating in original IA TVRs could inhibit the initiation of IA TVRs. When a carrier offers a TVR, it has determined the volume of cargo necessary to earn a profit at the discounted rate. If a carrier is forced to share the volume of cargo due to an adopting carrier's participation in the IA TVR, then the originating carrier may not receive sufficient revenue to generate the anticipated profit. As a consequence, a member line may be reluctant to initiate IA TVRs for fear that its original arrangement may be materially altered by the participation of another member line without the originating member line's consent,

resulting in loss of cargo and revenue. Inhibiting member lines from taking IA restrains competition and limits the options of both the carrier and the shipper in contravention of the intent of section 5(b)(8) of the 1984 Act.

NEC also oppose the requirement that the duration of the adopted IA TVR be the same as that of the initial IA TVR. Further, NEC find the phrase "in its entirety" in § 572.801(f)(2) of the proposed rule to be inconsistent with the "particular portion" clause of the definition of adopt in § 572.802(f)(1).

The Commission disagrees with NEC on both points. The nature of TVRs requires that an adoption of an original IA TVR be for the same duration and "in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period)." An alteration in the volume, rate, or time (as regards duration) of an original IA TVR does not constitute an IA TVR adoption, but a new rate offering. Permitting different beginning and ending dates of an IA TVR adoption after its effective date preserve the duration of the original IA TVR. Otherwise, if the duration changes, a shipper may be unable to move the required volume of cargo as specified in the original IA TVR. Adopting only a particular portion of an original IA TVR with regard to rate, volume, or duration also creates a new rate offering. The proposed rule correctly defines what constitutes an adoption of an original IA TVR, and its conditions for adoption are clear.

NEC object to the requirement that any currently effective TVR in which two or more member lines participate must be terminated within 90 days from the effective date of the rule. NEC oppose the severity of the 90-day provision for termination and request that the subject filings be allowed to expire on their own terms. IAFC also opposes the 90-day provision.

We agree that it may not be appropriate for the Commission to require the removal of effective TVR rates negotiated and agreed to in good faith. Accordingly, the 90-day provision shall be deleted from the final rule.

*Issue 3: Notice Period*

Section 572.801(b)(2) of the proposed rule would prohibit conference agreement provisions that impose on member lines a period of notice for adopting, withdrawing, amending, postponing or canceling independent actions. Shipper commenters,[1] as well as DOJ and DOT, generally support the proposed rule. The commenters believe the FMC's proposal is consistent with the provisions of the 1984 Act, which do not permit notice period requirements other than the 10-day maximum permitted by statute. Further, they argue that the imposition of any notice periods beyond the statutory period would unnecessarily restrict a carrier's right to IA, and inhibit overall market responsiveness.

While five conferences oppose this provision of the proposed rule, two conferences support it, but with modifications. NEC and IAFC point out the imprecision of the word "notice" and suggest the use of the phrase "advance notice." These conferences contend that a conference should be able to require that members notify it of the adoption of, or other action concerning, an IA in order to be able to incorporate such action in the conference tariff. Further, they argue that prohibiting notice to the conference would mean, in terms of the conferences' tariff operations, that no independent actions would be implemented.

NEC and IAFC, as well as other conferences, allege an inconsistency between various sections of the proposed rule. They note that the definition of "adopt" in § 572.801(f)(1) considers any alteration of an IA to be a new IA that must be filed pursuant to the IA filing and notice provisions of the applicable agreement. It is pointed out that, as currently drafted, this section would allow a member to "adopt" an IA, and immediately amend its adopted IA, thereby creating a new IA which would become effective without a notice period.

NEC argue that the prohibition of advance notice periods for amending IAs within the maximum 10-day period is in conflict with the plain meaning of the Act and its legislative intent, because an amendment to an IA constitutes a new IA subject to the advance notice provisions specified under section 5(b)(8) of the Act. They view adopting, withdrawing, postponing, or canceling an IA, on the other hand, as not changing the substantive content of an IA. Therefore, they urge the removal of the word "amending" form proposed § 572.801(f)(1).

Other conferences believe that they may establish other notice period requirements because section 5(b)(8) of the Act does not explicitly prohibit them. The Japan Conferences contend that the conference notice periods do not add to the 10-day maximum requirement, but rather enable its application. According to these Conferences, Congress intended independent actions to be burdened since it permitted conferences to require up to 10 days' notice on each independent action. These Conferences consider any IA action, other than an adopting IA, to be an initial or new IA regardless of whether it amends an existing IA, cancels an existing IA, or initiates a new IA. The Japan Conferences conclude, therefore, that they are permitted by the Act to require no more than 10 days' advance notice.

ANERA *et al.* and SEUSA maintain that any notice periods of less than 10 days are lawful. They argue that shorter notice periods on IA activity other than new IAs is not prohibited by the Act. ANERA *et al.* state that no empirical support exists for the FMC conclusion that notice periods of less than 10 days for IA activity other than initial IAs deter carriers from taking IAs. They advise that since shortening its notice period in July 1991, ANERA has received no complaints from either shippers or member lines indicating that notice periods hamper the right of IA. In addition, they contend that the sole effect of their notice periods is to liberalize commercial flexibility within the parameters established by Congress. ANERA *et al.* and SEUSA, along with the Latin American Agreements, suggest that the FMC not impose a broad prohibition of notice periods, but allow for reasonable notice periods of less than 10 days, with the caveat that the Commission could determine their merit on a case-by-case basis.

TWRA argues that the proposed prohibition is without a statutory basis because the Act is silent regarding "restrictive or prohibitive notices of these kinds." TWRA at 13. It also notes the lack of factual record suggesting that notice periods have an inhibiting effect on the exercise of IA.

We do not agree that, because the Act does not explicity prohibit notice periods on IAs other than initial IAs, such notice periods are permissible. In *Independent Action—Notice and Meeting Provisions in Conference Agreements*, __ F.M.C. __, 23 S.R.R. 1022 (1986), the Commission held that:

> To argue that the Act's alleged silence permits other substantive requirements or conditions which would effectively add to the limited notice requirement, either as a precondition to or as a consequence of independent action, is contrary to the express language of the Act. Any condition,

[1] One shipper, Union Camp, commented that the proposed rule also should include a prohibition against conference requirements that limit or restrict IAs, under which the conference will only accept notice from a specific pre-determined location, position or individual from the member lines. This issue is beyond the scope of this proceeding.

procedure or other mandatory requirement that in effect *adds* to the 10-day maximum notice requirement or places a mandatory burden on IA is, on its face, per se violative of section 5(b)(8).

*Id.* at 1027 (emphasis added).

The Commission believes that notice periods for adopting, withdrawing, canceling or postponing an IA place an improper burden on the carrier taking IA. These include the extant provisions of certain agreements requiring a member to give the conference forty-eight hours notice of the withdrawal of an IA in order to meet a lower conference rate applicable to the same commodity or service item. Although the conferences argue the administrative necessity of such provisions, the notice periods could be used to disadvantage the IA originator by allowing the conference to undercut the IA rate. The possibility that a member's right of independent action may be inhibited is sufficient to justify the proposed rule.

We do not view the act of adopting, withdrawing, postponing or canceling a previously taken IA, although performed by an individual member line, as creating a *new* independent rate action or service item that would be subject to the conference's notice provisions. An adopting IA simply allows one member to use another member's original IA as its own. The actions of withdrawing, postponing, or canceling affect only the duration of an IA. The contention that a new IA is created when an IA is withdrawn, canceled or postponed is without merit since the IA is removed from the conference tariff and the carrier's rate reverts to the conference rate.

In urging the Commission to adopt a less broad prohibition, several commenters suggest that reasonable notice periods should be allowed, subject to case-by-case review by the Commission. We disagree. The proposed rule provides clear guidelines for conferences and avoids filings which otherwise would require negotiated modifications.

NEC and IAFC suggest that the Commission clarify the proposed rule by prohibiting "advance" notice and by deleting the word "amending." We agree that conferences should be able to require notification so that they are able to implement an IA in their tariff. The language suggested by the conferences, however, does not adequately clarify the proposed rule. In fact, it potentially raises even more uncertainty as to the definition of "advance." While conferences need a certain time in which to actually publish their members' IAs in the conference tariff, the amount of time required will be a function of, *inter alia*, the number of IAs to be published by the conference. Conferences should publish the IAs without undue delay. The final rule, therefore, retains the prohibition of specific notice periods.

The Commission agrees with the commenters' suggestion that the word "amending" in this section is inconsistent with other sections of the proposed rule. Amending an IA does indeed create a new IA which should be subject to the conferences' notice provisions. Therefore, the word "amending" shall be deleted from this section in the final rule, and the rule shall be revised to read as follows:

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

*Issue 4: Filing and Maintenance Fees*

Section 572.801(g) of the proposed rule would prohibit conference provisions that allow for the allocation of costs on a usage basis for the publishing and maintenance of member lines' IAs. The basis of the proposed rule is that such costs should be treated like other administrative costs, and shared equally by all carriers on a *per capita* basis. Eleven commenters [2] responded in favor of prohibiting filing and maintenance fees on IAs. Seven commenters,[3] all representing conferences, responded against the proposal.

Commenters in favor generally contend that they rely on access to competitive, affordable and efficient ocean transportation services, and that filing and maintenance fees contribute in limiting their access to such service. NIT League argues that although conferences have a statutory obligation to provide for IA, there is no basis for allowing them to charge a member the filing and maintenance fees associated with IAs.

The comments opposed generally contend that since the 1984 Act is silent on prohibiting the assessment of usage fees, the proposed rule is contrary to statutory precedent governing the filing, effectiveness and modification of agreements under sections 5(a), 6 (b) and (c), and 11(c) of the 1984 Act.

The Latin American Agreements state that filing and maintenance fees are strictly a commercial matter that should be left to the discretion of the member lines. They contend that the assessment of costs with relation to IA is directly related to the "ministerial task of tariff filing" delegated to the conferences, and that the expense incurred by conferences in filing an IA is a mandatory expense which is incurred for the benefit of the individual member lines. SEUSA maintains that assessing individual conference members the cost of filing their own IAs avoids forcing one member to *de facto* subsidize another member's commercial activities.

The Japan Conferences contend that if information were available to indicate that there has been a negative effect on the level or frequency of IA use, such information would have been made public during this proceeding. They state that conference data show that there was no decrease in the number of IAs taken or increase in the number of IAs canceled before or after introduction of the fees. According to the Japan Conferences, modest increases are shown in the number of IAs taken after the fees became effective.

This latter argument fails to consider that the prohibition of filing and maintenance fees could have led to an increase in the number of IAs taken above its current levels. Moreover, the issue is not whether the conferences should be permitted to cover expenses, but rather that the charges do not create any disincentive, no matter how minimal, to carrier IA use. This is especially true where conferences assess regular maintenance fees against carriers with active IA rates even when the IAs remain unchanged. In order to ensure that carriers and shippers make full use of IAs, the administrative expenses associated with IA should be shared on a *per capita* basis rather than on a usage basis (especially in the case of maintenance fees). Therefore, the final rule prohibits conference provisions that provide authority for the allocation of costs on a usage basis for the publishing and maintaining of member lines' IAs.

*Issue 5: Automatic Expiration Dates*

Section 572.801(h) of the proposed rule would prohibit a conference from designating an expiration date for an independent action taken by a member line in the absence of an expiration date specified by the member itself. Conferences generally advocated that it was permissible for them to impose automatic expiration dates with the understanding that member lines can

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[2] *Commenters in favor of prohibiting filing and maintenance fees on IAs:* International Paper; Calcot, Ltd.; AgOTC; API; Union Camp Corp.; Sun-Diamond Growers of California; NFPA; SPI; NIT League; DOT; and DOJ.

[3] *Commenters against a rule prohibiting filing and maintenance fees on IAs:* TWRA; IAFC; the North Europe Conferences; SEUSA; the Latin American Agreements; the Japan Conferences; and ANERA *et al.*

specify as part of the independent action any expiration date they choose. The argument rests on two grounds. First, the 1984 Act does not specifically prohibit conferences from assigning expiration dates to IAs. Second, the imposition of expiration dates is merely a procedural matter related to keeping conference tariffs from becoming cluttered with outdated and unused IAs. The Japan Conferences state that members filing IAs have a tendency simply to leave IAs on file long after their usefulness is past, and, as a result, tariffs become more expensive to maintain and more difficult for shippers and others to use. They urge the Commission to revisit the proposed rule and reconsider the realistic (not hypothetical) possibilities presented by automatic expiry dates.

Shippers, DOJ, and DOT challenge the assertion that there is no extra burden placed upon member lines that take IA. They contend that conference-imposed expiration dates are not permitted under the 1984 Act and that the imposition of conference-assigned expiration dates does result in a constraint on the right of IA.

Upon review of the comments and further consideration of the issue, the Commission now believes it unlikely that conference-determined expiration will result in a restriction on IA, so long as the right of member lines to determine the duration of their IAs is not impeded, and member lines are given ample opportunity to choose and designate the duration of their IAs. Moreover, there actually may be positive results in allowing this practice to occur. Maintaining a tariff is a large expense both for carriers and conference offices. Keeping costs under control could improve the efficiency of conference operations, which would benefit the shippers who ultimately pay to cover these costs. Accordingly, the proposed rule shall be modified to allow for conference-determined expiration dates by consent of the member line, with the understanding that member lines must be given the opportunity to determine the duration of their IAs.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not 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, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Inasmuch as this final rule will affect only common carriers by water, conferences of such carriers, ports, and marine terminal operators, will result in a lessening of current regulatory burdens, the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0045 for 46 CFR part 572. Public reporting burden for this amendment is estimated to vary from 18 to 22 hours per response, with an average of 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573–0001; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

**List of Subjects in 46 CFR Part 572**

Administrative practice and procedure, Antitrust, Maritime carriers, Rates and fares.

Therefore, pursuant to 5 U.S.C. 553 and sections 5, 6, and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1704, 1705, 1716, part 572 of title 46, Code of Federal Regulations, is amended as follows:

## PART 572—[AMENDED]

1. The authority citation for part 572 continues to read:

**Authority:** 5 U.S.C. 533; 46 U.S.C. app. 1701–1707, 1709–1710, 1712, and 1714–1717.

2. Paragraphs (a)(4) and (a)(5) of section 572.502 are revised to read as follows:

**§ 572.502 Organization of conference and interconference agreements.**

(a) * * *

(4) Article 13—*Independent action.* The regulations for independent action are contained in section 572.801.

(5) Article 14—*Service contracts.* The regulations for service contracts are contained in section 572.802.

* * * * *

3. A new subpart H, consisting of §§ 572.801 and 572.802, is added reading as follows:

## Subpart H—Conference Agreements

**§ 572.801 Independent action.**

(a) Each conference agreement shall specify the independent action ("IA") procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 10 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 514.9(b) or § 580.10(a)(2) of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the filing of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under

independent action shall be included by the conference in its tariff for use by that member effective no later than 10 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f)(1) As it pertains to this part, "adopt" means the assumption in identical form of an originating member's independent action rate or service item, or a particular portion of such rate or service item. If a carrier adopts an IA at a lower rate than the conference rate when there is less than 30 days remaining on the original IA, the adopted IA should be made to expire 30 days after its effectiveness to comply with the statutory 30-day notice requirement. In the case of an independent action time/volume rate ("IA TVR"), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than "adopt" (e.g., "follow," "match") can be used to describe the action of assuming as one's own an initiating carrier's IA. Additionally, if a party to an agreement chooses to take on an IA of another party, but alters it, such action is considered a new IA and must be filed pursuant to the IA filing and notice provisions of the applicable agreement.

(2) An independent action time/volume rate filed by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (*i.e.*, a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering which results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. The adoption procedures discussed above do not authorize the participation by an adopting carrier in the cargo volume of the originating carrier's IA TVR. Member lines may file and participate in joint IA TVRs, if permitted to do so under the terms of their agreement; however, no carrier may participate in an IA TVR already filed by another carrier.

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the agreement in processing independent action filings.

(h) A conference agreement may not permit the conference to unilaterally designate an expiration date for an independent action taken by a member line. The right to determine the duration of an IA remains with the member line, and a member line must be given the opportunity to designate whatever duration it chooses for its IA, regardless if the duration is for a special period or open ended. Only in instances where a member line gives its consent to the conference, or where a member line freely elects not to provide for the duration of its IA after having been given the opportunity, can the conference designate an expiration date for the member line's IA.

(i) All new conference agreements filed on or after the effective date of this section shall comply with the requirements of this section. All other conference agreements shall be modified to comply with the requirements of this section no later than 90 days from the effective date of this section. However, any effective IA TVR adopted and participated in by other member lines at the time this section is published shall be permitted to remain in effect until its specified termination date.

(j) Any new conference agreement or any modification to an existing conference agreement which does not comply with the requirements of this section shall be rejected pursuant to § 572.601.

(k) If ratemaking is by sections within a conference, then any notice to the conference required by § 572.801 may be made to the particular ratemaking section.

**§ 572.802 Service contracts.**

(a) Each conference agreement that regulates or prohibits the use of service contracts shall specify its rules governing the use of service contracts by the conference or by individual members.

(b) Any change in conference provisions regulating or prohibiting the use of service contracts, whether accomplished by a vote of the membership or otherwise, shall not be implemented prior to the filing and effectiveness of an agreement modification reflecting that change.

(c) For the purpose of this section, conference provisions regulating or prohibiting the use of service contracts include, but are not limited to, those which permit or prohibit conference service contracts; permit or prohibit individual service contracts; permit or prohibit independent action on service contracts; permit or prohibit individual members to elect not to participate in conference service contracts; or impose restrictions or conditions under which individual service contracts may be offered.

By the Commission.

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 92-27586 Filed 11-18-92; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87-327; RM-5703]**

### Radio Broadcasting Services; Frederiksted, VI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Judith Mendez, allots Channel 278A at Frederiksted, Virgin Islands, as the community's first local FM transmission service. *See* 52 FR 33254, September 2, 1987. Channel 278A can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.6 kilometers (11.5 miles) east to avoid a nearby airport. The coordinates for Channel 278A at Frederiksted are North Latitude 17-43-00 and West Longitude 64-42-30. With this action, this proceeding is terminated.

**DATES:** Effective December 28, 1992. The window period for filing applications will open on December 29, 1992, and close on January 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commissions's Report and Order, MM Docket No. 87-327, adopted October 1, 1992, and released November 12, 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, D.C. 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.

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

Radio broadcasting.

**47 CFR PART 73—[AMENDED]**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by adding Frederiksted, Channel 278A.

Federal Communications Commission.

**Michael C. Ruger,**

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

[FR Doc. 92-28032 Filed 11-18-92; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 217, 222, and 227**

**[Docket No. 921184-2284]**

## Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

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

**ACTION:** Establishment of a temporary restricted tow-time option and observer requirement for vessels in the summer flounder trawl fishery.

**SUMMARY:** NMFS notifies owners and operators of vessels participating in the trawl fishery for summer flounder from Cape Charles, Virginia, to the southern border of North Carolina, that from November 15, 1992, until November 22, 1992, they must either use a NMFS-approved turtle excluder device (TED) in any net that is rigged for fishing, or comply with a restricted tow-time option. Under this option, fishermen must have a TED on order, must use tow times of 75 minutes or less, and must carry a NMFS-approved observer, if available, to monitor compliance of limited tow times and incidental capture of sea turtles. This option is appropriate because NMFS has determined that the supershooter grid TED, preferred by flounder fishermen, might not be available to all who wish to use it until November 20, 1992. NMFS previously announced that TEDs are required in this fishery beginning November 15, 1992 (57 FR 53603, November 12, 1992). NMFS believes that the use of TEDs or restricted tow times monitored by on-board observers will adequately protect sea turtles on a short-term basis. Beginning November 22, 1992, restricted tow times will no longer be allowed and trawlers fishing for summer flounder in this area must use TEDs unless a specific waiver is granted. This action, to allow fishermen to continue trawling for summer flounder while protecting threatened and endangered sea turtles, is authorized by 50 CFR 227.72(e)(6).

**DATES:** This action is effective from 12:01 a.m. Eastern standard time, November 15, 1992 until 11:59 p.m. Eastern standard time, November 21, 1992.

**ADDRESSES:** Dr. Michael Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region (813/893-3366) or Colleen Coogan, Protected Species Program, NMFS, Northeast Region (508/281-9291).

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS has taken action to require the use of TEDs in the summer flounder fishery effective November 15, 1992 (57 FR 53603, November 12, 1992). Although, numerous fishermen have purchased and installed TEDs, the supershooter TED, preferred by some flounder fishermen, is not available to all who wish to purchase that TED until November 20, 1992.

Information on where this and other TEDs are available may be requested from the Protected Species Branch, NMFS Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, Florida (813/893-3366), or the Harvesting Systems Branch, NMFS Mississippi Laboratories, 3209 Fredrick Street, P.O. Drawer 1207, Pascagoula, Mississippi, 39567, (601/762-4591).

NMFS' November 12, 1992, action allows the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), to grant a waiver of the requirement for a summer flounder trawler to have a TED in its net(s) if the vessel provides for, and carries on-board, a NMFS-approved observer and limits all tows to no more than 75 minutes, measured from the time the trawl doors or boards enter the water until they are removed from the water. Because some fishermen have complained that they are unable to obtain supershooter grid TEDs by the November 15, 1992, deadline, the Assistant Administrator is issuing a general waiver for a one-week period beginning November 15 and ending November 21, 1992, that allows for a restricted tow-time option as an alternative to using TEDs. Under this option, the owner or operator of a summer flounder trawl vessel must have a TED on order, have a NMFS-approved observer on board, limit tow times to no more than 75 minutes, and comply with the terms and conditions of the waiver. The North Carolina Division of Marine Fisheries has agreed to provide observers at no cost to accommodate those vessels opting for tow time limitations on a "first come, first served" basis.

The Assistant Administrator has determined that incidental takings of sea turtles during summer flounder fishing are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements.

A biological opinion was issued on October 30, 1992, for NMFS' action to require TED use in the summer flounder fishery off southern Virginia and North Carolina. Authorization for incidental takes includes both lethal takes and takes by injury. Furthermore, while only documented takes will be calculated for vessels using TEDs, the level of takings for vessels that are not using TEDs will be based on documented takes as well as estimates based on information from observers on-board fishing vessels or from other sources, such as the NMFS-NCDMF sea turtle monitoring program. Finally, if one or more Kemp's ridley, hawksbill, green, or leatherback sea turtle, or three or more loggerhead sea turtles are lethally taken or injured during the 30-day effective period of the notice issued on November 12, consultation must be reinitiated.

### Waiver to Allow Alternative of Limited Tow Times with Observers for the Summer Flounder Fishery

This action is authorized by 50 CFR 227.72(e)(6), and supplements the action published on November 12, 1992 (57 FR 53603). That action requires owners and operators of summer flounder trawl vessels in the Virginia-North Carolina restricted area that they must have a NMFS-approved TED in each net that is rigged for fishing, unless a specific waiver is granted by the Assistant Administrator.

For the period from November 15 under November 21, 1992, the Assistant Administrator is issuing a general waiver from the TED requirement for the summer flounder fishery if the owner or operator of a summer flounder trawl vessel complies with the four conditions of the limited tow time option specified in this action.

First, the owner or operator of a summer flounder trawl vessel must prove that he or she intends to have a TED installed in fishing nets by November 22, 1992; proof may consist of a valid copy of a purchase order from a TED manufacturer or other documentation. Proof of intent must be carried on board the vessel at all times the vessel is in the southern Virginia-North Carolina restricted area.

Second, the owner or operator of a summer flounder trawl vessel must arrange for a NMFS-approved observer to be on board the vessel at all times the vessel is in the southern Virginia-North Carolina restricted area; or if an observer is unavailable, the owner or operator of a summer flounder trawl vessel must carry an original statement of observer unavailability issued by the Division of Marine Fisheries at all times the vessel is in the southern Virginia-North Carolina restricted area.

For purposes of this general waiver, the State of North Carolina will provide all available NMFS-approved observers at no cost to vessel owners or operators on a "first come, first served" basis; information on observers may be obtained from Director, Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina, 28557 (tel. 919–726–7021). If the owner or operator of a summer flounder trawl vessel is unable to obtain an observer from the State of North Carolina, the owner or operator of a summer flounder trawl vessel may obtain a statement of observer unavailability from that office.

Third, the owner or operator of a summer flounder trawl vessel must limit tow times to no longer than 75 minutes, measured from the time that trawl doors enter the water until they are removed from the water.

Fourth, the owner or operator of a summer flounder trawl vessel must comply with the terms and conditions of the notice of general waiver to be carried by the NMFS-approved observer, or to be issued with the statement of observer unavailability.

This general waiver expires at 11:59 PM on November 21, 1992, and after that time owners and operators of summer flounder trawl vessels must comply with requirements of the action published on November 12, 1992 (57 FR 53603).

All NMFS-approved observers will report any violations of the conservation measures required by this action, or other applicable regulations and laws; such information can be used for law enforcement purposes.

Any person who does not comply with any requirement in this document, including any term or condition in any written notification issued hereunder, is in violation of the interim final regulations, codified at 50 CFR 227.71(b)(3).

**Classification**

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to allow trawlers without TEDs to continue fishing for flounder, while providing adequate protection for listed sea turtles, and is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under Executive Order 12291, because it is not a major rule.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an environmental assessment (EA) for the interim final rule published on September 8, 1992 (57 FR 40861), and the emergency action requiring sea turtle conservation measures in this fishery beginning November 15, 1992 (57 FR 53603, November 12, 1992). Those EAs concluded that with specified mitigation measures, emergency actions, such as this would have no significant impact on the human environment.

This action does not contain a collection-of-information requirement subject to the Paperwork Reduction Act. Fishermen unable to install TEDs and who wish to fish must contact the State of North Carolina Division of Marine Fisheries to be assigned an observer to monitor compliance with restricted tow times.

The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds there is good cause to take this action on an emergency basis and that it is impracticable and contrary to the public interest to provide notice and opportunity for comment. Failure to implement temporary measures immediately would result in fishermen not being able to fish for summer flounder in the southern Virginia-North Carolina restricted area, because the some types of TEDs are not currently available. Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

Dated: November 13, 1992.

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

*Assistant Administrator for Fisheries.*

[FR Doc. 92–28074 Filed 11–16–92; 10:01 am]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 57, No. 224
Thursday, November 19, 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 THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[CO-49-88]

RIN 1545-AL58

### Allocation of Income and Loss to Periods Before and After Change Date for Purposes of Section 382; Hearing

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides a notice of public hearing on proposed regulations relating to rules for allocating net operating loss or taxable income and net capital loss or gain between the period ending on the change date and the period beginning on the day after the change date for the taxable year in which a loss corporation has an ownership change.

**DATES:** The public hearing will be held on Thursday, February 25, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, February 4, 1993.

**ADDRESSES:** The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO-49-88), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 382 the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, February 4, 1993, an outline of the oral comments/testimony to be present at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,
*Alternate Federal Register Liaison Officer Assistant Chief Counsel (Corporate).*

[FR Doc. 92-27740 Filed 11-18-92; 8:45 am]

BILLING CODE 4830-01-M

### 26 CFR Part 1

[CO-049-88]

RIN 1545-AL58

### Allocation of Income and Loss to Periods Before and After the Change Date for Purposes of Section 382

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 382 of the Internal Revenue Code of 1986. For the taxable year in which a loss corporation has an ownership change, the proposed regulations provide rules for allocating net operating loss or taxable income and net capital loss or gain between the period ending on the change date and the period beginning on the day after the change date The proposed regulations allow the loss corporation to elect to make this allocation as if it closed its books on the change date.

**DATES:** Written comments must be received by February 4, 1993. Requests to speak (with outlines of oral comments to be presented) at the public hearing scheduled for 10 a.m., February 25, 1993, must be received by February 4, 1993. See the notice of hearing published elsewhere in this issue of the Federal Register.

**ADDRESSES:** All submissions are to be sent to: Internal Revenue Service, Attention: CC:CORP:T:R [CO-049-88] P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. The hearing will be held in the Commissioner's Conference Room 3313, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Mann of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:5) or telephone 202-622-7550 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information and suggestions for reducing the burden 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 Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information requirement in this regulation is at proposed § 1.382-6(b)(2) and the proposed amendment to § 1.382-2T(a)(2)(ii), which permit a closing-of-the-books election for purposes of certain allocations for the change year. The respondents will be loss

corporations that make the closing-of-the-books election.

The estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

Estimated total annual reporting burden: 200 hours.

Estimated annual burden per respondent varies from 0.05 hours to 0.2 hours, depending on individual circumstances, with an estimated average of 0.1 hours.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: on occasion.

**Background**

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 382 of the Internal Revenue Code. Section 382 was amended by section 621 of the Tax Reform Act of 1986, the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988 and the Revenue Reconciliation Act of 1989.

*A. Introduction*

Following an ownership change, section 382 limits the amount of post-change income that may be offset by a corporation's pre-change loss. Sections 382 (b)(3)(A) and (d)(1) require that, except as provided in section 382(h)(5) and in regulations, taxable income or net operating loss must be allocated ratably to each day in the change year for purposes of applying the section 382 limitation. Under section 383, similar rules apply with respect to pre-change capital losses and certain pre-change credits.

The legislative history states that regulations could permit loss corporations to allocate change year income or loss by closing the books as of the change date or by excluding certain items from ratable allocation. H.R. Rep. No. 99–841, 99th Cong., 2d Sess. II–186, II–188.

Notice 87–79, 1987–2 C.B. 387, allows taxpayers to allocate change year income and loss by closing their books as of the change date if they obtain a private letter ruling. Notice 87–79 also announced the Internal Revenue Service's intention to issue regulations providing a closing-of-the-books election.

*B. Closing-of-the-books election*

The proposed regulations generally provide that a loss corporation may allocate net operating loss or taxable income and net capital loss or gain for the change year between the pre-change period and the post-change period (1) by ratably allocating an equal portion to each day in the change year, or (2) if it so elects, based on a closing of its books as of the change date. A closing-of-the-book selection applies only for purposes of this allocation and does not terminate the loss corporation's taxable year as of the change date. If the closing-of-the-book selection is made, the amounts allocated to either the pre-change or the post-change period cannot exceed the net operating loss or taxable income and net capital loss or gain for the change year.

Under the proposed regulations, the closing-of-the-books election is made on the information statement required by § 1.382–2T(a)(2)(ii) for the change year and must be made on or before the due date (including extensions) of the loss corporation's return for that year. The closing-of-the-books election is irrevocable.

The proposed regulations provide consistency rules for corporations that are members of consolidated or controlled groups. Previously issued proposed regulations apply section 382 to consolidated groups by adopting group and subgroup principles. See, e.g., proposed §§ 1.1502–91 (c) and (d), and 1.1502–92. If a closing-of-the-books election is made with respect to an ownership change of a group or subgroup, the election applies to every member of the group or subgroup. See § 1.382–6(b)(3) (i) and (ii), as proposed by this document.

Previously issued proposed regulations also apply section 382 to controlled groups. See proposed § 1.382–5. If two or more members of a controlled group have ownership changes as a result of the same plan or arrangement and they continue to be members of the controlled group (or become members of another controlled group), a closing-of-the-books election applies only if the election is made by all members having the ownership changes. See § 1.382–6(b)(3)(iii).

The proposed regulations at § 1.382–6(d) coordinate with § 1.1502–76, under which a consolidated return must include each subsidiary's items of income, gain, deduction, loss, and credit for the portion of the year for which it is a member. If the subsidiary joins or leaves the group during a consolidated return year, its items for the portion of its year for which it is not a member must be included in a separate return (which may be the consolidated return of another group). Section 1.1502–76 provides rules for allocating the subsidiary's items between the returns. Any period of less than 12 months for which a separate or consolidated return is required under § 1.1502–76 is considered a separate taxable year.

Any allocation of items under the proposed regulations is determined after applying § 1.1502–76. For example, if the date a corporation becomes a member of a consolidated group is both a change date under section 382 and the end of a short taxable year under § 1.1502–76, § 1.1502–76 applies to allocate a portion of the corporation's items to the short taxable year ending on the change date. The proposed regulations do not apply because the change date is the last day of the short taxable year.

On the other hand, if the corporation has a change date on a day other than the last day of the short taxable year (e.g., because the option attribution rules under section 382 result in a change date earlier than the date the corporation becomes a member), § 1.1502–76 first applies to allocate a portion of the corporation's items to the short taxable year that includes the change date, and these proposed regulations then apply to allocate items within the short taxable year for purposes of section 382.

Recently proposed regulations under § 1.1502–76(b) permit an election for a corporation that joins or leaves a consolidated group to ratably allocate its items (other than extraordinary items) between its short taxable years. Under the ratable allocation election, an equal portion of the corporation's items (other than extraordinary items) is allocated to each day of the corporation's original year. Thus, any items that are ratably allocated to a short taxable year under § 1.1502–76(b) are also ratably allocated for section 382 purposes within that short taxable year, even if the section 382 closing-of-the-books election is made. If both the ratable election under proposed § 1.1502–76(b) and the section 382 closing-of-the-books election are made, any extraordinary items arising in a short taxable year are allocated under section 382 within the short taxable year by closing the books.

*C. Certain Operating Rules*

Under the proposed regulations, capital items are allocated separately from ordinary items and are not included in determining net operating loss or taxable income. In determining net operating loss or taxable income and net capital loss or gain, pre-change and

post-change items recognized during the change year generally can be offset against one another without regard to the section 382 limitation. In addition, net operating loss generally is reduced, without regard to the section 382 limitation, by the amount of capital gain remaining after offset by capital loss carryovers.

Under section 382(h), to the extent that the loss corporation has a net unrealized built-in loss, built-in loss recognized during the post-change period is allocated entirely to the post-change period and is subject to the section 382 limitation. To the extent that the loss corporation has a net unrealized built-in gain, built-in gain recognized during the post-change period is allocated entirely to the post-change period and increases the section 382 limitation. For purposes of the allocation rules, these built-in losses or gains are not taken into account in determining the loss corporation's net operating loss or taxable income and net capital loss or gain.

For that determination, the proposed regulations also exclude income or gain recognized on the disposition of assets transferred to the loss corporation during the post-change period, if a principal purpose of the transfer was to ameliorate the impact of the section 382 limitation. Such income or gain is allocated entirely to the post-change period. Absent this rule, a loss corporation could plan to ratably allocate some of this income or gain to the pre-change period, thereby allowing the amount so allocated to be offset by pre-change losses without limitation even though the income or gain is not a pre-change item.

*D. Application to Credits and Alternative Minimum Taxable Income*

The proposed regulations provide that the principles of this section apply for allocation of credits described in section 383.

The Service and the Treasury Department believe that Congress generally intended that the AMT system be separate from, and parallel to, the regular tax system. See, for example, § 1.56(g)–1(a)(5). Accordingly, the principles of this section apply for allocation of alternative minimum taxable income.

The loss corporation must use the same method of allocation (ratable allocation or closing-of-the-books) for regular tax purposes (including the allocation of credits described in section 383) and for alternative minimum tax purposes.

*E. Future Regulations May Address Certain Additional Issues*

The Service and the Treasury Department are concerned about the interaction of the ratable allocation rules under the proposed regulations and the built-in gain and loss rules under section 382(h), especially with respect to extraordinary items (*e.g.*, an asset sale not made in the ordinary course of business). Where taxpayers have net extraordinary gain in the pre-change period or net extraordinary loss in the post-change period (excluding built-in items described in section 382(h)(5)), they presumably will make the closing-of-the-books election. On the other hand, taxpayers that have net extraordinary loss in the pre-change period or net extraordinary gain in the post-change period (excluding built-in items described in section 382(h)(5)) presumably will choose ratable allocation. Under those circumstances, ratable allocation effectively may allow taxpayers to convert pre-change loss into post-change loss that is not subject to the section 382 limitation.

The Service and the Treasury Department are considering whether regulations are needed to prevent distortions. For example, regulations could require extraordinary pre-change items to be allocated to the pre-change period if the net amount of extraordinary pre-change loss that would be allocated to the post-change period under ratable allocation exceeds a threshold. A similar rule could apply for extraordinary post-change items. Alternatively, regulations could allow ratable allocation for extraordinary items, but require appropriate adjustments in applying the built-in gain and loss rules (subject to a threshold).

The Service requests comments on (1) whether future regulations should address the interaction of the ratable allocation rules under the proposed regulations and the built-in gain and loss rules under section 382(h), and (2) if so, whether one of the approaches described above or any other approach should be adopted.

*F. Limitation Increase Rule*

In recent private letter rulings issued under Notice 87–79 allowing taxpayers to make a closing-of-the-books election, the Service has allowed an increase in the section 382 limitation to the extent that net pre-change income was offset by net post-change loss.

The Service and the Treasury Department have not included the limitation increase rule in the proposed regulations because the rule would add considerable complexity to the regulations. In addition, the limitation increase rule is inconsistent with the approach taken in the proposed regulations, which generally allows change year losses to offset change year income and gains without regard to the section 382 limitation. The Service and the Treasury Department recognize that the limitation increase rule might be appropriate if the proposed regulations were modified to apply the section 382 limitation within the change year, either as a general matter where the loss corporation makes the closing-of-the-books election or with respect to extraordinary items where the loss corporation ratably allocates.

*G. Effective Date*

The proposed regulations apply to ownership changes occurring after the date these regulations are published as final regulations in the **Federal Register**. The Service intends to continue issuing private letter rulings under Notice 87–79 until it either publishes these regulations as final regulations in the **Federal Register** or publishes notification to the contrary in the Internal Revenue Bulletin. Letter rulings issued on or after November 19, 1992 will apply the principles of these proposed regulations, including not applying the limitation increase rule to the offset of net pre-change income by net post-change loss. Publication of this notice of proposed rulemaking does not affect the application of any letter ruling issued before November 19, 1992.

**Special Analyses**

It has been determined that these proposed regulations 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, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before adopting these regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A

public hearing has been scheduled for February 25, 1993.

**Drafting Information**

The principal author of these regulations is Roberta F. Mann, Office of the Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

**List of Subjects in 26 CFR 1.381(a) Through 1.383–3**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority citation for part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805 * * * § 1.382–6 also issued under 26 U.S.C. 382(b)(3)(A), 26 U.S.C. 382(d)(1), 26 U.S.C. 382(m), and 26 U.S.C. 383(d) * * *

**Par. 2.** Section 1.382–2T is amended as follows:

1. In paragraph (a)(2)(ii)(E), the language "and" following the semicolon is removed.

2. In paragraph (a)(2)(ii)(F), the period at the end is removed and "; and" is added in its place.

3. Paragraph (a)(2)(ii)(G) is added.

4. The added provision reads as follows:

**§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).**

(a) * * *

(2) * * *

(ii) * * *

(G) provide, if the loss corporation makes the closing-of-the-books election under § 1.382–6(b), all the information required by such section.

* * * * *

**Par. 3.** Section 1.382–6 is added to read as follows:

**§ 1.382–6 Allocation of income and loss to periods before and after the change date for purposes of section 382.**

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section, a loss corporation must allocate its net operating loss or taxable income (see section 382(k)(4)) and its net capital loss (see section 1222(10)) or modified capital gain net income (as defined in paragraph (g)(4) of this section) for the change year between the pre-change period and the post-change period by ratably allocating an equal portion to each day in the year.

(b) *Closing-of-the-books election*—(1) *In general.* Except as provided in paragraphs (b)(3)(iii) and (d) of this section, a loss corporation may elect to allocate its net operating loss or taxable income and its net capital loss or modified capital gain net income for the change year between the pre-change period and the post-change period as if the loss corporation's books were closed on the change date. An election under this paragraph (b)(1) does not terminate the loss corporation's taxable year as of the change date (*e.g.*, the change year is a single tax year for purposes of section 172).

(2) *Making the closing-of-the-books election*—(i) *Time and manner.* A loss corporation makes the closing-of-the-books election by including the following statement on the information statement required by § 1.382–2T(a)(2)(ii) for the change year: "The closing-of-the-books election under § 1.382–6(b) is hereby made with respect to the ownership change occurring on [Insert Date]." The election must be made on or before the due date (including extensions) of the loss corporation's income tax return for the change year.

(ii) *Election irrevocable.* An election under this paragraph (b) is irrevocable.

(3) *Coordination with rules relating to consolidated and controlled groups*—(i) *Consolidated groups.* If a loss group has an ownership change, any election under this paragraph (b) of this section must be made by the common parent of the loss group. The election applies to every member of the loss group.

(ii) *Loss subgroups.* If a loss subgroup has an ownership change (and paragraph (b)(3)(i) of this section does not apply), any election under this paragraph (b) of this section must be made by the common parent of the group that includes the loss subgroup parent for the change year. The election applies to every member of the loss subgroup.

(iii) *Controlled groups.* If paragraph (b)(3)(i) or (ii) of this section does not apply, and if, as part of the same plan or arrangement, two or more members of a controlled group (within the meaning of § 1.382–5(e)(2)) have ownership changes and continue to be members of the controlled group (or become members of the same other controlled group), a closing-of-the-books election applies only if the election is made by all members having the ownership changes.

(c) *Operating rules for determining net operating loss, taxable income, net capital loss, modified capital gain net income, and special allocations.* For purposes of this section, for the change year—

(1) *In general*—(i) Net operating loss or taxable income is determined without regard to gains or losses on the sale or exchange of capital assets; and

(ii) Net operating loss or taxable income and net capital loss or modified capital gain net income are determined without regard to the section 382 limitation and do not include the following items, which are allocated entirely to the post-change period—

(A) Any income, gain, loss, or deduction to which section 382(h)(5)(A) applies; and

(B) Any income or gain recognized on the disposition of assets transferred to the loss corporation during the post-change period for a principal purpose of ameliorating the section 382 limitation.

(2) *Adjustment to net operating loss*—(i) *Determination of remaining capital gain.* Modified capital gain net income allocated to each period is offset by capital losses to which section 382(h)(5)(A) applies and capital loss carryovers, subject to the section 382 limitation (in the case of modified capital gain net income allocated to the post-change period).

(ii) *Reduction of net operating loss by remaining capital gain.* Net operating loss allocated to each period is reduced (but not below zero) without regard to the section 382 limitation, first by the modified capital gain net income remaining in the same period, and then by the modified capital gain net income remaining in the other period.

(d) *Coordination with rules relating to the allocation of income under § 1.1502–76(b).* If § 1.1502–76 applies (relating to the taxable year of members of a consolidated group), an allocation of items under paragraph (a) or (b) of this section is determined after applying § 1.1502–76. Thus, if a short taxable year under § 1.1502–76 is a change year for which an allocation under this section is to be made, the allocation under this section applies only to the items allocated to that short taxable year under § 1.1502–76.

(e) *Allocation of certain credits.* The principles of this section apply for purposes of allocating, under section 383, excess foreign taxes under section 904(c), current year business credits under section 38, and the minimum tax credit under section 53. The loss corporation must use the same method of allocation (ratable allocation or

closing-of-the-books) for purposes of sections 382 and 383.

(f) *Examples.* The rules of section are illustrated by the following examples:

*Example 1.* (i) Assume that the loss corporation, L, a calendar year taxpayer with a May 26, 1994, change date, determines a section 382 limitation under section 382(b)(1) of $100,000. Thus, for the change year, its section 382 limitation is $100,000 × (219/365) = $60,000. L makes the closing-of-the-books election under paragraph (b) of this section.

(ii) Assume that L has a $150,000 capital loss carryover (from its 1993 taxable year) and a $300,000 net operating loss carryover (from its 1993 taxable year) to the change year. L recognizes, in the pre-change period, $200,000 of ordinary loss, and, in the post-change period, $150,000 of capital gain and $100,000 of ordinary income. Assume that section 382(h) does not apply to the capital gain or the ordinary income.

(iii) L has a $100,000 net operating loss for the change year ($200,000 pre-change loss less $100,000 post-change income), as determined under paragraph (c)(1)(i) of this section. Because L has no current year capital losses, L's $150,000 capital gain recognized in the post-change period is its modified capital gain net income for the change year (as defined at paragraph (g)(4) of this section). L allocates $100,000 of net operating loss to the pre-change period and $150,000 of modified capital gain net income to the post-change period.

(iv) Under paragraph (c)(2)(i) of this section, L uses its capital loss carryover to offset its modified capital gain net income allocated to the post-change period, subject to its section 382 limitation. L's section 382 limitation is $60,000, so L uses $60,000 of its capital loss carryover to offset $60,000 of its $150,000 modified capital gain net income. L has absorbed its entire section 382 limitation for the change year and has $90,000 of modified capital gain net income remaining in the post-change period.

(v) Under paragraph (c)(2)(ii) of this section, L offsets its $100,000 net operating loss allocated to the pre-change period by the $90,000 of modified capital gain net income remaining in the post-change period, without regard to the section 382 limitation, thereby reducing its pre-change net operating loss to $10,000.

(vi) From its 1993 taxable year, L will carry over $90,000 of capital loss and $300,000 of net operating loss to its 1995 taxable year. From its 1994 taxable year, L will carry over $10,000 of net operating loss subject to the section 382 limitation to its 1995 taxable year.

*Example 2.* (i) Assume the facts of *Example 1*, except that L does not make the closing-of-the-books election under paragraph (b) of this section.

(ii) L ratably allocates its $100,000 net operating loss and its $150,000 of modified capital gain net income for the change year. $40,000 of net operating loss ($100,000×(146/365)) and $60,000 of modified capital gain net income ($150,000×(146/365)) are allocated to the pre-change period. $60,000 of net operating loss ($100,000×(219/365)) and $90,000 of modified capital gain net income ($150,000×(219/365)) are allocated to the post-change period.

(iii) Under paragraph (c)(2)(i) of this section, L uses its capital loss carryovers to offset modified capital gain net income. The capital loss carryovers offset the $60,000 modified capital gain net income allocated to the pre-change period without limitation. Subject to the section 382 limitation, the remaining $90,000 of capital loss carryovers offset the modified capital gain net income allocated to the past-change period. Accordingly, L uses $60,000 of its capital loss carryovers to offset $60,000 of its $90,000 modified capital gain net income allocated to the post-change period. L has absorbed its entire section 382 limitation for the change year.

(iv) Under paragraph (c)(2)(ii) of this section, L's $60,000 net operating loss allocated to the post-change period is offset by its remaining $30,000 of post-change modified capital gain net income, reducing its post-change net operating loss to $30,000.

(v) From its 1993 taxable year, L will carry over $30,000 of capital loss and $300,000 of net operating loss to its 1995 taxable year. From its 1994 taxable year, L will carry over $70,000 of net operating loss ($40,000 pre-change + $30,000 post-change) to its 1995 taxable year. The $40,000 pre-change portion of that carryover is subject to the section 382 limitation.

(g) *Definitions and nomenclature.* The terms and nomenclature used in this section and not otherwise defined herein have the same meanings as in sections 382 and 383, the regulations thereunder, and the regulations under section 1502 applying sections 382 and 383 to consolidated groups. For purposes of this section:

(1) *Change year.* A loss corporation's taxable year that includes the change date is its "change year."

(2) *Pre-change period.* The "pre-change period" is the portion of the change year ending on the close of the change date.

(3) *Post-change period.* The "post-change period" is the portion of the change year beginning with the day after the change date.

(4) *Modified capital gain net income.* A loss corporation's "modified capital gain net income" is the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges for the change year, determined by excluding any short-term capital losses under section 1212.

(h) *Effective dates.* This section applies to ownership changes occurring on or after [Insert Date This Section is Published as final regulations in the **Federal Register**].

**Phil Brand,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 92–27742 Filed 11–18–92; 8:45 am]

BILLING CODE 4830–01–M

## Customs Service

## 31 CFR Part 1

## Privacy Act of 1974, as Amended; Exemption of System of Records From Certain Provisions

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, Customs is proposing to exempt a system of records, the Pacific Basin Reporting Network (Treasury/Customs .171) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

**DATES:** Comments must be received no later than December 21, 1992.

**ADDRESSES:** Comments (preferably in triplicate) must be submitted to the U.S. Customs Service, Regulations and Disclosure Law Branch, room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Kathryn C. Peterson, Chief, Regulations and Disclosure Law Branch, U.S. Customs Service, (202) 482–6930.

**SUPPLEMENTARY INFORMATION:** As a law enforcement agency, the U.S. Customs Service has a wide variety of investigatory responsibilities including, for example, investigations of smuggling, narcotics trafficking, the importation of prohibited or restricted merchandise, violations of the Neutrality Act, investigations of organized crime activities, commercial fraud investigations and many others. Among the activities in which Customs is involved is the clearance of aircraft and vessels and their crews into the Customs territory of the United States. The purpose of the Pacific Basin Reporting Network system of records is to collect and store information with respect to potential violations of Customs and other domestic and international laws and where appropriate to disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 19 U.S.C. 1433, 1459; 49 U.S.C. App. 1509; Treasury Department Order No. 165, Revised, as amended.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department

of the Treasury is today publishing separately a notice of a system of records, the Pacific Basin Reporting Network—Treasury/Customs .171. This system of records will assist Customs in the proper performance of its functions under the statutes and Treasury Department Order No. 165 cited above.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Commissioner of Customs intends to exempt the Pacific Basin Reporting Network from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(2), and 31 CFR 1.23(c). The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a (j)(2) and (k)(2).

**General Exemption Under 5 U.S.C. 552a(j)(2)**

Pursuant to 5 U.S.C. 552a(j)(2), the Commissioner of Customs proposes to exempt the Pacific Basin Reporting Network from the following provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(c) (3) and (4); (d) (1), (2), (3) and (4); (e) (2), (3), (4) (G), (H), and (I); (e) (5) and (8); (f) and (g).

**Specific Exemptions Under 5 U.S.C. 552a(k)(2)**

To the extent the exemption under 5 U.S.C. 552a(j)(2) does not apply to the Pacific Basin Reporting Network, the Commissioner of Customs proposes to exempt the Pacific Basin Reporting Network from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c) (3) and (4); (d) (1), (2), (3) and (4); (e) (1), (2), (3), (5) and (8); (e)(4) (G), (H) and (I); (f) and (g).

**Reasons for Exemption Under 5 U.S.C. 552a (j)(2) and (k)(2)**

Although more specific explanations are contained in 31 CFR 1.36 under the heading United States Customs Service, the following explanations for exemptions will be helpful.

(1) Pursuant to 5 U.S.C. 552a(4)(G) and (f)(1), individuals may inquire whether a system of records contains records pertaining to them. Application of these provisions to the Pacific Basin Reporting Network would give individuals an opportunity to learn whether they have been identified as either suspects or subjects of investigation. As further described in the following subsection, access to such knowledge would impair the Office of Enforcement's ability to carry out its mission, since individuals could take steps to avoid detection; inform associates that investigation is in progress; learn whether they are only suspects or identified as law violators; begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation.

(2) Pursuant to 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3), and (5), individuals may gain access to records pertaining to them. The application of these provisions to the Pacific Basin Reporting Network would compromise the Office of Enforcement's ability to provide useful tactical and strategic information to law enforcement agencies. Permitting access to records contained in the Pacific Basin Reporting Network would provide individuals with information concerning the nature of any current investigations concerning them and would enable them to avoid detection or apprehension. By discovering the collection of facts which would form the basis of their arrest, by enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and by learning that criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance.

Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations in such a way as to avoid detection or apprehension and thereby neutralize law enforcement officers' established investigative tools and procedures.

Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of sources of information by exposing them to reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Office of Enforcement's ability to carry out its mandate.

Furthermore, providing access to records contained in the Pacific Basin Reporting Network could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

By compromising the law enforcement value of the Pacific Basin Reporting Network for the reasons outlined above, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Office of Enforcement and thus would restrict the Office's access to information necessary to accomplish its mission most effectively.

(3) Pursuant to 5 U.S.C. 552a(d) (2), (3), and (4), (e)(4)(H), and (f)(4) an individual may request amendment of a record pertaining to him or her and the agency must either amend the record, or note the disputed portion of the record and provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since

these provisions depend on the individual's having access to his or her records, and since these rules propose to exempt the Pacific Basin Reporting Network from provisions of 5 U.S.C. 552a, as amended, relating to access to records, for the reasons set out in (2) above, these provisions should not apply to the Pacific Basin Reporting Network.

(4) Under 5 U.S.C. 552a(c)(4) an agency must inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules propose to exempt the Pacific Basin Reporting Network from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (3) above, this provision ought not apply to the Pacific Basin Reporting Network.

(5) Under 5 U.S.C. 552a(c)(3) an agency is required to make an accounting of disclosure of records available to the individual named in the record upon his or her request. The accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Pacific Basin Reporting Network. Making an accounting of disclosure available to the subjects of an investigation would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest.

Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Pacific Basin Reporting Network has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Office of Enforcement's information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(6) Under 5 U.S.C. 552a(e)(4)(I) an agency is required to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Pacific Basin Reporting Network could compromise its ability to provide useful information to law enforcement agencies, since revealing sources for the information could disclose investigative techniques and procedures, result in threats or reprisals against informers by the subjects of investigations, and cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) Under 5 U.S.C. 552a(e)(2) an agency is required to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the Reporting Network would impair the ability to collate, analyse, and disseminate investigative, intelligence and enforcement information.

Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension. In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(8) Pursuant to 5 U.S.C. 552a(e)(3) an agency must inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; and the effects on the individual of not providing all or part of the information. The Pacific Basin Reporting Network should be exempted from this provision to avoid impairing the Office of Enforcement's ability to collect and collate investigative intelligence and enforcement data.

Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. If it became known that the undercover officer was assisting in a criminal investigation, the officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

Further, individuals for personal reasons often would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities. Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation. Further, application of the provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, where further investigation reveals that the subject was not involved in any criminal activity.

(9) Pursuant to 5 U.S.C. 552a(e)(5) an agency must maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate", application of this provision to the Pacific Basin Reporting Network would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the Pacific Basin Reporting Network's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In

collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information.

Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collected and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(10) Under 5 U.S.C. 552a(e)(8) an agency must make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Pacific Basin Reporting Network should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(11) Under 5 U.S.C. 552a(g) civil remedies are provided to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The Reporting Network should be exempted from this provision to the extent that the civil remedies may relate to this provision of 5 U.S.C. 552a from which these rules propose to exempt the Pacific Basin Reporting Network, since there should be civil remedies for failure to comply with provisions from which the Reporting Network is exempted. Exemption from this provision will also protect the Reporting Network from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative intelligence, and law enforcement data.

**Comments**

Consideration will be given to any written comments 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), § 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 and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

After consideration of the comments received, notice will be given concerning the exempt status of this system of records. If the Commissioner of Customs finally exempts as herein proposed, a conforming amendment to 31 CFR 1.36 will also be published.

**Carol Hallett,**

*Commissioner of Customs.*

Dated: October 16, 1992.

**Peter K. Nuney,**

*Assistant Secretary (Enforcement).*

Dated: October 29, 1992.

**Deborah M. Witchey,**

*Deputy Assistant Secretary (Administration).*

[FR Doc. 92-28045 Filed 11-18-92; 8:45 am]

BILLING CODE 4820-02-M

## COPYRIGHT ROYALTY TRIBUNAL

### 37 CFR Chapter III

**[Docket No. 92-3-DART]**

### Digital Audio Recording Technology Act; Implementation

**AGENCY:** Copyright Royalty Tribunal.

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

**SUMMARY:** This advance notice of rulemaking is issued to inform the public that the Copyright Royalty Tribunal is considering the adoption of regulations to implement section 1007 of the Audio Home Recording Act (also known as DART, the Digital Audio Recording Technology Act). This section directs the Tribunal to promulgate regulations concerning the filing of claims by recording companies, artists, music publishers, and songwriters. This document invites the participation of the public in providing comments, views and information to assist the Tribunal in adopting appropriate regulations.

**DATES:** Initial comments concerning the content of the proposed regulations should be received on or before December 18, 1992. Reply comments should be received on or before December 28, 1992.

**ADDRESSES:** An original and five copies of the comments shall be addressed to Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009.

**FOR FURTHER INFORMATION CONTACT:** Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., Suite 918, Washington, DC 20009, Telephone (202) 606-4400.

**SUPPLEMENTARY INFORMATION:** Section 1007(a)(1) of DART provides that within the first two months of each calendar year after the calendar year in which DART takes effect, every interested copyright owner that is entitled to royalty payments under DART must file its claim, for payments collected during the preceding year, with the Tribunal. 17 U.S.C. 1007(a)(1). This section also authorizes the Tribunal to prescribe the "form and manner" for filing claims. *Id.*

Accordingly, the Tribunal wishes to receive comments concerning the types of information that should be required of copyright owner claimants.

Dated: November 13, 1992.

**Cindy Daub,**

*Chairman.*

[FR Doc. 92-27994 Filed 11-18-92; 8:45 am]

BILLING CODE 1410-09-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

**[CC Docket No. 92-222, FCC 92-440]**

### Allocation of General Support Facility Costs

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This Notice of Proposed Rulemaking proposes to amend a rule that causes an over-allocation of telephone company general support facility (GSF) costs to access charge categories other than common line. The Notice also seeks comment on specific methodologies for calculating a contribution charge to recover GSF costs if the over-allocation of these costs to special access is not corrected.

**DATES:** Interested parties may file comments on or before December 4, 1992, and reply comments on or before December 21, 1992.

**ADDRESSES:** Parties are to send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street, NW., Washington, DC 20554. Parties

should also file one copy of any documents filed in this docket with the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Douglas L. Slotten, 202–653–6975, Common Carrier Bureau, Policy and Program Planning Division.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rulemaking* in CC Docket No. 92–222, adopted September 17, 1992, and released October 19, 1992.

The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW., room 239, Washington, DC 20554.

1. We are proposing to eliminate the only regulatory mechanism identified in the record in CC Docket No. 91–141 as potentially warranting a contribution charge applicable to local exchange carriers' (LECs') special access and expanded interconnection offerings. We make this proposal in lieu of permitting the LECs to impose a contribution charge at this time. § 69.307 of our Rules, 47 CFR 69.307, requires the LECs to apportion GSF investment among the access categories based on investment in central office equipment, information origination/termination equipment, and cable and wire facilities excluding Category 1.3, the investment in subscriber lines. This allocation also has collateral effects on the allocation of GSF expenses. As a result, costs are under-allocated to the common line category and over-allocated to other access categories, including special access and transport.

2. We therefore propose to modify § 69.307 by deleting the words "excluding Category 1.3," and we invite interested parties to comment on this proposal. We also ask interested parties to propose specific methodologies for calculating a contribution charge to recover over-allocated GSF for use in the event that we do not ultimately adopt our proposal for reallocation of GSF costs.

## I. Procedural Matters

### *A. Ex Parte*

3. This proceeding is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

### *B. Regulatory Flexibility Act*

4. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because the proposed rule amendment, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Carriers providing interstate access transmission lines for telecommunications services directly subject to the proposed rule amendment are large corporations or affiliates of such corporations. The Secretary shall send a copy of this Notice of Proposed Rulemaking, 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, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*

### *C. Notice and Comment Provision*

5. Pursuant to applicable procedures set forth in § § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 4, 1992, and reply comments on or before December 21, 1992. To file formally in this proceeding, persons must file an original and five copies of all comments, reply comments, and supporting comments. Parties that want each Commissioner to receive personal copies of their comments must file originals plus nine copies. Parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street, NW., Washington, DC. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. For further information regarding this Notice of Proposed Rulemaking, contact Douglas L. Slotten, Common Carrier Bureau, Policy and Program Planning Division, 202–653–6975.

## II. Ordering Clause

6. Accordingly, *It is ordered* that notice is hereby given of the proposed regulatory changes regarding revision of § 69.307 of our Rules, 47 CFR 69.307, as described above, and that comment is invited on these proposals. (This action is taken pursuant to sections 1, 4(i) & (j), 201–205, 218, 220 & 404 of the Communications Act, 47 U.S.C. 151, 154(i) & (j), 201–205, 218, 220 & 404.)

**List of Subjects in 47 CFR Part 69**

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92–28071 Filed 11–18–92; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 92–245; RM–8026]**

## Radio Broadcasting Services; Frederiksted, Virgin Islands

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Jose J. Arzuaga proposing the allotment of Channel 298A at Frederiksted, Virgin Islands. Channel 298A can be allotted to Frederiksted in compliance with the Commission's minimum distance separation requirements without the imposition of site restriction. The coordinates for Channel 298A at Frederiksted are North Latitude 17–42–48 and West Longitude 64–53–00.

**DATES:** Comments must be filed on or before January 4, 1993, and reply comments on or before January 19, 1993.

**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: Jose J. Arzuaga, P.O. Box 980, Quebradillas, Puerto Rico 00742 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–245, adopted October 1, 1992, and released November 12, 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, D.C. 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 N.W., Suite 640, Washington, D.C. 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. 92–28033 Filed 11–18–92; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Parts 73 and 76**

**[MM Docket No. 92–254, FCC 92–486]**

## Indecency and Political Advertisement in Television Broadcasting

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; Request for comments on proposed interpretative ruling.

**SUMMARY:** The Commission is requesting comment on the issues of indecency and political advertisements in television broadcasting. The intended effect of this Request for Comments will be to assist the Commission to resolve these difficult issues.

**DATES:** Comments are due on or before January 22, 1993 and Reply Comments are due on or before February 23, 1993.

**ADDRESSES:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Milt Gross, Chief of the Political Programming Branch, (202) 632–7586.

**SUPPLEMENTARY INFORMATION:**

1. The Commission has before it an Application for Review, filed by Kaye, Scholer, Fierman, Hays & Handler ("Kaye, Scholer"), of the action taken by the Chief of the Mass Media Bureau in a letter on August 21, 1992 (FCC Ref. 8210–AJZ/MJM), which declined to grant the relief sought in Kaye, Scholer's Petition for Declaratory Ruling of July 29, 1992. In its petition, Kaye, Scholer had requested a declaratory ruling from the Commission with respect to the following:

> Whether a broadcaster may, consistent with the "reasonable access" provisions of Section 312(a)(7) of the Communications Act and the "no censorship" provision of Section 315(a) of the Communications Act, "channel" into those hours when there is no reasonable risk of children being in the audience, candidate "uses" that present graphic depictions of dead or aborted and bloodied fetuses or fetal tissue.

Kaye, Scholer Application for Review at 5. In comments filed in response to the Kaye, Scholer Application for Review, another party questioned whether a policy that denies licensees' ability to channel such programming is consistent with the Commission's "adoption and enforcement of children's television programming rules." Comments of Mark Van Loucks in Support of Application for Review at 14. After determining that the specific political advertisement at issue was not indecent under Section 1464, the Bureau concluded that a licensee could not channel the advertisement to the indecency "safe harbor" without running afoul of Section 312(a)(7) and 315 of the Act.

2. In addition, the Chief of the Mass Media Bureau has issued today, under severe time constraints, a letter ruling in response to a complaint filed on behalf of Daniel Becker, a candidate for Congress in the Ninth District of Georgia, against WAGA–TV, Atlanta. WAGA–TV has refused to air Mr. Becker's 30-minute campaign program "Abortion in America: The Real Story" outside the safe harbor for indecent material because the station argues that to do otherwise would violate 18 U.S.C. 1464. Unlike the political advertisement at issue in the *Kaye, Scholer* ruling, the Bureau has not determined whether "Abortion in America" is or is not indecent under section 1464 because the program has not yet been broadcast by the station. The Bureau stated that until the Commission provides definitive guidance, it would not be unreasonable for the licensee to rely on a prior informal staff opinion in this area, set forth in the Letter from Chairman Mark Fowler to Hon. Thomas A. Luken, dated January 19, 1984, and conclude that section 312(a)(7) does not require it to air, during hours outside the "safe harbor", material that it reasonably and in good faith believes is indecent.

3. We are convinced that these decisions present extremely difficult questions that would best be resolved with the benefit of full public comment. Thus, we hereby request public comment on the issues raised by the rulings described above. Specifically, we seek comment on all issues concerning what, if any, right or obligation a broadcast licensee has to channel political advertisements that it reasonably and in good faith believes are indecent. We also seek comment as to whether broadcasters have any right to channel material that, while not indecent, may be otherwise harmful to children. In this latter respect, we specifically invite commenters to address the proper scope of any such right and the standard by which the Commission should evaluate the reasonableness of broadcasters' judgments rendered in exercising that right.[1]

4. Interested parties may file comments on or before January 22, 1993, and reply comments on or before February 23, 1993. An original and five copies of all comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Finally, in view of the general nature and broad application of the policy issues raised herein, we will treat this as a non-restricted proceeding subject to section 1.1206(b)(4) of our rules. 47 CFR 1.1206(b)(4).

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**List of Subjects**

*47 CFR Part 73*

Television broadcasting.

*47 CFR Part 76*

Political candidates.

[FR Doc. 92–28031 Filed 11–18–92; 8:45 am]

BILLING CODE 6712–01–M

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[1] Until the Commission acts on the Kaye, Scholer Application for Review, licensees should follow the principles set forth in the Bureau's letter rulings. See Gillette Communications of Atlanta, Inc. and Kaye, Scholer, Fierman, Hays and Handler, DA 92–1160 (MMB), released August 21, 1992; and Letter to Daniel Becker, DA 92–1503 (MMB), released October 30, 1992.

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition To List the California Tiger Salamander

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

**ACTION:** Notice of petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the California tiger salamander (*Ambystoma californiense*) under the Endangered Species Act of 1973, as amended (Act). The petition has been found to present substantial information indicating the requested action may be warranted. Through issuance of this notice, the Service is commencing a formal review of the status of this species.

**DATES:** The finding announced in this notice was made on October 27, 1992. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below until further notice.

**ADDRESSES:** Data, information, comments or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Michael Long at the above address (916/78–4613).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that the requested action may be warranted, then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned action is warranted within 1-year of the receipt of a petition that presents substantial information.

On February 26, 1992, the Service received a petition from Dr. H. Bradley Shaffer of the University of California, Davis, to list the California tiger salamander (*Ambystoma californiense*) as an endangered species. Dr. Shaffer clearly identified his letter, dated February 20, 1992, as a petition. The petition, supporting documentation, and other documents have been reviewed to determine if substantial information has been presented indicating that the requested action may be warranted. This notice announces the 90-day finding for the petition to list the California tiger salamander under the Endangered Species Act.

The California tiger salamander is a large (7.5 to 16.2 centimeters (3.0 to 6.4 inches)), stocky, terrestrial salamander with a broad, rounded snout. The small eyes have black irises and protrude from the head. Coloration consists of white or pale yellow spots or bars on a black background, but is variable depending on location. Undersurfaces vary from almost uniform white or pale yellow to a variegated pattern of white or pale yellow, and black.

Early researchers reported the California tiger salamander as a full species (*Ambystoma californiense*). Subsequent researchers considered it to be one of many subspecies within the *Ambystoma tigrinum* complex. Recent genetic work has shown the California tiger salamander to be consistently differentiated from other members of the *Ambystoma tigrinum* complex, and indicates the species is isolated from others in the complex. In addition, the California tiger salamander differs significantly from other tiger salamanders in its pattern of egg-laying and breeding phenology. Although discussion on the taxonomy of this salamander continues, it is now considered to be a full species by many of those familiar with this animal (Shaffer, University of California, Davis, pers. comm.; Jennings, Department of Herpetology, California Academy of Sciences, pers. comm.). Based on the currently available information, the Service accepts the full species status for the California tiger salamander. The species is designated as a category 2 candidate in the November 21, 1991, Animal Notice of Review (56 FR 58804), and is classified as a "Species of Special Concern" by the California Department of Fish and Game.

The historical distribution of the California tiger salamander apparently included large portions of the Central Valley of California from the southern San Joaquin Valley into the southern Sacramento Valley north of the Sacramento River Delta. The salamander also was found in the lower foothills along the eastern side of the Central Valley and in the foothills of the Coast Ranges. The California tiger salamander occurs in grasslands and open oak woodlands. Necessary habitat components include ground squirrel or gopher burrows for underground retreats and breeding ponds, such as seasonal wetlands, vernal pools, or slow-moving streams, that do not support fish. Since the salamander may migrate up to a mile from its underground retreats to breeding ponds, unobstructed migration corridors also are required.

The petition asserts that the California tiger salamander should be listed as an endangered species because of documented dramatic habitat losses and population declines throughout the historical range of the species. The decline of the tiger salamander is attributed to conversion of grassland and oak woodland habitat to agriculture, urban development, fish introductions, and other anthropogenic factors. These factors have extirpated this species from large geographic areas of its former range, notably, the Central Valley of California.

Vernal pools, the species' primary breeding habitat, have been reduced by about 90 percent in the Central Valley (Holland 1988). The California tiger salamander has been eliminated from approximately 55 percent of the estimated 300–350 historic breeding localities used by this species (Jennings, pers. comm.). The Service is aware of numerous development projects that threaten this species. Urban expansion threatens the remaining California tiger salamander habitat, particularly in the foothills along the eastern side of the Central Valley, and the Carmel Valley, Livermore, and Santa Rosa areas. Projects that do not eliminate tiger salamander habitat directly may further fragment extant populations and prevent recolonization after extinctions of local populations.

The petition has been reviewed by staff at the Sacramento Field Office in Sacramento, California, and the Regional Office in Portland, Oregon. The Service finds that the petitioner has presented substantial information indicating that the requested action may be warranted. This finding is based on the scientific and commercial information contained in the petition,

referenced in the petition, and otherwise available to the Service at this time.

This finding initiates a status review for this species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

*References Cited*

Holland, R.F. 1988. What about this vernal pool business? Pages 351–355 *IN* J.A. Kusler, S. Daly, and G. Brooks, Editors. Urban wetlands. Proceedings of the National Wetland Symposium, Oakland, California.

**Author**

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

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

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: October 27, 1992.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 92–28038 Filed 11–18–92; 8:45 am]

**BILLING CODE 4310–55–M**

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**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List Seven Species as Endangered and Commencement of a Status Review for Four of the Species

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

**ACTION:** Notice of petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), announces a 90-day finding on a petition to add seven species to the Lists of Endangered and Threatened Wildlife and Plants. A petition to list seven plant species from Oregon, Idaho, and Nevada has been found to present substantial information indicating that the requested action may be warranted. Through issuance of this notice, the Service is commencing a formal review of the status of four of these species. The remaining three species were the subject of a previous petition and therefore are not being considered here.

**DATES:** The finding announced in this notice was made on March 2, 1992. Comments and materials related to this petition finding may be submitted to the Boise Field Office at the address below until further notice.

**ADDRESSES:** Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Parenti, Boise Field Office, at the above address (208–334–1931).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that a requested action may be warranted then the Service initiates a status review on that species. Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned actions are warranted within 1 year of the receipt of a petition that presents substantial information.

On October 8, 1991, the Service received a petition from Mr. Stu Garrett, representing the native Plant Society of Oregon, Oregon Resources Council, Portland Audubon Society, Oregon Natural Desert Association, Concerned Citizens for Responsible Mining, and The Wilderness Society to list the following seven plants as endangered: *Amsinckia carinata* (Malheur Valley fiddleneck), *Astragalus sterilis* (barren milk-vetch), *Eriogonum crosbyae* (Crosby's buckwheat), *Ivesia rhypara* var. *rhypara* (grimy ivesia), *Mentzelia mollis* (smooth blazing-star), *Mentzelia packardiae* (Packard's blazing-star), and *Senecio ertterae* (Ertter's senecio). Three of the plants listed above were included in the Smithsonian Institution's Report, which was presented to Congress on January 9, 1975, and accepted by the Service as a petition under the Act. The Service has made warranted but precluded findings annually since 1983 for these three taxa. Therefore, the Service regards the petition to list *Astragalus sterilis, Mentzelia mollis,* and *Mentzelia packardiae* as second petitions. The Service has evaluated the petitioner's requested actions for the remaining four plant species.

*Amsinckia carinata, Eriogonum crosbyae, Ivesia rhypara* var. *rhypara,* and *Senecio ertterae* occur on unique substrates in Oregon and Nevada. The petition and supporting documentation have been reviewed to determine if substantial information has been presented to indicate that the requested actions may be warranted.

The petition states that mining, particularly cyanide heap-leach open-pit gold mining, threatens these four plants, and that there has been a recent increase in this type of mining in Oregon, Idaho and Nevada. Threats include prospecting for new claims, off-road vehicle use associated with mining and prospecting, road construction for mining operations, deposition of overburden, mine reclamation, disturbance related to mining operations and actual mining in plant populations. In addition, the petition states that all sites of the species occur within rangelands, which are used primarily for cattle grazing. Cattle trail over all known populations. Habitat disturbance caused by cattle leads to invasion of weeds, erosion, and to the overall degradation of the habitat.

*Amsinckia carinata*, in the family Boraginaceae, is an erect, bristly, annual herb with deep yellow or orange flowers and long middle and upper leaves. This plant is only known from the Malheur Valley, in northern Malheur County, Oregon. After its initial discovery in 1896, the plant was not seen again until 1984 when it was rediscovered near the small town of Harper, Oregon. Although several small populations were located in 1989, it appears that the potential habitat is extremely limited. The entire range of the species includes less than 10,000 acres of habitat in a 20 square mile (32 square kilometer) area. The petition states that potential habitat for

the species is extremely limited and it is unlikely that additional populations will be found. Population sizes vary from year to year with rainfall and in dry years are very small. According to the petition, all populations of the species are located on mining claims. Prolonged drought, variability in seasonal rainfall, competition with introduced noxious weeds, and some hybridization could also contribute to the extinction of this species.

*Eriogonum crosbyae*, in the family Polygonaceae, is a low, densely-matted herbaceous perennial with basal leaves and yellow flowers. The species occurs in south-central Oregon in Lake County including a site on the Lake-Harney County borders, and in adjacent Elko County, Nevada. The petition states that all known populations of the species are threatened by habitat destruction from surface mining for gold. The plant occurs on a tufaceous substrate similar to gold-bearing deposits elsewhere in Oregon and Nevada. Recent status surveys on this species have not located any new populations (Smith and Schoolcraft 1989, as cited in the petition; Kaye *et al.* 1990, as cited in the petition). The petition further states that 88 percent of the Nevada populations are within the boundary of the Hog Ranch Mine Claim blocks in Nevada. Six subpopulations there have been partially or completely destroyed by mining operations. The reproductive capacity of this species appears to be poor at all known sites. Researchers have observed seedlings at only two sites in undisturbed habitat.

*Invesia rhypara* var. *rhypara*, in the family Rosaceae, is a low-spreading perennial with white flowers and mostly basal leaves. This species is now known from four population centers in Malheur and Lake Counties, Oregon, and Washoe and Elko Counties, Nevada, for a total of six populations. The plant is limited to a tufaceous substrate similar to gold-bearing deposits elsewhere in Oregon and Nevada. The petition states that all known sites are on mining claims, although the status of two claims in Oregon is unclear. The known populations and habitat areas are small and localized. Extensive inventory efforts in 1989 and 1990 yielded no new populations (Kaye *et al.* 1990, as cited in the petition). Existing populations are small and widely isolated. The reproductive success of this species appears to be limited.

*Senecio ertterae*, in the family Asteraceae, is an herbaceuous annual with irregularly-shaped, long, wooly, alternate leaves and golden-yellow flower heads. This species is a narrow endemic confined to specific substrates derived from one type of volcanic ash in the Leslie Gulch ash flow tuff formation. The species is not known to occur outside Leslie Gulch, Malheur County, Oregon. The range of the species is less than 30 miles (48 kilometers), and the total known habitat within this range is approximately 2,000 acres. The overall area is small enough that the entire species could be considered one extended population. The petition states that the sites are surrounded by recently recorded mining claims and all but a few of the populations are included within the claims. This species is threatened by recreational use, particularly off-road vehicle use, which causes soil disturbance and erosion in the loose ash beds. An additional threat to the species is the invasion of exotic weeds such as cheatgrass (*Bromus tectorum*).

This petition has been reviewed by the staff at the Boise Field Office in Boise, Idaho, the Portland Field Office, and the Regional Office in Portland, Oregon. Based on scientific and commercial information contained in the petition, referenced in the petition, and otherwise available to the Service at this time, the Service has determined that the petition presents substantial information indicating that listing of *Amsinckia carinata*, *Eriogonum crosbyae*, *Ivesia rhypara* var. *rhypara*, and *Senecio ertterae* may be warranted.

This finding initiates a status review for each of the above species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of these species.

## Author

This notice was prepared by Robert Parenti (Boise Field Office) and Allison Banks (Portland Regional Office).

## List of Subjects in 50 CFR Part 17

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: October 6, 1992.

**Bruce Blanchard,**

*Acting Director, U. S. Fish and Wildlife Service.*

[FR Doc. 92–28037 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–55–M

## 50 CFR Part 17

**RIN 1018–AB83**

## Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status for the Delhi Sands Flower-Loving Fly

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

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to determine the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This species originally consisted of two subspecies, the El Segundo flower-loving fly (*R. t. terminatus*) and the Delhi Sands flower-loving fly (*R. t. abdominalis*). The last individuals of the El Segundo Dunes fly were seen alive in the 1960's, and the subspecies is presumed to be extinct. The Delhi Sands flower-loving fly, the remaining representative of the species, is confined to a fraction of its original habitat, in areas of the Delhi Sands formation, all within an 8-mile radius in southwestern San Bernardino and northwestern Riverside Counties. Most of its former habitat was destroyed by agricultural conversions during the 1800's. Intensive urban and residential development imminently threaten the species' survival at present. Habitat existing today is less than one-half of what existed in 1975. Up until the fall of 1990, there were six extant colonies, but one of these, a 70-acre site, was recently destroyed by the construction of a shopping center. An 80-acre tract containing high quality habitat and a high density of the Delhi Sands flower-loving fly was mined to a depth of several feet since September of 1991, destroying all native vegetation in the area. Another colony was bisected and reduced in size by the construction of a county park in 1988. In addition to direct destruction by urban and residential development, the species' habitat is being degraded by removal of native vegetation for fire control, invasion of exotic vegetation, illegal dumping, and off-road vehicle (ORV) use. Moreover, the least degraded of the remaining population sites are all within the boundaries of joint city/county "Enterprise Zone" project, designed to encourage development through tax incentives. Finally, due to population and range reductions, the species may be prone to stochastic extinctions, more

vulnerable to the effects of adverse environmental conditions, and less able to recolonize areas previously occupied.

**DATES:** Comments from all interested parties must be received by January 19, 1993. Public hearing requests must be received by January 4, 1993.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003, 805/644–1766.

**FOR FURTHER INFORMATION CONTACT:** Lynn Wilson Oldt, Ventura Field Office, at 805/644–1766.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) is a large insect in the Dipteran family Apioceridae. It has an elongate body, much like that of a robber fly (*Asilidae*), but unlike asilids, it has a long tubular proboscis, used, as in butterflies, for extracting nectar from flowers. The flower-loving fly is approximately 2.5 centimeters (1 inch) long, orange-brown in color, and has dark brown oval spots on the upper surface of the abdomen. This species is a strong flier, and, like a hummingbird, is capable of stationary, hovering flight.

*Rhaphiomidas terminatus* consists of two subspecies, the El Segundo flower-loving fly (*Rhaphiomidas terminatus terminatus*) and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). Specimens of *R. terminatus* were misidentified as *Rhaphiomidas episcopus* by D. W. Coquillett, based upon material he collected in 1891 from Los Angeles, California. Townsend (1895) referred to these specimens as *Rhaphiomidas mellifex*. Cazier (1941) noted that both of these identifications were in error and used the specimens collected by Coquillett to describe *R. terminatus* as a new species. Later in the same publication, the Delhi Sands flower-loving fly was described as *Rhaphiomidas abdominalis*, based upon an adult male collected in August 1888, in Colton, California. In 1941, when both *R. terminatus* and *R. abdominalis* were described, Cazier had only two specimens of each taxa available for examination, and these individuals appeared to represent distinct species. However, when the genus was revised (Cazier 1985), it was determined that *abdominalis* is a subspecies of *R. terminatus*, based on abdominal maculations and other morphological characters. *Rhaphiomidas terminatus terminatus* is presumed extinct; thus *Rhaphiomidas terminatus abdominalis* is the only extant representative of this species. A complete description and illustration of these subspecies can be found in Cazier (1985).

The Delhi Sands flower-loving fly currently occurs at five locations in southern California: Four in southwestern San Bernardino County, and one in Riverside County, just south of the San Bernardino County line. All known colonies occur on privately owned land within an 8-mile radius circle.

The most characteristic feature of all collection sites for this animal is the presence of fine, sandy soils, often with wholly or partly consolidated dunes. These soil types are generally classified as the "Delhi" series (primarily Delhi fine sand). Delhi series soils cover approximately 40 square miles in several irregular patches, extending from Colton, California, to Ontario, Canada, and Chino, California, in western Riverside and San Bernardino Counties (USDA 1971, 1980). Much of the area of Delhi soils has been used for agriculture (chiefly grapes and citrus) since the 1800's. More recently, this area has been used for dairies, housing tracts, and commercial/industrial sites. The documented distribution of the Delhi Sands flower-loving fly extends from the eastern margin of the Delhi fine sand in Colton to near its western limits in Mira Loma. This distribution strongly suggests that this animal once occurred throughout much or all of the 40 square miles of Delhi fine sand. This notion is reinforced by the historic distribution of the closely related El Segundo flower-loving fly (now believed extinct), further west in the coastal dunes of Los Angeles County.

Ballmer (1989) reported the results of searches for the Delhi Sands flower-loving fly in potential habitat (undeveloped or abandoned areas of Delhi sand). No additional sites for the species were found; these absences were variously attributed to a lack of native vegetation (possibly associated with heavy ORV use), degradation by past agricultural use, solid waste disposal, freeway construction, and conversion to housing. It may be possible to restore the habitat in some of these areas for future reintroduction. The results of extensive searches by Ballmer and others indicate that this animal now occupies less than 2.5 percent of the total area of Delhi fine sands. Thus, it appears that over 97 percent of the habitat of the fly has been eliminated.

The life history of the Delhi Sands flower-loving fly is not well known, but is probably similar to that of other members of this genus (Cazier 1985). All members of the genus *Rhaphiomidas* inhabit arid or semi-arid regions and many favor sand dunes with sparse vegetation. Adults of some species, probably including *R. t. abdominalis*, take nectar from flowers by means of their elongate proboscis. The preference of *Rhaphiomidas* for sparsely vegetated areas may be related to the insect's behavior of flying low, usually a meter or less above ground, and frequently landing on the surface (Ballmer 1989). Cazier (1985) suggested that vegetation may aid in the selection of oviposition (egg-laying) sites as in *Apiocera*, another apiocerid fly genus.

Collection records for the Delhi Sands flower-loving fly indicate a single annual flight period during August and September. A skewed ratio of males to females (about 2:1) suggests that, as with many other insect species, males are more active, spending much of their time flying and investigating vegetation or the sand surface for resting females. Mating of this animal has not been observed, but it is known that eggs are deposited in sand. In captivity, one female survived for 10 days and produced over 50 eggs (Ballmer 1989). Larval development apparently also takes place in the sand. The single annual flight suggests that development to metamorphosis takes a full year. Pupae work their way to the surface prior to emergence as adults. Hogue (1967) describes the emergence of an El Segundo flower-loving fly from a pupal case in a remnant coastal dune in Manhattan Beach, California.

Circumstantial evidence suggests that sparse native vegetation is important in the biology of *R. t. abdominalis*, though specific plant associations are not known. Dominant native plant species in its habitat include wild buckwheat (*Eriogonum fasciculatum*), croton (*Croton californicus*), and telegraph weed (*Heterotheca grandiflora*) (Ballmer 1989). Additional native plants found with *R. t. abdominalis* include *Ambrosia acanthocarpa, Amsinkia intermedia, Eriastrum sapphirinum, Eriogonum thurberi,* and *Lessingia glandulifera*. Cazier (1985) reported that several specimens of *Rhaphiomidas terminatus terminatus* had been collected associated with a phlox (*Eriastrum filifolium*).

On October 30, 1989, the U.S. Fish and Wildlife Service (Service) received a petition from Mr. Greg Ballmer, an entomologist affiliated with the University of California at Riverside, to list the Delhi Sands flower-loving fly as an endangered species. A petition also had been submitted to the California Fish and Game Commission on October 18, 1989. This petition was referred to the Department of Fish and Game (CDFG), who found the petitioned action may be warranted. The petition was later voluntarily withdrawn when the petitioner learned that it could be rejected by the State, because CDFG had not yet determined whether they had authority to list insects (see Factor D under the Summary of Factors Affecting the Species section). On July 19, 1990, the Service received a letter from Mr. Ballmer requesting reactivation of this petition. In accordance with section 4(b)(3)(A) of the Endangered Species Act (Act), on October 30, 1990, the Service found that substantial information had been presented indicating that the petitioned action may be warranted. That finding was published in the **Federal Register** on December 24, 1990 (55 FR 52852). On November 21, 1991, when the Service published the Animal Notice of Review (56 FR 58804), the Delhi Sands flower-loving fly was included as a category 1 candidate species for future listing action. Category 1 comprises those taxa for which the Service has on file sufficient information to support proposals for endangered or threatened status. On March 25, 1992, Mr. Ballmer petitioned the Service to list the Delhi Sands flower-loving fly as an endangered species on an emergency basis, due to ongoing and anticipated construction projects within its habitat. This rule constitutes the Service's final finding on the petitioned action, that the listing of the Delhi Sands flower-loving fly as endangered is warranted.

**Summary of Factors Affecting the Species**

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.* The major threats to the Delhi Sands flower-loving fly are habitat loss and degradation. Historic and recent agricultural, residential, and commercial development has significantly reduced suitable habitat for the animal.

The other subspecies of this taxa, the El Segundo flower-loving fly historically occurred in coastal dunes of southwestern Los Angeles County, California (Cazier 1985). All known localities for this animal were on coastal sand dunes. Surveys conducted during 1987, 1988, 1990, and 1991, at the Airport Dunes, the largest remaining coastal sand dune system south of Point Conception in California, did not locate any El Segundo flower-loving flies, and apparently other known sites for the subspecies are no longer suitable habitat, due to urbanization (Ballmer, *in litt.*, 1989; Rudi Mattoni, private entomologist, pers. comm. to C.D. Nagano 1991). There are no extant sites known for this subspecies.

Most of the former habitat for the Delhi Sands flower-loving fly was destroyed by agricultural conversion in the 1800's. The remaining fragments of suitable habitat continue to be destroyed by the construction of homes, businesses, and associated roads and infrastructure. Based on the distribution of the Delhi Sands soil type, the present distribution of the Delhi Sands flower-loving fly most likely represents 2 to 3 percent of its former range; the amount of habitat existing today is approximately one-half of what existed in 1975 (Ballmer 1989).

The five remaining sites occupied by Delhi Sands flower-loving fly occur within an 8-mile radius circle on private land, totalling between 350 and 700 acres. These sites are divided approximately equally by Interstate 10 (I–10) and adjacent Southern Pacific railroad tracks. The portion north of I–10 is undergoing rapid and intensive urbanization. The largest site in this area, encompassing 70 acres, was destroyed sometime after 1990 by the construction of a shopping center. Another area north of I–10 that once supported the largest population of the animals was bisected and reduced in size by a county park in 1988. The resultant two sites and a third small site north of I–10 are threatened by numerous factors including adjacent urban development, invasion of exotic vegetation, removal of native vegetation for fire prevention, dumping, and ORV use. All three remaining habitat parcels north of I–10 are offer for sale, and one already has roads and streetlights installed (Ballmer 1992).

A significant amount of habitat for the Delhi Sands flower-loving fly is located south of I–10 in the city of Colton, California. The owner of this site has sold some adjacent property and has plans to develop the area containing the habitat of the animal (Greg Ballmer, pers. comm. 1992). This habitat is surrounded by petroleum facilities, railroad storage yards, a landfill, a cement quarry, and a sewage treatment plant. An adjoining parcel, which contained the greatest concentration of the Delhi Sands flower-loving fly observed in 1991, was sand mined some time between September 1991 and March 1992. The only other San Bernardino County site south of I–10 occurs within a powerline right-of-way and adjacent to a major road. Portions of this area are also being advertised for sale.

All of the sites containing suitable habitat for the Delhi Sands flower-loving fly located in San Bernardino County south of I–10 are within the Agua Mansa Enterprise Zone (County of San Bernardino 1986). This is a joint project of the cities of Colton, Rialto, and Riverside, and the counties of Riverside and San Bernardino. Its purpose is to encourage industrial development of the area through various tax and other economic incentives. The few remaining colonies of the Delhi Sands flower-loving fly would quickly be eliminated from increased development in this region.

In 1990, a small site in Riverside County, just south of the San Bernardino County line, was found to be occupied by the Delhi Sands flower-loving fly. However, this site may now be too small to persist; residential units were recently constructed on land adjacent to this location. As with most of the other sites, this area too is being degraded, as described below.

All of the known occupied sites are presently being degraded by ongoing soil disturbances, caused by grading, plowing, discing to remove vegetation for fire control, and off-road vehicle use. The Delhi Sands flower-loving fly is rare to absent in areas where these activities occur. Service biologists noted, during a 1991 survey, that the animals tended to occupy portions of habitat least disturbed by these activities. The absence of these insects from disturbed habitat may be due to the direct effects of the disturbance or to the growth of tumbleweeds (*Salsola kali*) and other non-native vegetation such as European grasses (chiefly *Avena* spp. and *Bromus* spp.) that increase following soil

disturbance. Tumbleweeds often form dense thickets covering extensive areas of soil and grow to more than one meter high; these and introduced grasses may eliminate open areas of sand by forming dense patches. Tumbleweeds occur to some extent at every extant fly location. The use of off-road vehicles in the tiny areas of the fly's remaining habitat may contribute to loss of native vegetation and subsequent invasion of these weedy, non-native species. Illegal dumping of abandoned automobiles and other trash has also contributed to habitat degradation.

In summary, one colony has been lost due to urban development since 1990, one was partially destroyed by sand mining some time between late 1991 and early 1992, and four colony sites are currently offered for sale. Given the rate and interest in residential and commercial development in this area and the added incentive of the Agua Mansa Enterprise Zone plan, these sites are likely to be purchased and developed in the immediate future. Finally, virtually all of the sites presently occupied by this fly are being degraded by soil-disturbing activities that reduce native vegetation and promote the invasion of non-native, weedy species.

*B. Overutilization for Commercial, Recreation, Scientific or Educational Purposes*

Although flies in general are not especially popular with collectors (Pyle *et al.* 1981), *Rhaphiomidas* flies are prized because of their unusual size, coloration, and rarity (C.D. Nagano, pers. obs.). A dedicated collector or collectors could readily eliminate the Delhi Sands flower-loving fly, given its small, isolated populations. Even scientific collecting, or repeated handling and marking (particularly of females and/or in years of low abundance) could eliminate or seriously damage the populations through loss of genetic variability. Collection of females dispersing from a colony could also reduce the probability that new colonies will be founded.

*C. Disease or Predation*

Not known to be applicable.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The Delhi Sands flower-loving fly is not specifically protected under any state or local laws. The CDFG has stated that they are unable to protect insects under their current regulations (Bontadelli 1990).

*E. Other Natural or Manmade Factors Affecting Its Continued Existence.*

The small colony sizes and habitat fragmentation of the Delhi Sands flower-loving fly make this taxa especially vulnerable to random extinction events and to loss of genetic variability. Small population size increases rates of inbreeding and may allow the expression of any deleterious recessive genes occurring in the population (known as "inbreeding depression"). Loss of genetic variability, through random genetic drift, is a further danger for small populations, reducing their ability to respond successfully to environmental stresses. In the remaining vestiges of its former habitat and with its reduced genetic variability, the Delhi Sands flower-loving fly is vulnerable to random fluctuations or variation of annual weather patterns, availability of food, and other environmental stresses.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Delhi Sands flower-loving fly in issuing this proposed rule. As described under the "Summary of Factors Affecting the Species," the available information indicates that one subspecies is already extinct. Over 97 percent of the other subspecies' historic habitat has been eliminated; the five fragments of its remaining habitat are imminently threatened by urban development, unauthorized trash dumping, off-road vehicle use, and stochastic events. This fly and its habitat receive no protection at any location. Based on this information, the Service concludes that the Delhi Sands flower-loving fly is in imminent danger of extinction throughout the remainder of its range and believes that a proposal to list as endangered is appropriate.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary may designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for the Delhi Sands flower-loving fly at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or more of the following situations exist: (1) The species is imperiled by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not beneficial to the species.

In the case of the Delhi Sands flower-loving fly, both criteria are met. As discussed under "Summary of Factors Affecting the Species," the animal is especially vulnerable to the removal of specimens for scientific or personal collections, an activity that could be carried out by a few people, and would be very difficult to regulate or control. The precise pinpointing of localities that would result from publication of critical habitat descriptions and maps in the **Federal Register** would render the species more vulnerable to collecting. Furthermore, such maps and associated information would increase the threat of vandalism to these sites. For these reasons, the Service concludes that the designation of critical habitat is not prudent for the Delhi Sands flower-loving fly at this time. Additionally, there is no known or anticipated Federal involvement at any of the sites where the species occurs. Affected agencies and principal landowners will be notified concerning management requirements of this species and protection will be sought through private landowner coordination after the species is listed and through the recovery process. Therefore, the Service finds that designation of critical habitat for the Delhi Sands flower-loving fly would be of no benefit to the species.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. Such activities may be initiated following listing. Some activities may be initiated prior to listing if circumstances permit. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part

402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. If a proposed Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is expected for activities occurring within habitats currently occupied by the Delhi Sands flower-loving fly.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship in certain circumstances. *Rhaphiomidas terminatus abdominalis* spends all but a short flight period between August and September in close association with the sandy soil, and under such circumstances destruction of the species habitat could be interpreted to constitute take. Applicants may apply for incidental take permits under such circumstances where grading or other activities may result in take.

Requests for copies of the regulations on listed wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2104).

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Delhi Sands flower-loving fly;

(2) The location of any additional populations of the Delhi Sands flower-loving fly and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the Delhi Sands flower-loving fly; and

(4) Current or planned activities in the subject area and their possible impacts on the Delhi Sands flower-loving fly.

The final decision on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to an action that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Ventura Field Office of the Southern California Field Station (see **ADDRESSES** section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


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### Authors


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### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under INSECTS to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * * * | * * * | * | * | * | * | | |
| INSECTS | | | | | | | |
| Fly, Delhi Sands flower-loving. | *Rhaphiomidas terminatus abdominalis.* | U.S.A. (CA) | NA | E | | NA | NA |
| * * * | * * * | * | * | * | * | | |

Dated: September 28, 1992.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 92-28039 Filed 11-18-92; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 663

**[Docket No. 920546-2146]**

**RIN 0648-AE01**

## Pacific Coast Groundfish Fishery

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

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Secretary of Commerce (Secretary) proposes regulations to implement a comprehensive data collection and regulatory program for all processing vessels greater than 125 feet in length and for all harvesting vessels that deliver their catch to these vessels in the Pacific Coast groundfish fishery off the coasts of Washington, Oregon, and California. The program would consist of:

(1) A requirement that processing vessels carry observers;

(2) A requirement that processing vessels and vessels that deliver to processing vessels obtain Federal permits;

(3) Recordkeeping and reporting requirements; and

(4) A revised definition of "fishing trip" for processing vessels over 125 feet that process their own catch, and for harvesting vessels delivering fish to such processing vessels, for the purpose of applying trip landing and frequency limits that are necessary to restrict the landings of several groundfish species. This action is necessary to maintain accurate statistics on this fishery, which is rapidly changing. This action is authorized by Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP). It is intended to further the goals and objectives of the FMP.

**DATES:** Comments are invited until December 21, 1992.

**ADDRESSES:** Comments may be sent to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Draft logbook and report forms also are available for public review and comment at these addresses.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140; Rodney R. McInnis at 213-514-6199; or the Pacific Fishery Management Council at 503-326-6352.

**SUPPLEMENTARY INFORMATION:** The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) in the Pacific Ocean off the coasts of Washington, Oregon, and California are managed by the Secretary according to the FMP prepared by the Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for U.S. fishermen at 50 CFR part 663. General regulations that also pertain to U.S. fishermen are at 50 CFR part 620. The FMP has been amended four times. The most recent amendment (Amendment 4) authorizes Federal data collection requirements, including Federal permits and observers, in the event that State data collection programs fail to provide the Secretary with statistical information for adequate management.

Data currently are collected by the States of Washington, Oregon, and California in cooperation with NMFS and the Council. Until recently, State regulations have been satisfactory because the vast majority of the Pacific Coast groundfish catch has been landed ashore at processing plants regulated by the States. However, a new class of fishing vessels built for fishing in Alaskan waters has begun fishing for Pacific whiting off Washington, Oregon, and California (WOC). These vessels are large, and either process their own catch and/or process the catch of fishing vessels that deliver to them. They may land, transfer, or offload their catch either at sea or at ports outside of the Pacific fishery management area. For this reason, the Council has determined that the States are not capable of regulating and collecting necessary fishery management data from this class of vessels. Thus, the Council has recommended that the Secretary implement a comprehensive Federal data collection and regulatory program, as authorized by Amendment 4, to collect information necessary for fishery management from this class of vessels, and to regulate their activities.

The comprehensive data collection program consists of a mandatory observer program, a requirement for Federal permits, and reporting and recordkeeping requirements. The proposed rule also includes a definition of a "fishing trip" for the purpose of applying and enforcing trip limits. The program requires processing vessels greater than 125 feet in length ("processing vessels" or "processors") and fishing vessels that deliver fish to these processing vessels to obtain a Federal permit before being allowed to deliver or process fish in the fishery management area. These permits would be issued free of charge. The Secretary has implemented similar requirements in the domestic groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands (55 FR 4839, February 12, 1990, and 54 FR 50386, December 6, 1989). The Secretary now proposes to impose similar measures in the Pacific groundfish fishery.

### 1. Mandatory Observer Program

In June of 1990, a survey of domestic annual processing (DAP) needs for Pacific whiting off Washington, Oregon, and California was conducted by the Northwest Region, NMFS. The survey indicated that, for the first time, the

entire annual quota could be taken by U.S. processors. This was attributed to the recent interest by processors from Alaska in utilizing Pacific whiting between Alaska pollock seasons (note: each Alaska pollock season has a separate quota; when a season is closed they normally go to Washington, Oregon, and California). In 1990, joint ventures between foreign processing vessels and U.S. harvesters, which are subject to 100 percent observer coverage by law, took 87 percent of the Pacific whiting quota. Displacement of the joint venture fishery by U.S. processors, which are not currently subject to an observer requirement, will result in a loss of observer data from which vital scientific, enforcement, and fisheries management data have been derived.

Domestic processors are large vessels, generally longer than 125 feet. Most harvest as well as process fish. Some only process fish delivered to them by other vessels. They are capable of harvesting and/or processing large quantities of fish in a relatively short time. Individually, they can process from 220 to 600 metric tons (mt) per day. As a group, the approximately 25 processors that expressed an interest in the Pacific whiting fishery could take the entire Pacific whiting quota in less than 2 months. They may stay at sea for weeks, even months at a time, and may land, transfer, or offload finished product at sea or in Alaska or other areas outside the Pacific groundfish management area.

Few of the large U.S. processors have experience in the Pacific whiting fishery. It is not known whether they can fish for whiting effectively with nets designed for Alaskan waters, while avoiding high bycatches of salmon and other prohibited species. It is also not known to what extent they will harvest and retain or discard other groundfish species that are subject to trip landing and trip frequency limits imposed to prevent premature achievement of quotas or harvest guidelines. Observers are necessary onboard each processing vessel to collect information critical to determine the management requirements for this new domestic fishery. This information includes species composition data, biological data previously collected by observers onboard joint venture processing vessels, and catches of both prohibited species and species subject to trip limits.

NMFS has prepared an Observer Plan for the Pacific Coast Groundfish Fishery (Pacific Observer Plan) patterned after the Alaska Observer Plan. The main difference between the Alaska and Pacific plans is that the Pacific plan only requires observer coverage for processing vessels longer than 125 feet. Fishing vessels delivering to processing vessels will not be required to carry an observer because the processing vessels will carry observers. Otherwise, the provisions of the Alaska Observer Plan regarding the responsibilities of NMFS, program administration, observer training and certification, contractor certification, observer debriefing, responsibilities of vessel operators, and the responsibilities of certified observer contractors have been incorporated in the Pacific Observer Plan.

Observers will be a uniformly trained group of scientific technicians whose function is data gathering. They will be stationed on processing vessels to gather data according to a statistically sound sampling plan to provide data that otherwise may not be accurately reported by processors or are too burdensome for processors to collect during their normal operations. The observer program is intended to augment the industry recordkeeping and reporting system. Observers will perform multiple duties including estimating haul weight, sampling for species composition, estimating product recovery rates, estimating discards and catch of prohibited species, collecting biological data and specimens, collecting data on the operation and characteristics of the vessel and fishing effort, and monitoring compliance with applicable regulations.

Copies of the Pacific Observer Plan may be obtained from the Regional Directors at the above addresses. The plan describes the responsibilities of NMFS, vessel operators, and NMFS-certified contractors who will act as agents of NMFS in providing observers to processing vessels. Under the provisions of this proposed regulation, processing vessels may not begin operations in the fishery management area without an observer onboard unless an exemption has been granted in writing by NMFS.

**2. Federal Permits**

Basic to any data collection program is the necessity for managers to know from whom they need to collect data. Also an important element in enforcing Federal regulations is the Government's ability to impose restrictions or sanctions on permits, including revocation if necessary, in the event of non-compliance with the regulations. Thus, the Council has recommended and NOAA proposes that all vessels subject to the comprehensive Federal data collection program be required to apply for and receive a free Federal permit as a condition of processing or delivering to a processing vessel in the Exclusive Economic Zone off the coasts of Washington, Oregon, and California (fishery management area). All processing vessels greater than 125 feet in length and all fishing vessels that deliver to them will be required to obtain permits. By this means NOAA will be able to identify those vessels that require observers, will be able to deliver and collect the appropriate logbook and reporting instructions, and will know from whom to expect Start and Stop Reports and weekly production reports. In the absence of a Federal permit requirement, NOAA would be unable to identify those vessels that intended to process or deliver fish to a processing vessel in the area, which would make enforcement of the data collection program almost impossible.

Upon receipt of a properly completed application, the Northwest Regional Director, NMFS, will issue a Federal permit free of charge accompanied by the appropriate logbooks, forms, and instructions. A Federal permit will be valid only through December 31 of the year for which it was issued.

**3. Recordkeeping and Reporting Requirements**

NOAA proposes the following new recordkeeping and reporting requirements for certain vessels: (1) Processing vessels that process their own catch must maintain Daily Fishing and Cumulative Production Logs (DFCPLs), and Transfer/Offloading Logs (Transfer Logs); (2) processing vessels that receive fish from fishing vessels must maintain Daily Reports of Fish Received and Cumulative Production Logs (DRCPLs), and Transfer Logs; (3) fishing vessels that deliver unprocessed groundfish products to a processing vessel must maintain the daily effort and catch portion of DFCPLs; (4) processing vessels must notify the NMFS Northwest Region at least 24 hours prior to beginning operations in the fishery management area and at least 24 hours prior to leaving the fishery management area; and (5) processing vessels must submit Weekly Production Reports (WPRs) that include timely data on species and product form, by gear and area. These requirements are necessary to provide adequate information on which to base both inseason and preseason management decisions affecting the Pacific whiting resource and the fisheries that utilize it.

To lessen the cost to the industry of meeting the recordkeeping and reporting requirements, NMFS will provide logbooks at no cost to the vessel operators. Logbooks will be printed on

two-part carbonless paper so that vessel operators can simply tear out copies of log entries and submit them to NOAA as required, while retaining the originals until the end of the fishing year or until the recorded fish or fish products are no longer aboard, whichever occurs later.

*Daily Fishing and Cumulative Production Log (DFCPL); Daily Report of Fish Received and Cumulative Production Log (DRCPL).*

Processing vessels that process their own catch would be required to maintain a DFCPL. Processing vessels that only receive fish from harvesting vessels would be required to maintain a DRCPL. The DFCPL and DRCPL are identical except that the DFCPL combines the production log with a fishing effort and catch log and the DRCPL combines the production log with a record of fish received from other vessels. Harvesting vessels delivering to processing vessels would be required to maintain the fishing effort and catch section of the DFCPL. The DFCPL and DRCPL logs record daily catch or catch receipt information, along with daily and cumulative production information.

The daily fishing effort and catch portion of the DFCPL includes: (1) Vessel and gear specifications; (2) haul-by-haul information; (3) daily information on discards and retained catch; and (4) information on daily vessel activity. The haul-by-haul information includes the date, time, location, sea depth, trawl depth, hail weight, and duration of haul. (Comparable information would be recorded for each set if longline or pot gear is used.) The crew size information is broken out by fishing and processing crews where appropriate. The discard information is broken down by species, species group, and prohibited species. The estimated daily discards of prohibited species (e.g., halibut, Dungeness crab, and salmon) are recorded in numbers. All other species discard estimates are recorded by weight. The effort information is used to support enforcement operations and for biological and economic evaluation of existing and proposed fishery management measures. The daily fishing effort and catch portion is used to verify information reported in the WPRs.

Duplicate copies of the DFCPLs and DRCPLs would be submitted to NMFS periodically, whereas original copies of the logs would remain on the vessels at least until the end of the fishing year (longer if product remains on board past the end of the fishing year). These logs would be made available to NMFS observers and to enforcement officers. Observers would use the information in the logs to assist in their data collection responsibilities. The discard information maintained in the logs would assist those responsible for completing the WPRs, which include estimates of discards.

Information relating to estimated haul weight or catch receipt weight would be recorded in the DFCPL or DRCPL within 2 hours after the fish are brought on board. Timely recording of this information is necessary so that enforcement officers may account for unrecorded product inventory. Other entries in the DFCPL and DRCPL would be updated within 12 hours of the end of the day on which the haul, receipt, or production occurred.

Each page of the DFCPL and DRCPL would include entries from only one statistical area and gear type to facilitate preparation of the WPR by processors. The WPR reflects the cumulative weekly production, as recorded in the DFCPL or DRCPL, and is used for inseason monitoring of quotas and harvest guidelines. Because quotas and harvest guidelines often are specified by statistical area and gear type, cumulative weekly production amounts must be recorded and reported by these same qualifiers.

The DFCPL and DRCPL also record daily discards by the processor. This information, along with discard information provided to processors by catcher vessel operators, would be reported on the WPR and used to obtain information relating to total fishing mortality resulting from fishing operations. A comprehensive observer program will provide Pacific whiting, other groundfish, and prohibited species discard information from a significant portion of the industry. Observers need access to discard information recorded in the logs to help assess their estimates of discard amounts, particularly of prohibited species. Furthermore, all catcher vessels and processors must record discard information to provide at least a minimum estimate of discard mortality in the event of inadequate observer coverage. In addition to total mortality estimates, recorded discard estimates would be used to derive estimates of bias resulting from intentional or unintentional misreporting of data.

Specific information on the catcher vessel (vessel name, vessel permit number, and receipt time), together with the cumulative production information recorded in the DRCPL, would be used by enforcement officers to verify information reported on the WPRs. Product transfer information (recorded in the product transfer log) would be subtracted from the verified cumulative production information (in the DFCPL or DRCPL) to obtain the amount of product that should be present on a processor vessel.

*Product Transfer/Offloading Logs (Transfer Logs)*

Processors would be required to maintain a product transfer log similar to that currently required of processors in the Alaska groundfish fishery. This log would record all shipments or transfers of products by species, product type, product weight (or units) and value, the name of the company or person transporting the product, the date of shipment, and the destination of the product.

Each processor required to maintain a transfer log would be required to submit to NMFS copies of their transfer log entries for each month in which transfers occurred. This information assists enforcement officers in verifying reported catch, and will be compared with the original transfer logs, DFCPLs, DRCPLs, and product inventory during vessel boardings to verify the amount of retained product reported in the WPRs.

Product weight, product types, and values for each species harvested in the WOC are currently recorded on State fish tickets for vessels landing in ports in WOC. The same information is needed from processing vessels. The transfer/offloading information from processing vessels will be incorporated with fish tickets into a coastwide data base to be used for socioeconomic analyses such as determining the impacts of current regulations and future proposed regulations on processing vessels in accordance with Executive Order 12291, the Regulatory Flexibility Act, and other applicable law.

*Weekly Production Report (WPR)*

A weekly production report would be required of processing vessels as in the Alaska Region. It would summarize by area and gear:

(1) Total weight of catch or receipt of groundfish species and number of prohibited species;

(2) Weekly production by groundfish species and product form; and

(3) Product recovery rates by groundfish species and product form.

Processing vessels would report to NMFS both product weight and round weight. Vessels will also be required to provide product recovery rates along with the conversion to round weight. This information will help NMFS develop uniform standard conversion factors for converting product weight to round weight.

The WPRs are to be submitted weekly, by fax or telex. NMFS needs this information weekly to track the harvest rate. The fleet is large, with a potential to harvest large amounts in a short period. Without the weekly reports there is a high risk of overharvesting the resource or exceeding a quota before NMFS knows this has happened.

*Start and Stop Reports*

The purpose of Start and Stop Reports is to allow NOAA to be aware of which processing vessels are operating in the WOC area each week so that NOAA knows which vessels are required to submit weekly reports and to help locate individual vessels in enforcement and emergency situations. The Start and Stop Reports are to be sent by fax or telex to the Northwest Regional Office of NMFS.

**4. Definition of "Fishing Trip" for the Application of Trip Limits**

The harvest of many species of Pacific groundfish is regulated by controlling the amount of fish that may be landed from a single fishing trip. The purpose of trip limits is to stretch the available quantity of fish for harvest as long as possible throughout the year to provide fresh fish for markets and processors and to prevent the waste and discards that would occur if fish caught after a catch quota was reached were discarded. Although the processing and fishing vessels covered by these requirements are expected to fish mainly for Pacific whiting, for which there is no trip limit, they may legally take other groundfish species that are subject to trip limits. Current regulations, however, define a fishing trip as the period of time between offloadings of catch. When a "fishing trip" was originally defined, almost all vessels harvesting groundfish returned to port and offloaded at a local processing plant, with a typical fishing trip lasting several days. Vessels that deliver to processors at sea and vessels that process their own catch, however, could either obtain an unfair advantage or be unfairly penalized compared to boats that return to port to offload if the current definition of a "fishing trip" is not modified to address their different mode of operation.

For example, a fishing vessel that delivers to a processor at sea may make several deliveries a day. Under the current definition, each delivery could be considered a "fishing trip" and, if no trip frequency limit were in effect, the vessel could make an unlimited number of "trips" each day. This would defeat the purpose of imposing trip landing limits. On the other hand, processing vessels may not offload ("land") to another vessel or ashore for many weeks or even months. These vessels would be limited, during the period between offloadings, to a single trip limit while vessels that landed ashore could offload and return to the grounds frequently.

NOAA proposes to resolve these problems by tailoring a definition of "fishing trip" specifically for vessels delivering fish to a processor at sea, and for processing vessels that process their own catch. In regard to such vessels, NOAA proposes that the length of a "fishing trip," for the purpose of applying trip limits, be deemed to begin at 0001 hours each Wednesday and end at 2400 hours the following Tuesday.

**5. Definition of "Product Weight"**

Commenters are particularly invited to comment on the definition of "product weight", which has been copied from Federal regulations governing groundfish fisheries off Alaska.

**Classification**

This proposed rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 et seq., and was prepared at the request of the Pacific Fishery Management Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the Pacific coast goundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The NMFS prepared an Environmental Assessment/Regulatory Impact Review/Regulatory Flexibility Analysis (EA/RIR/RFA) for this rule, and the Assistant Administrator concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the EA/RIR/RFA from the Addresses above.

The Assistant Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 et seq. This conclusion is based on the EA/RIR/RFA prepared for this rule which indicates that a NMFS survey of the class of vessels required to carry observers and comply with new recordkeeping/reporting and permit requirements indicated that gross revenues averaged $8.2 million per vessel in 1989. Therefore, they are not small businesses. This additional recordkeeping/reporting and permit burden, although similar to that in the Alaska fisheries, is a new requirement in the Pacific Coast groundfish fishery that will result in increased costs of as much as $500 per year for processors. Catcher vessels that deliver to processing vessels, because they are only required to maintain a daily fishing log, will incur a cost of less than $200 per vessel per year, which is not a significant impact. The comprehensive data collection plan also would require that observers be aboard processing vessels over 125 feet at a cost of about $6,000 per month per vessel.

The Assistant Administrator determined that this proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This collection-of-information requirement has been submitted to the Office of Management and Budget for approval. Most of the information collected under the proposed recordkeeping and reporting requirements is catch, effort, and production information normally maintained by the groundfish vessel operators for their own internal business purposes. Public recordkeeping and reporting burden for this collection of information is limited to the amount of time necessary for vessel operators to transfer this information to the required logbook or report and to submit this information to NMFS. The additional burden for the three modes of operation is estimated to average (1) 13 minutes per day for vessels that deliver to processors, (2) 20 minutes per day for vessels that process only, and (3) 33 minutes per day for vessels that catch and process at sea. The proposed rule also requires vessel owners to apply to NMFS for a Federal permit to operate in the fishery. The estimated burden associated with this regulation averages about 10 minutes per permit application per year for new applicants and less than 10 minutes per year for renewals. Send comments regarding these burden estimates or any other aspect of this collection of information, including

suggestions for reducing this burden to NMFS at the address above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn. NOAA Desk Officer).

The NMFS Northwest Regional Director has determined that this rule does not directly affect the coastal zone of any State with an approved coastal management program.

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

**List of Subjects in 50 CFR Part 663**

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: November 10, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 663 is proposed to be amended as follows:

## PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. Section 663.2 is amended by revising the definition of "fishing trip" and by adding, in alphabetical order, definitions for "processing", "processing vessel", "product weight", and "trip frequency limit", as follows:

**§ 663.2 Definitions.**

* * * * *

*Fishing trip* means a period of time between landings when fishing is conducted. For vessels delivering fish to a processing vessel and for processing vessels that process their own catch, a "fishing trip" for the purpose of applying trip limits is deemed to begin at 0001 hours Wednesday and end at 2400 hours the following Tuesday.

* * * * *

*Processing* or *to process* means the preparation or packaging of groundfish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

*Processing vessel* means any vessel of the United States over 125 feet in length (as stated on the vessel's U.S. Coast Guard Certificate of Documentation) that is used for, or equipped to be used for, processing groundfish in the fishery management area.

*Product weight* means the weight of the fish product in pounds or to at least the nearest tenth of a metric ton (0.1 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and indivudally frozen fish. The weight of a production unit is based on the average weight of the product as determined by analyzing representative samples. The weight of the production unit does not include packaging. The weight of the production unit does include water added to the product and other additives reported to NMFS. NMFS may use the weight of the production units, with an allowance for water not to exceed 5 percent of the weight of the production unit, to determine net weight, and to calculate round-weight equivalents.

* * * * *

*Trip frequency limit* means the period of time during which a single trip limit may be landed.

* * * * *

3. Section 663.3 is amended by adding paragraph (b)(4) as follows:

**§ 663.3 Relation to other laws.**

* * * * *

(b) * * *

(4) *Marine mammals.* Exemption permits and the recordkeeping and reporting of the incidental take of marine mammals in commercial fishing operations are governed by Federal regulations at 50 CFR 216.24 and 50 CFR part 229.

* * * * *

4. Section 663.4 is revised to read as follows:

**§ 663.4 Recordkeeping and reporting.**

(a) *State requirements.* This part recognizes that catch and effort data necessary for implementing the Pacific Coast Groundfish Plan are collected by the States of Washington, Oregon, and California under existing State data collection requirements. Any person who is required to do so by the applicable State law must make and/or file any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable State law.

(b) *DAP survey.* Telephone surveys of the domestic industry (see sections II.G., II.H., and II.I. of the Appendix to this part) will be conducted by NMFS to determine amounts of fish that will be made available to foreign fishing and joint venture processing (OMB Approval No. 0648–0243).

(c) *Processing requirements.* This paragraph (c) applies to the owners and operators of processing vessels, and to the owners and operators of any vessel that delivers groundfish to a processing vessel. All references to "processing vessels" and "vessels" in this section include the owners and operators of those vessels. Depending on whether a processing vessel is processing its own catch, or is processing groundfish delivered by another vessel, different recordkeeping and reporting requirements apply. Some recordkeeping and reporting requirements also apply to vessels that deliver groundfish to processing vessels. Where logbooks are required, they will be supplied by NMFS, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; phone 206–526–6140; fax 206–526–6426. Any processing vessel that processes its own catch, and any vessel that delivers groundfish to a processing vessel, must maintain the Daily Fishing and Cumulative Production Logbook (DFCPL). Any processing vessel that processes groundfish delivered by another vessel must maintain the Daily Report of Fish Received and Cumulative Production Logbook (DRCPL). Any processing vessel that both catches and processes the fish it catches, as well as processes fish delivered to it, must complete both the DFCPL and the DRCPL. All processing vessels are required to submit Product Transfer/Offloading Logbooks (Transfer Logs), Weekly Production Reports (WPRs), and Stop and Start Reports.

(1) *General requirements.* (i) All records, reports, and logbooks required by this paragraph (c) must be completed in English, and must be legible, timely, accurate, and based on Pacific Local Time (PLT). For the purpose of logbook entries and reports, a week is defined as the period from 0001 hours Wednesday through 2400 hours the following Tuesday.

(ii) Vessels must make available the original of any record, report, or logbook required under this paragraph immediately upon the request of an authorized officer or observer at any time during which the record, report, or logbook is required to be maintained.

(iii) Where submission of logbooks or reports is required, the logbooks or reports must be mailed, transmitted, or delivered to the Fisheries Management Division—F/NWR3, NMFS, 7600 Sand Point Way NE, Building 1, Seattle WA 98115–0070; fax 206–526–6426; telex 910–444–2786. Logbooks and reporting forms

provided by the Northwest Regional Director must be used.

(iv) No person except an authorized officer may remove any original page of any logbook or report from the vessel until the end of the fishing year and for as long thereafter as fish or fish products recorded in logbooks and/or reports are retained on board that vessel.

(v) Any entry or recording of information which is required to be made in a logbook or report must be made in indelible ink. No person except an authorized officer may alter or change any entry or record in a logbook or report except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting and initialing the correction, provided that the original entry or record remains legible.

(2) *Daily Fishing and Cumulative Production Logbook (DFCPL).* A processing vessel that only processes its own catch and does not process groundfish delivered from other vessels, and any vessel that delivers groundfish to a processing vessel must maintain a DFCPL, which is a daily record of fishing effort and catch, and, for a processing vessel, a cumulative production record of groundfish harvested by that vessel. A processing vessel that processes its own catch must complete the entire log. A vessel that delivers its catch to a processing vessel is not required to complete the production section of the DFCPL. The following information must be recorded:

(i) The page number, numbered consecutively each day beginning with page one for the first day the vessel conducted any fishing activity subject to this section after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. If such fishing activity is conducted with more than one gear type, in more than one reporting area, or for more than one target species during any day, a separate page must be used for each gear type, reporting area, or target species.

(ii) The date.

(iii) The vessel's name and number of the Federal permit issued pursuant to § 663.11.

(iv) The management subarea (as defined in § 663.5) where the vessel fished.

(v) The gear type used by the vessel (pelagic trawl, bottom trawl, roller trawl, hook and line, or pot gear).

(vi) Whether or not an observer is onboard the vessel and the name of the observer, if onboard.

(vii) The number of crew members.

(viii) For each haul or set, as appropriate to the gear type employed:

(A) The trawl or set number. This number must be consecutive beginning with number one for the first haul or set of the year in the fishery management area.

(B) The time the trawl or set reaches fishing depth.

(C) The position of the vessel, in geographic coordinates, when the trawl or set reaches fishing depth.

(D) The average sea depth during the trawl or set in fathoms.

(E) The average depth the gear is fished in fathoms.

(F) The total number of hooks or pots, if applicable.

(G) The time at the beginning of gear retrieval.

(H) The position of the vessel, in geographic coordinates, at the beginning of retrieval of the trawl or set.

(I) The estimated total weight of the entire trawl haul or set in round weight to the nearest one tenth of a metric ton (0.1 mt).

(J) The total time of the tow or set between the time the gear reaches the fishing depth and begins to fish and the beginning of retrieval.

(K) For those vessels that deliver their catch to a processing vessel, the name of the processing vessel.

(ix) The following information must be recorded for each species or species group, to the nearest hundredth of a metric ton (0.01 mt) round weight for groundfish and by number for prohibited species:

(A) The daily amount of each groundfish species or species group, and prohibited species that is discarded.

(B) The daily amount of each groundfish species or species group retained.

(C) The balance forward of prohibited species and of retained or discarded groundfish species or species groups during a week. At the beginning of a week, the balance forward for that week will be zero.

(D) The cumulative weekly total of prohibited species and of retained or discarded groundfish species or species groups.

(x) A processing vessel must also maintain in its DFCPL the following production information for groundfish retained by that vessel, in product weight to the nearest hundredth of a metric ton (0.01 mt):

(A) The total product weight by species or species group and product type for each day's catch. Production information must be entered for the date on which the fish were caught (i.e., when the haul or set is brought on board).

(B) The cumulative balance forward of species product amounts during a week. At the beginning of a week, the balance forward for that week will be zero.

(C) The product recovery rate by species or species group and product type.

(D) The cumulative weekly total product aboard by species and product type.

(xi) The signature of the operator of the vessel.

(xii) *Data entry.* Entries in the DFCPL as to trawl or set number, date, time, position, and estimated catch weight must be recorded within 2 hours after the fish are brought on board from each applicable trawl or set. All other information required in the DFCPL must be recorded by noon of the following day.

(xiii) *Log submittal.* A processing vessel that harvests groundfish must submit the duplicate copy of its DFCPL to the Fisheries Management Division, NMFS, within 14 calendar days after the vessel departs from the fishery management area, or quarterly (by March 31, June 30, September 30, or December 31) if the vessel does not depart from the fishery during that quarter. A vessel delivering groundfish to a processing vessel must mail or hand-deliver a duplicate copy of the DFCPL to the Fisheries Management Division, NMFS, at least quarterly (by March 31, June 30, September 30, or December 31).

(3) *Daily Report of Fish Received and Cumulative Production Logbook (DRCPL).* A processing vessel that processes only those groundfish received from another vessel must maintain a DRCPL, which is a daily record of groundfish received and a cumulative production record of that groundfish. The following information must be recorded:

(i) The page number, numbered consecutively beginning with page one for the first day the processing vessel received fish after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page must be used for each day's entry and for each gear type, reporting area, or target species.

(ii) The date.

(iii) The processing vessel's name and number of the Federal permit issued pursuant to § 663.11.

(iv) The management subarea (as defined in § 663.5) where the vessel receives groundfish.

(v) The gear type used by the catcher vessel (pelagic trawl, bottom trawl, roller trawl, hook-and-line, or pot gear).

(vi) Whether or not an observer is onboard and the name of the observer if onboard.

(vii) The number of crew members.

(viii) The signature of the operator of the vessel must be included in each daily record of a DRCPL.

(ix) For each groundfish set or trawl codend received:

(A) The haul or set receipt number. This number must be consecutive beginning with number one for the first haul or set of the day in the fishery management area.

(B) The time when the set or codend is received.

(C) The position of the processing vessel in geographic coordinates when the set or codend is received.

(D) The name of the fishing vessel delivering the set or codend.

(E) The number of the Federal permit issued under § 663.11 for the fishing vessel delivering the set or codend.

(F) The estimated total weight of the set or codend in round weight to the nearest tenth of a metric ton (0.1 mt).

(G) The target species if other than Pacific whiting. (This may be entered in the "Comments" sections.)

(x) The following information must be recorded in the receipt portion of the DRCPL for each species or species group, to the nearest hundredth of a metric ton (0.01 mt) round weight for groundfish and by number for prohibited species:

(A) The daily amount of each groundfish species or species group, and prohibited species that is discarded.

(B) The daily amount of each groundfish species or species group retained.

(C) The balance forward of prohibited species, and of discarded or retained groundfish species or species groups during a week. At the beginning of a week, the balance forward for that week will be zero.

(D) The cumulative weekly total of prohibited species and of discarded or retained groundfish by species or species group.

(xi) A processing vessel must also maintain in its DRCPL the following production information for groundfish retained by that vessel, in product weight to the nearest hundredth of a metric ton (0.01 mt):

(A) The total product weight by species or species group and product type for each day's production. Production information must be entered for the date on which the fish were delivered (i.e., when the haul or set is brought on board).

(B) The cumulative balance forward of species product amounts during a week. At the beginning of a week, the balance forward for that week will be zero.

(C) The product recovery rate by species or species group and product type.

(D) The cumulative weekly total product aboard by species and product type.

(xii) *Data entry.* The date and time of receipt of a set or codend, the name of the delivering vessel, the position of the processing vessel and the estimated catch receipt weight, must be recorded in the DRCPL within 2 hours after the set, codend, or catch is received. All other information required in the DRCPL must be recorded by noon of the day following the day the catch receipt occurred.

(xiii) *Log submittal.* A duplicate copy of the DRCPL must be mailed or hand-delivered to the Fisheries Management Division, NMFS, within 14 calendar days after the vessel departs from the fishery management area, or quarterly (by March 31, June 30, September 30, or December 31) if the vessel does not depart from the fishery management area during the quarter.

(4) *Product Transfer/Offloading Logbook (Transfer Log).* For each transfer or offloading of groundfish, shoreward of the outer boundary of the fishery management area, the processing vessel that receives the groundfish must maintain a Transfer Log. The following information must be recorded:

(i) The page number, numbered consecutively beginning with page one for the first transfer occurring after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year.

(ii) The time (PLT), date, and position (in geographic coordinates or, if within a port, the name of the port) the transfer or offloading began and was completed.

(iii) The product weight and product type, to the nearest kilogram (one thousandth of a metric ton (0.001 mt)), number of units, if applicable, and product value either by kilo or unit, by species or species group, of all fish products transferred or offloaded.

(iv) The vessel name and documentation number of the vessel receiving the product or, if to a shoreside location, the name of the location and commercial facility receiving the product.

(v) The intended port of destination of the receiving vessel if transferred to another vessel.

(vi) *Data entry.* All required data must be recorded within 12 hours of the completion of the transfer or offloading.

(vii) *Log submittal.* A duplicate copy of the Transfer Log for each month in which any product transfer or offloading occurred must be faxed, mailed, or hand-delivered to the Fisheries Management Division, NMFS, within 14 calendar days after the end of the month in which a transfer or offloading occurred.

(5) *Weekly Production Report (WPR).* After submitting a Start Report under paragraph (c)(6) of this section, and continuing until that vessel submits a Stop Report under paragraph (c)(6) of this section, a processing vessel must submit a WPR for each fishing week. If a processing vessel that catches groundfish also receives groundfish from other catcher vessels during the same week, data must be submitted separately for each operation. If a processing vessel fishes for or receives a target species other than Pacific whiting, a separate WPR must be submitted for that fishery, preceded by the name of the target species. Each WPR must contain the following information:

(i) Vessel name, Federal permit number, and radio call sign.

(ii) The ending date of the weekly reporting period.

(iii) Submitter's name, telephone number, and fax or telex number.

(iv) The number of days that the vessel fished and the number of days that the vessel received groundfish, the number of vessels that delivered groundfish, and total number of deliveries (codends or sets received) during the week, by area and gear type. A vessel that processes its own catch must enter: the number "0" under "number of delivery vessels", and the number of hauls or sets it made under "number of codends."

(v) The total product weight for the week by species or species group, product type, area and gear type, to the nearest one hundredth of a metric ton (0.01 mt).

(vi) The product recovery rate for each species or species group and product type.

(vii) The total round weight of all fish caught or received during the week, by species or species group, area, and gear type, to the nearest one hundredth of a metric ton (0.01 mt).

(viii) The number of each prohibited species, by area and gear type.

(ix) *Data entry.* The DFCPL or DRCPL is the basis for the information submitted in the WPR.

(x) *Report submittal.* The WPR must be received by the Fisheries Management Division, NMFS, within 48 hours of the end of each fishing week (i.e., prior to 2400 hours each Thursday). The WPR must be transmitted by fax or telex as described in paragraph (c)(1)(iii)

of this section, unless otherwise specified by the Regional Director.

(6) *Start and Stop Reports.* If a processing vessel enters the fishery management area to fish for, receive, or process groundfish in the fishery management area, the vessel must transmit a Start Report. Before a processing vessel departs from the fishery management area after having fished for, received, or processed groundfish in the fishery management area, the vessel must transmit a Stop Report. Each Start and Stop Report must contain the following information:

(i) The vessel's name, Federal permit number, and radio call sign.

(ii) The date and hour (PLT) when fishing, receipt of fish, or processing will begin or the vessel will leave the fishery management area.

(iii) The management subarea (as defined in § 663.5) and the position in geographical coordinates where fishing, receipt of fish, or processing is to begin, or from which the vessel will leave the fishery management area.

(iv) *Report submittal.* Each Start Report must be transmitted at least 24 hours before fishing, receiving, or processing begins. Each Stop Report must be transmitted at least 24 hours before the departure from the fishery management area. Processing vessels must transmit Stop and Start Reports by fax or telex as described in paragraph (c)(1)(iii) of this section, unless otherwise specified by the Regional Director.

5. Section 663.7 is amended by revising paragraph (f) and adding paragraphs (n), (o), and (p) to read as follows:

**§ 663.7 Prohibitions.**

* * * * *

(f) Take and retain, receive and retain, possess, or land more groundfish than specified under § 663.23, § 663.24, or under an EFP issued under § 663.10.

* * * * *

(n) Fish for, receive, or process groundfish with a processing vessel that does not have aboard a valid permit required in § 663.11, records, reports, or logbooks required in § 663.4, or an observer as required in § 663.30.

(o) Falsify or fail to make, keep, maintain, submit, or make available for inspection any record, logbook, or report as required by this part.

(p) With respect to observers:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

6. Part 663 is amended by adding a new § 663.11 as follows:

**§ 663.11 Permits.**

(a) *General.* In the fishery management area, a processing vessel may not fish for or process groundfish, nor may a vessel deliver groundfish to a processing vessel without possessing on board the vessel a vessel permit issued under this section. All references to "processing vessel" and "vessel" in this section include the owners and operators of those vessels. Permits will be issued without charge and renewed annually.

(b) *Application.* The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Northwest Regional Director a written application containing the following information:

(1) The vessel owner's name, mailing address, and telephone and fax numbers.

(2) The name of the vessel.

(3) The vessel's U.S. Coast Guard documentation number.

(4) The home port of the vessel.

(5) The length and net tonnage of the vessel.

(6) The hull color of the vessel.

(7) The names of all operators and/or lessees of the vessel.

(8) The type of operations the vessel will conduct (i.e., processing only or processing and harvesting).

(9) For harvesting vessels, the type of fishing gear to be used.

(10) The signature of the applicant and date of signature.

(c) *Issuance.* (1) Except pursuant to the permit denial procedures set forth in subpart D of 15 CFR part 904, upon receipt of a properly completed application, the Regional Director will issue the permit required by paragraph (a) of this section.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Notification of Change.* Any person who has applied for and received a permit under this section shall give written notice of any change in the information provided under paragraph (b) of this section to the Northwest Regional Director within 30 days of the date of that change. Failure to provide written notice of change will invalidate the permit.

(e) *Duration.* A permit is valid through December 31 of the year for which it was issued unless it is revoked, suspended, or modified under subpart D of 15 CFR part 904.

(f) *Alteration.* No person may alter, erase, or mutilate any permit issued under this section. Any permit that has been intentionally altered, erased, or mutilated will be invalid.

(g) *Transfer.* Permits issued under this section are not transferable or assignable. Each permit is valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this section must be presented for inspection upon request of any authorized officer.

7. Part 663 is amended by adding a new § 663.30 as follows:

**§ 663.30 Observers.**

(a) *Purpose.* The purpose of this section is to provide for the placement, accommodation, and security of scientific technicians known as "observers" aboard processing vessels. Observers, while stationed aboard processing vessels, will carry out such scientific, compliance monitoring, and other functions as are specified in the Pacific Observer Plan (NMFS, Northwest Region). A copy of the Pacific Observer Plan will be issued to each processing vessel.

(b) *Scope.* This section applies to the owners and operators of processing vessels. All references to "processing vessels" in this section include the owners and operators of those vessels.

(c) *Coverage.* Each processing vessel is required to carry an observer aboard

when fishing for or processing groundfish within the fishery management area, unless an exemption has been granted in writing by the Regional Director.

(d) *Responsibilities.* A processing vessel must:

(1) Provide all costs of accommodations for the observer that are equivalent to those provided for crew members, and the expenses for such accommodation shall be undertaken or arranged for by the vessel;

(2) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(i) Adequate fire fighting equipment;

(ii) A life raft capable of holding all persons on board; and

(iii) Other equipment required by U.S. Coast Guard regulations pertaining to safe operation of the vessel;

(3) Allow the observer, upon request, to use the vessel's communication equipment and personnel for the transmission and receipt of messages;

(4) Allow the observer, upon request, to use the vessel's navigation equipment and personnel to determine the vessel's position;

(5) Allow the observer free and unobstructed access to the vessel's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space that may be used to hold, process, weigh, or store fish or fish products at any time;

(6) Notify the observer at least 15 minutes before fish are brought on board, or fish or fish products are transferred from the vessel, to allow the observer to sample the catch or observe the transfer, unless the observer specifically requests not to be notified;

(7) Allow the observer to inspect and copy the vessel's DFCPL, DRCPL, Transfer Log, and any other logbook, record, report, or document required by regulations;

(8) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(9) Move the vessel to such places and at such times as may be designated by the Regional Director (or his designee) for purposes of embarking and debarking the observer;

(10) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(11) Notify the observer at least 3 hours before an observer is transferred;

(12) Provide a safe pilot ladder and conduct the transfer in such a way as to ensure the safety of the observer during the transfer; and

(13) Provide an experienced crew member to assist the observer in the small boat or raft, when an observer is transferred from boat to boat at sea.

[FR Doc. 92–27881 Filed 11–18–92; 8:45 am]
BILLING CODE 3510–22–M

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**50 CFR Part 683**

**[Docket No. 920788–2188]**

## Western Pacific Bottomfish and Seamount Groundfish Fisheries

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes an amendment to the regulations implementing the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). The proposed rule would require all primary operators and relief operators on vessels intending to fish for bottomfish within the Mau Zone of the Northwestern Hawaiian Islands (NWHI) to complete a protected species workshop conducted by NMFS.

**DATES:** Comments on the proposed rule must be received on or before December 18, 1992.

**ADDRESSES:** Comments should be sent to Gary Matlock, Director, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, CA 90802–4213, (310) 980–4034; or Alvin Katekaru or Eugene Nitta, Pacific Area Office, NMFS, Honolulu, Hawaii 96822–2396, (808) 955–8831.

**SUPPLEMENTARY INFORMATION:** The FMP was implemented on August 27, 1986 (51 FR 27413, July 31, 1986). In July 1988, the Secretary of Commerce approved Amendment 2 to the FMP establishing a NWHI bottomfish fishery limited access program, which created two fishing zones: A Mau (qualifying) Zone and Ho'omalu (limited access) Zone. The amendment also included, as part of the permit issuance process, a protected resources species workshop requirement for primary operators and relief operators on vessels intending to fish for bottomfish. The purpose of the workshop is to inform fishermen about protected resources concerns so that interactions between threatened and endangered species and bottomfishing operations can be avoided or their impacts minimized. Final regulations published on August 9, 1988 (53 FR 29907), required vessel operators (as well as relief operators) fishing in the Ho'omalu Zone to attend the workshops. The workshops were initially required only for those fishing in the Ho'omalu Zone because the potential for interactions with Hawaiian monk seals was greatest in this area. More than 80 percent of the bottomfish grounds in the NWHI occur in the Ho'omalu Zone, and most of the Honolulu-based bottomfish fleet had operated there up to that time.

Between 1989 and 1991, the total number of permits issued for the NWHI bottomfish fishery increased substantially, primarily due to a substantial increase (150 percent) in the number of Mau Zone permittees. In 1989, NMFS issued 12 permits for the Mau Zone; in 1991, 30 permits were issued for this zone. By comparison, the number of permitted vessels in the Ho'omalu Zone decreased from 8 to 6 between 1989 and 1991.

This increase in bottomfishing activity within the Mau Zone also resulted in incidents of interactions between fishermen and Hawaiian monk seals and bottlenose dolphins when fish are removed from the lines by these animals. On November 27, 1990, at the request of the Western Pacific Fishery Management Council (Council), emergency regulations (55 FR 49050, November 26, 1990; 56 FR 5159, February 8, 1991) were implemented requiring all vessel captains to notify NMFS when intending to bottomfish within 50 nautical miles around the NWHI so that observers could be placed aboard when directed to do so by the Regional Director. On May 26, 1991, final regulations implementing Amendment 4 to the FMP made permanent the observer requirements that were established under emergency action. They established a 50-nautical-mile protected species zone around the NWHI, which included both the Ho'omalu and Mau Zones. On December 17, 1991, the Council established a control date for entry into the bottomfish fishery in the Mau Zone (56 FR 67598, December 31, 1991).

With the continued increase of fishing effort in the Mau Zone, it is now appropriate that primary operators of Mau Zone vessels also be required to attend protected species workshops as part of the permit issuance process. Attendance at these workshops will be required on a one-time basis only.

At its meeting of March 16–17, 1992, the Council concurred with the intent of the proposed action.

NMFS Southwest Regional Office recently moved to new facilities at 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. This proposed rule would amend the definition of "Regional Director" to reflect the new mailing address for the Southwest Region, NMFS. The terms "primary operator" and "relief operator" are intended to have the same meanings as the terms "captain" and "relief captain", which are used in current regulations.

**Classification**

This proposed rule is published under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the bottomfish and seamount groundfish fishery and is consistent with the Magnuson Act and other applicable law.

An Environmental Assessment (EA) for Amendment 2 to the FMP prepared by NMFS concluded that establishment of a NWHI bottomfish limited entry access program, including required participation by vessel operators and relief operators in a protected species workshop, would not significantly affect the quality of the human environment. Since the proposed action would not result in any significant change from the status quo, it is categorically excluded from the requirement to prepare an EA under section 6.02.c.3.(f) of NOAA Administrative Order 216–6. The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed action will not have a cumulative effect of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Approximately 30 vessels fish in the Mau Zone, although relatively few of these vessels are used full time in the zone. Fishing trips average 15 days, with 3–5 days on shore to refuel, re-provision, and make necessary repairs. Participation in a protected species workshop, which lasts about 45 minutes, can be accomplished easily during the "down" period of vessel operators. NMFS will notify all current Mau Zone permit holders by mail of the proposed rule. The workshop requirement would be implemented in conjunction with the renewal of the Mau Zone permits for calendar year 1993. At least three pre-announced workshops for group participation would be held between October 1 and December 31, 1992, when the current permit expires, and one workshop would be held during January 1993. If necessary, individual workshops would be conducted onboard vessels when in port for operators who are unable to attend the group sessions. There should be no interruption or delays of any fishing trips as a result of the proposed protected species workshop requirement, and neither the revenue nor expenses of the fishing vessel operators or owners would be affected. Therefore, the economic impact is expected to be negligible and a regulatory flexibility analysis has not been prepared.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Hawaii. This determination has been submitted for review to the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

**List of Subjects in 50 CFR Part 683**

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

Dated: November 13, 1992.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 683 is proposed to be amended as follows:

## PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

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

2. In § 683.2, the definition of "Regional Director" is revised to read as follows:

**§ 683.2 Definitions.**

* * * * *

*Regional Director* means the Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

* * * * *

3. In § 683.6, paragraph (f) is revised to read as follows:

**§ 683.6 Prohibitions.**

* * * * *

(f) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalu Zone permit without completing a protected species workshop conducted by NMFS.

* * * * *

4. In § 683.21, new paragraph (a)(5) is added to read as follows:

**§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.**

(a) * * *

(5) Before the Regional Director issues a Mau Zone or Ho'omalu Zone permit to fish for bottomfish under this section or under § 683.25, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

* * * * *

**§ 683.25 [Amended]**

5. In § 683.25, paragraph (a)(5) is removed and paragraphs (a)(6) and (a)(7) are redesignated as (a)(5) and (a)(6), respectively.

[FR Doc. 92–27909 Filed 11–18–92; 8:45 am]

BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 57, No. 224
Thursday, November 19, 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

November 13, 1992.

The Department of Agricultural 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 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.

**Reinstatement**

• Rural Electrification Administration
Certification of Authority
REA Form 675
On occasion
Businesses or other for-profit; Small businesses or organizations; 450 responses; 45 hours
Monte Heppe (202) 720–9550

**Larry Roberson,**

*Deputy Departmental Clearance Officer.*

[FR Doc. 92–28067 Filed 11–18–92; 8:45 am]

BILLING CODE 3410–01–M

## Office of the Secretary

### National Arboretum Advisory Council; Renewal of Advisory Council

The Department of Agriculture has renewed the National Arboretum Advisory Council for a 2-year period. The Council was last renewed August 17, 1990.

The purpose of the Council is to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations. The National Arboretum was created by Act of Congress (Pub. L. No. 799, 69th Congress, 20 U.S.C. 191–194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council meets annually at the National Arboretum in Washington, DC, to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, site development, and long-range goals. The Council's findings are reported in writing to the Secretary of Agriculture.

The Secretary has determined that the renewal of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, DC, this 9th day of November 1992.

**Charles R. Hilty,**

*Assistant Secretary for Administration.*

[FR Doc. 92–28125 Filed 11–18–92; 8:45 am]

BILLING CODE 3410–03–M

## Forest Service

### Exemption of Douglas-Fir Bark Beetle II Salvage Project From Appeal, Wallowa-Whitman National Forest, Oregon

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice to exempt decisions from administrative appeal.

**SUMMARY:** This is a notification that the decision to implement the Douglas-Fir Bark Beetle II Salvage Project located on the Wallowa Valley Ranger District of the Wallowa-Whitman National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published **Federal Register** on January 23, 1989 (54 FR 3342).

**DATES:** November 19, 1992.

**FOR FURTHER INFORMATION CONTACT:** Bruce Kaufman, Timber Staff, Wallowa-Whitman National Forest, 1550 Dewey Avenue, Baker City, Oregon, 97814, (phone (503) 523–6391).

**SUPPLEMENTARY INFORMATION:** In 1991, a rapid spread of infestation by Douglas-fir bark beetles was detected on the northern portion of the Wallowa-Whitman National Forest. During the winter of 1991–1992 the Douglas-Fir Bark Beetle Salvage and Control Project removed 3.5 MMBF of infested and dead Douglas-fir trees. While bark beetle populations were significantly reduced through salvage efforts during the winter of 1991–92, ongoing reconnaissance of the affected area has shown that numerous pockets of infestation remain active. Further salvage of dead and dying timber is needed to remove over-wintering beetles before they emerge in the spring and fly to infest other areas. The purpose of the Douglas-Fir Bark Beetle II Salvage Project (DFBB ii) is to prevent the spread of bark beetles and salvage the value of dead, dying, and beetle infested trees before the wood fiber deteriorates.

In 1991, the interdisciplinary team for the Douglas-Fir Bark Beetle Control and Salvage began analysis of the project area. Results of that analysis were documented in the Douglas-Fir Bark Beetle Control and Salvage environmental assessment.

Later additional analysis and public scoping were conducted by the DFBB II interdisciplinary team during the summer and fall of 1992 to examine pockets of infestation currently proposed for harvest. With a projected volume of less than 1 million board feet, the DFBB II Salvage Project falls within a category of actions excluded from documentation in an environmental impact statement or environmental assessment.

Recognizing the need to expedite salvage and protect mechantability of the affected timber, the DFBB II interdisciplinary team specifically designed this year's salvage project tor "no effect" to chinook salmon, a federally listed threatened species. No significant issues were identified during analysis or public scoping.

Biological evaluations have been completed for all Proposed, Endangered, Threatened, and Sensitive plant, wildlife, and fish species within the project area. All biological evaluations indicated that the project could proceed as planned. Consultation with the National Marine Fisheries Service was not initiated as a biological evaluation determined that project activities would have "no effect" on chinook salmon.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this salvage project this project is 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 Memo for the DFBB II Salvage Project may be signed by the Wallowa Valley District Ranger. Therefore, this project will not be subject to review under 35 CFR Part 217.

Dated: November 13, 1992.

**Nancy Graybeal,**

*Acting Regional Forester.*

[FR Doc. 92–28077 Filed 11–18–92; 8:45 am]

BILLING CODE 3410–11–M

## Hen Moose Timber Sale, Willamette National Forest, Linn County, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Revision of a notice of intent to prepare an environmental impact statement.

**SUMMARY:** This is the second notice of intent to prepare the Hen Moose environmental impact statement (EIS). The original notice of intent was published on May 13, 1991 in the **Federal Register** (56 FR 21985). The original Notice anticipated the draft EIS to be filed with the Environmental Protection Agency by July, 1991. The final EIS was scheduled to be completed by September 1991. Due to a need to expeditiously address the salvage of catastrophic blow down found elsewhere on the Sweet Home Ranger District and a series of injunctions on timber harvest in spotted owl habitat, release of the Hen Moose draft EIS was delayed. Release of the draft EIS has been re-scheduled for December, 1992. The final EIS will be withheld pending resolution of ongoing spotted owl legislation.

**FOR FURTHER INFORMATION CONTACT:** Questions and comments about this EIS should be directed to Donna Short, Intergrated Resource Management Assistant, Sweet Home Ranger District, Sweet Home, Oregon 97386, (phone: 503–367–5139).

Dated: November 10, 1992.

**Darrel L. Kenops,**

*Forest Supervisor.*

[FR Doc. 92–28076 Filed 11–18–92; 8:45 am]

BILLING CODE 3410–11–M

## Radio and Television Broadcast Use Fee Advisory Committee; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Radio and Television Broadcast Use Fee Advisory Committee will meet in Portland, Oregon, on December 1 and 2, 1992, from 8 a.m. to 5 p.m. The Committee is comprised of eleven members. The purpose of the meeting is for the Committee to review information pertaining to fees for radio and television broadcast use on public and National Forest System lands. Items to be discussed include: (1) Continuation of discussion on establishing fair market value (FMV) for communication uses and consideration of alternatives; (2) Review and edit of the Committee Report. The designated Federal official on the Committee is Gordon H. Small, Director of Lands, USDA Forest Service. Richard Spight, Diablo Communications, Inc., Point Richmond, California, will chair the meeting, which is open to public attendance; however, participation is limited to Committee members and Forest Service and Bureau of Land Management personnel. Persons who wish to bring communications use fee matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

**DATES:** The meeting will be held December 1 and 2, 1992.

**ADDRESSES:** The meeting will be held at the Red Lion Downtown, Wahkeena Falls Room, 310 SW Lincoln, Portland, Oregon 97201.

Send written comments to J. Kenneth Myers, Executive Secretary, Radio and Television Broadcast Use Fee Advisory Committee, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

**FOR FURTHER INFORMATION CONTACT:** Brent Handley, Lands Staff, (202) 205–1264.

Dated: November 13, 1992.

**George M. Leonard,**

*Associate Chief.*

[FR Doc. 92–28014 Filed 11–18–92; 8:45 am]

BILLING CODE 3410–11–M

## Forest Service

## Fee Schedule for Communications Use Rental in the Pacific Northwest Region

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The Forest Service hereby gives notice that it is adopting a revised schedule of rental fees for communication uses on National Forest System lands located in the Pacific Northwest Region.

**DATES:** This schedule is effective for communication uses immediately. For current uses, the fee schedule is effective January 1, 1993.

**ADDRESSES:** Copies of the schedule may be obtained by writing to the Regional Forester, Pacific Northwest Region, Robert Duncan Plaza, 333 SW First Avenue, (PO Box 3623), Portland, Oregon 97208–3623, Attention: Director, Lands and Minerals.

**FOR FURTHER INFORMATION CONTACT:** Lisa Freedman, Lands Staff, (phone (503) 326–7140) or Jim Galaba, Lands Staff, (phone (503) 326–2921), Pacific Northwest Region, Robert Duncan Plaza, 333 SW First Avenue, (PO Box 3623), Portland, Oregon 97208–3623.

**SUPPLEMENTARY INFORMATION:** On December 11, 1986, the Pacific Northwest Region of the Forest Service published in the **Federal Register** a fee schedule for electronic communication sites (51 FR 44646). That schedule set forth the annual rental fees for different types and intensities of communication uses for areas or zones with similar fees in the States of Oregon and Washington. The fee schedule required that it be updated every 5 years based on an updated market analysis. On September 17, 1990, the Region published in the **Federal Register** a notice that it was preparing a market survey to adjust the existing schedule of rental fees, as required in the original schedule (55 FR 38123).

The market analysis was completed by the Forest Service by collecting transaction data from other agencies, private fee appraisers, communication specialists, private landowners who own land under communications sites, courthouse records, National Forest communications site holders and other sources. A letter was sent to all communications site permit holders,

informing them of the market analysis and asking for comments. The analysis provided the basis for the establishment of fair annual rent estimates.

On July 16, 1992 notice of the proposed schedule was published in the **Federal Register** (57 FR 31493). Public comments on the proposed schedule were accepted beyond the August 31, 1992 closing date for comments and prior to the development of the final schedule. The final fee schedule provides a rental fee for communication uses based on type of use for a given area or zone. The schedule was developed using sound business management principles and the market survey. The fee schedule will be adjusted every ten years based on an updated market analysis. The fee schedule is in accordance with the Federal Land Policy and Management Act of 1976 which requires private users of public lands to pay the fair market value of the use authorized.

Dated: November 9, 1992.

**Michael S. Edrington,**

*Acting Deputy Regional Forester.*

[FR Doc. 92-28078 Filed 11-18-92; 8:45 am]

BILLING CODE 3410-11-M

## CENTRAL INTELLIGENCE AGENCY

### Review of Material Intended for Nonofficial Publication

**AGENCY:** Central Intelligence Agency.

**ACTION:** Notice of proposed policy; request for comments.

**SUMMARY:** This notice sets forth policy and procedures that govern the submission and review of material intended for nonofficial publication by current and former Agency employees and others obligated to protect from unauthorized disclosure certain information they obtain as a result of their affiliation with CIA. This review of material is necessary to carry out the obligations of the Director of Central Intelligence to protect intelligence sources and methods and other classified information from unauthorized disclosure. This action will update the existing procedures governing prepublication review and provide a reasonable process by which authors can receive CIA assistance in fulfilling their nondisclosure obligations.

**DATES:** Comments must be submitted on or before December 21, 1992.

**ADDRESSES:** Comments may be mailed to Chairman, Publications Review Board, Central Intelligence Agency, Washington, DC 20505.

**FOR FURTHER INFORMATION CONTACT:** Fred F. Manget, (703) 351-2546.

**SUPPLEMENTARY INFORMATION:** This is a proposed update of the current Headquarters Regulation (6-2), which governs the policies and procedures of the CIA's prepublication review of material intended for nonofficial publication. Because it affects some persons no longer associated with CIA (such as retirees), it is being published for notice and comment. Since it is an internal regulation for the most part, it is not being published in the Code of Federal Regulations.

For the reasons set forth in the preamble, HR 6-2 is proposed to be amended as follows:

Agency Review of Material Intended for Nonofficial Publication

*Paragraph*



**Authority:** 50 U.S.C. 403, 50 U.S.C. 403g, E.O. 12333, E.O. 12356.

**Public Affairs**

*HR 6-2*

**2. Agency Review of Material Intended for Nonofficial Publication**

*Synopsis.* This notice sets forth policy and procedures that govern the submission and review of material intended for nonofficial publication of current and former Agency employees and others obligated to protect from unauthorized disclosure certain information they obtain as a result of their affiliation with CIA. It also reflects the responsibilities for prepublication review of the Publications Review Board and other Agency components.

(a) *General.*

(1) The National Security Act of 1947, as amended, the CIA Act of 1949, as amended, and Executive Order 12333 require the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. Executive Order 12356 requires protection of classified information from unauthorized disclosure. Employees and others who have been authorized access to information the public disclosure of which could harm the national security incur special obligations to protect such information. These obligations have been embodied in secrecy agreements.

(2) Based on the above obligations and responsibilities, this notice requires all current and former Agency employees, and others obligated by contract, to submit for prior review by CIA all materials (defined in paragraph (b)(2) below) intended for nonofficial publication.[1] This notice also establishes standards for review.

(3) It is the Agency's policy to adopt and implement all lawful measures to protect from unauthorized disclosure information which, if disclosed, could damage the national security, and to ensure that individuals given access to such information understand and comply with their obligation not to disclose it. Prior review by the Agency of material intended for nonofficial publication is a key component of efforts to prevent unauthorized disclosures. The purpose of prepublication review is twofold: To assist individuals in meeting their obligations and to ensure that information damaging to the national security is not disclosed inadvertently. Prior restraint of publication imposed by the Agency in implementing this policy has been judicially upheld where the Agency acts without undue delay, as a general rule meaning within thirty days of receipt of the material to be reviewed.

(4) In conducting prepublication review, the Agency's policy is to:

(i) Identify information for deletion or revision only to the extent necessary to protect information the disclosure of which could harm national security;

(ii) Respond in a timely manner to specific inquiries from individuals as to whether particular material must be submitted for review or about any other aspect of the review process or the Agency's substantive determinations; and

(iii) Provide for administrative appeal of the initial determinations.

(b) *Author responsibilities.*

(1) Current and former Agency employees are obligated to submit material intended for nonofficial publication for prepublication review. Agency contractors and others who sign secrecy agreements with the Agency must also submit such material for prepublication review in accordance with their secrecy agreements.

(2) Submission to the Agency must be made prior to disclosing such

[1] "Publication" in this context means communicating information to one or more persons. "Nonofficial publication" is a work prepared by the author as a private individual, not as a government employee or contractor acting in an official capacity.

information to anyone who is not authorized by the Agency to have access to it. The responsibility rests with the author to learn from the Agency whether the material intended for publication fits the description set forth in this paragraph. Prepublication review obligations cannot be avoided by causing another person, such as a ghostwriter, spouse, friend, or associate, to prepare the material. Revelation of information damaging to the national security to any person not authorized to receive it is prohibited.

(3) Current employees must also submit material that could reasonably be expected to impair the performance of their duties, interfere with the authorized functions of the Agency, or have an impact on the foreign relations or security of the United States.

(4) If a person with prepublication review obligations is asked to comment on the nonofficial intelligence-related materials of others not so obligated (for example, to review a book by a nongovernment author prior to publication), the CIA author should treat his or her comments as a proposed nonofficial publication subject to this regulation. If upon submission the reviewing official determines that it is necessary to review all or part of the underlying text to evaluate the comments, the CIA author should obtain the outside author's consent before submitting the relevant parts of any unpublished text to the Agency for review.

(5) Authors of material submitted to the Agency are expected to cooperate with and assist the review process. When an author claims that information intended for nonofficial publication is unclassified because it has already appeared in public, the author may be called upon to identify any open sources for information that, in the Agency's judgment, originates from classified sources. Failure or refusal to identify such public sources or otherwise to cooperate may result in refusal of authorization to publish the information in question. The author also may be requested to cite the source in a footnote.

(6) Should a person subject to the prepublication review obligation learn that another person also subject to the prepublication review obligation is preparing material intended for nonofficial publication that may contain information requiring Agency approval for public release, he or she should remind the author of the requirement to submit the material to the Publications Review Board (PRB or Board) or through his or her chain of command, as appropriate, for Agency review.

(7) It is not possible to anticipate all questions that may arise about which materials require prepublication review. It is the author's obligation to seek guidance on all prepublication review issues not explicitly covered in this notice.

(c) *Procedures for submitting material for review.*

(1) Current employees must submit material intended for nonofficial publication through their supervisory chain of command to their Deputy Director or Head of Independent Office. Current employees may elect to make submissions directly to the Chairman, PRB, only for determination of the necessity for any Agency review. (Note: Employees are required to notify the Office of Security and the Office of Public and Agency Information of the proposed publication by submitting Form 879, Outside Activity Approval Request.)

(2) Upon receipt of material from a current employee as described in paragraph (b)(3), any supervisory official in the author's chain of command may submit the material to the Board for decision under paragraph (h)(1), below. Alternatively, a Deputy Director or Head of Independent Office (or designee) may:

(i) Determine that public release of the material is authorized based on paragraphs (h) (1) or (2), below, or

(ii) Approve publication of the material with deletions and/or changes, or disapprove publication, based on paragraphs (h) (1) or (2), below. The Board acts as the Agency's office of record for all component-approved material. Thus, the author should ensure that the Board receives a copy of the approval memorandum signed by his or her Deputy Director or Head of Independent Office.

(3) Deputy Directors and Heads of Independent Offices shall submit material intended for nonofficial publication either to the Executive Director or to the Board for review.

(4) Former employees and others not currently affiliated with the Agency must submit material intended for nonofficial publication to the Board (see paragraph (c)(8) for address). The chairman will notify them of the Board's findings and act as primary spokesperson for the Agency in all communications concerning prepublication review.

(5) Procedures for submission and review of proposed nonofficial publications by Agency contractors depend on the terms of the contract. If the contractor is former Agency employee, the material should be submitted to the Board. The chairman will coordinate the review with the contracting component if the subject matter of the material and the contract for services overlaps; otherwise, the review will be treated like that for any employee. If the contractor is not a former employee, the contracting component will conduct the review in accordance with the terms of the contract for services and the contractor's secrecy agreement.

(6) Authors who are directed to delete material in accordance with this notice are required to submit their revisions to the Agency for final review.

(7) Persons preparing material for nonofficial publication are invited at any stage to discuss their plans with the Chairman, PRB, the PRB legal adviser, or an authorized representative specifically designated for this purpose. The views of the Agency may be given only by one of these individuals. Any one acting in reliance on views expressed by any person other than such authorized Agency representative must assume responsibility for the consequences of that action.

(8) Except for those under cover, authors should direct questions to the Chairman, Publications Review Board, 1026 Ames Building ((703) 351–2546). Overt authors outside the Agency should include "Central Intelligence Agency, Washington, DC 20505" in the address. Authors whose affiliation with the Agency remains covert will be provided with a separate channel of communication.

(d) *Agency organization and responsibilities.*

(1) The Board consists of a chairman designated by the Director of Public and Agency Information and senior representatives from the Directorate of Operations, the Directorate of Administration, the Directorate of Science and Technology, the Directorate of Intelligence, the Office of Security, and the cover unit. The Board members are nominated by the appropriate Deputy Director or Operating Official for the concurrence of the Director of Public and Agency Information. The Office of General Counsel provides a legal adviser. The Board will meet as required at the call of the chairman to ensure that the provisions of this notice are met.

(2) The chairman will ensure that appropriate reviewers are assigned to review submitted material. If the reviewers unanimously decide that it is unobjectionable under the standards and criteria listed above, the chairman will notify the author through the appropriate channels. If any reviewer objects to publication, the matter will be

resolved upon consultation with the chairman or at a Board meeting.

(3) The chairman is authorized unilaterally to represent the Board when disclosure of submitted material so clearly would not harm national security that additional review is unnecessary or when time constraints or other unusual circumstances make it impractical or impossible to convene or consult the Board. The chairman may also determine that the subject of the material is so narrow or technical that only certain Board members need be consulted.

(4) The Agency will make every effort to complete the initial review of submitted material and respond to authors within 30 days of receipt by the PRB or other reviewing official.

(e) *Materials to be submitted for prepublication review.*

(1) Material which must be submitted for prepublication review consists of all writings and scripts or outlines of oral presentations intended for nonofficial publication, including works of fiction, which contain any mention of the CIA, intelligence data or intelligence activities, or material on any subject about which the author has had access to classified information in the course of his or her employment or other CIA affiliation.

(2) The prepublication review obligation is not limited to any particular category of materials or methods of presentation or publication. It applies to both oral and written materials. With respect to written materials, it applies not only to books but to all other forms of written materials or prepared statements intended for public dissemination, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, scholarly papers, and nonofficial testimony prepared in advance of presentation, whether it is before a Federal or state investigative commission, a congressional body, a judicial forum (unless the witness is a defendant in a criminal case in the United States), or any other similar proceeding. (Current employees who must make court appearances and respond to subpoenas should contact the Office of General Counsel.) Because works of fiction are often based upon and/or can be used to convey factual information, fictional accounts of the Agency or of intelligence activities are also covered. Material created or disseminated through electronic or other media also is subject to this notice.

*(f) Materials not subject to review*

(1) The prepublication review requirement does not apply to material that is totally unrelated to intelligence or employment matters, such as cooking, gardening, or purely domestic political matters.

(2) Material that consists solely of personal views, opinions, or judgments on matters of public concern and does not contain or purport to contain any mention of the CIA, intelligence activities or data, or information on any topic about which the author had access to classified information, is not subject to the prepublication review requirement. For example, a person with prepublication review obligations is free without prior review to submit testimony to Congress or make public speeches or publish articles on such topics as proposed legislation as long as the material prepared for public use is not classified, does not state or imply facts about intelligence activities or substantive intelligence information, or, in the case of current employees or contractors, impair the performance of their duties or the authorized functions of the Agency or adversely affect foreign relations or national security.

(3) In some circumstances the expression of what purports to be an opinion may in fact convey information subject to prior review. For example, a former intelligence analyst's opinion that the United States can or cannot verify compliance with strategic arms limitation agreements is an implied statement of fact about Agency activities and substantive intelligence information and would be subject to prior review. This does not mean that such a statement would necessarily require deletion, but merely that the subject matter requires review by the Agency before publication. However, discussion limited to the desirability of proposed arms limitation agreement based solely on analysis of its provisions, without any discussion of intelligence information or activities, would not require prior review.

(4) Descriptions of Agency activities will require prior review. A person subject to the prepublication review obligation who writes or speaks about areas of national policy as an observer outside the government, without relying or purporting to rely on classified information, intelligence information, or other similar information does not have to submit such materials for period review. While some "gray areas" may exist, persons preparing material intended for nonofficial publication are expected to err on the side of prepublication review.

*(g) Oral statements*

The prepublication review requirement applies to material that the person contemplates presenting publicly or actually has prepared for public presentation. Thus, a person is not in breach of the prepublication review requirement if he or she participates extemporaneously and without prior preparation in an oral expression of information (for example, news interview, panel discussion, and unrehearsed speech) and does not submit material for review in advance. Where an individual has been asked to speak or testify on matters that normally would be subject to prior review and has actually prepared for the speaking engagement or testimony in advance by making notes, drafting an outline, rehearsing with an associate, or otherwise, the exception for extemporaneous oral expression does not apply. Moreover, making a genuinely extemporaneous oral statement does not exempt an individual from liability for any unauthorized disclosure of information damaging to the national security he or she may make in the course of such expression. Persons subject to the prepublication review obligation are encouraged to seek guidance from the PRB before granting such interviews or agreeing to make such appearances.

*(h) Standards of review*

(1) The Agency may deny permission for nonofficial publication of any information obtained during the course of employment or other service with the CIA that has not been placed in the public domain by the U.S. Government, and if disclosure reasonably could be expected to harm the national security interests of the United States.

(2) Permission to publish will not be denied solely because the statement may be embarrassing to or critical of the Agency.

(3) Where information contained in material intended for nonofficial publication is available to the author from classified sources and also independently from open sources, the author may be permitted to republish the information if he or she can cite an adequate open source publication and if republication of the information by that author at the time of review will not cause additional damage to the national security through authoritative confirmation of previous publications. The Board will exercise due care and discretion in making these determinations on a case-by-case basis and include as factors in its decision the

following: the sensitivity of the information from classified sources, the number and currency of these previous publications, the level of detail previously exposed, the source of the previous disclosures (whether authoritative and acknowledged or an anonymous "leak"), the new author's access to classified sources, and the authority and credibility his or her Agency experience brings to a confirmatory statement. The Board may give permission to publish contingent on the author's citation of open sources in a footnote.

(4) For current employees and contractors, the Agency may also deny permission to publish statements or expressions of opinion that could reasonably be expected to impair the author's performance of duties, interfere with the authorized functions of the CIA, or have an adverse impact on the foreign relations or security of the United States.

(5) Approval for publication does not represent Agency endorsement or verification of, or agreement with, the subject matter. Therefore, consistent with cover status, authors are encouraged (current employees are required, unless waived by supervisors) to publish the following disclaimer: "This material has been reviewed by the CIA. That review neither constitutes CIA authentication of information nor implies CIA endorsement of the author's views." An employee's supervisors may also amend the wording of this disclaimer, when appropriate, provided the Chairman, PRB, is notified of the variance.

*(i) Breach*

(1) Prepublication review allows the Agency to determine whether material contemplated for nonofficial publication contains information which, if disclosed, could harm national security, and gives the Agency an opportunity to prevent the public disclosure of such information. Prior review means that written materials are submitted to the Agency before being circulated to publishers, editors, literary agents, coauthors, reviewers, or the public at each stage of their development. This prior review requirement is intended to prevent comparison of different versions of such material, which would reveal what items had been deleted by the Agency. For this reason, review of the material after it has been submitted to publishers, reviewers, or other outside parties does not satisfy an author's prepublication review obligation. The Agency reserves the right to review any such material in order to take necessary protective action to mitigate damage caused by disclosure. Such review and action does not preclude the U.S. Government and the Agency from exercising any legal rights otherwise available.

(2) The Office of General Counsel will be notified in all cases when a possible violation of a prepublication obligation occurs. Failure to comply with prepublication review obligations can result in the imposition of civil or criminal penalties. The Office of General Counsel will report all potentially criminal conduct to the Department of Justice. The Agency will not make such reports, or make any recommendation to the Department of Justice regarding any action, civil or criminal, on the basis of the expressed or presumed animus of a person toward the U.S. Government or the Agency.

*(j) Appeal*

(1) Authors who wish to appeal decisions should address such appeals in writing to the Executive Director, accompanied by the material intended for nonofficial publication and any supporting materials the author wishes the Executive Director to consider. On behalf of the Executive Director, the Chairman, PRB, will forward the appeal and relevant documentation through the senior Operating Officials of the affected component to each Deputy Director or Head of Independent Office whose representative on the Board objected to information in the material at issue. The Deputy Director or Head of Independent Office will affirm or recommend revision of the Board's decision affecting his equities and will forward that recommendation to the General Counsel. The General Counsel will review the recommendations for legal sufficiency and will make a recommendation to the Executive Director for a final Agency decision. Every effort will be made to complete the appeal process within 30 days.

(2) This notice is intended to provide direction and guidance for those persons who have prepublication review obligations and those who review material submitted for nonofficial publication. Nothing contained in this notice or in any procedures promulgated to implement this notice is intended to confer, and does not confer, any substantive or procedural right or privilege on any person or organization.

**William O. Studeman,**

*Admiral, U.S. Navy, Deputy Director of Central Intelligence.*

[FR Doc. 92–28115 Filed 11–18–92; 8:45 am]

BILLING CODE 6310–02–M

## COMMISSION ON CIVIL RIGHTS

### Kentucky Advisory Committee; Agenda and Notice of Public Meeting

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 Kentucky Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, December 9, 1992, at the City Hall Building, Commission Chambers, 1001 College Street, Bowling Green, Kentucky 42101. The meeting will include: (1) A discussion of the status of the Commission, SACs, and appropriations; (2) a discussion and update of the current project; and (3) a session to receive information from community leaders on bigotry related violence in Kentucky with an emphasis on Bowling Green.

Persons desiring additional information, or planning a presentation to the Committee should contact Kentucky Chairperson Thelma Clemons 502/893–1055 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, November 10, 1992.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 92–28019 Filed 11–18–92; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

**[Case No. 650]**

### Action Affecting Export Privileges; Arnold I. Mandel and Rona K. Link Mandel, aka Rona K. Link and Tirrco; Order Vacating Temporary Denial Order

On January 16, 1984, then-Hearing Commissioner Thomas W. Hoya issued an order temporarily denying the export privileges of Arnold I. Mandel, Rona K. Link Mandel, also known as Rona K. Link, and their company, TIRRCO. 49 FR 2489 (January 20, 1984.) The order was issued in accordance with § 388.19 of

the Export Administration Regulations (then codified at 15 CFR parts 368–399 (1984)) the Regulations),[1] based on an ongoing investigation being conducted by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), that gave the Department reason to believe that the Mandels and their company had committed violations of the Regulations.

In accordance with § 388.19 of the Regulations, the order provided that it was to remain in effect "until the final disposition of any administrative or judicial proceedings initiated against the respondents as a result of the ongoing investigation." On February 4, 1992, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, issued an order pursuant to section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991)) EAA),[2] and § 770.15 of the Regulations denying the Mandels all U.S.-export privileges until July 9, 2001. The order was based on the July 9, 1991 convictions of Arnold I. Mandel and Rona K. Mandel on charges of unlawfully exporting certain electronic equipment from the United States to Hong Kong without having obtained the required validated export license from the U.S. Department of Commerce.

The July 9, 1991 convictions concluded the judicial proceeding against the Mandels that was initiated against them based on the investigation that gave rise to the January 16, 1984 temporary denial order. The Department issued an order under section 11(h) of the EAA denying the Mandels' export privileges based on their convictions and will not pursue any administrative charges against them concerning the transactions that resulted in their convictions.

Accordingly, pursuant to the provisions of § 388.19 of the 1984 Regulations and the January 16, 1984 temporary denial order, and based on the authority provided to me by the EAA and the Regulations,[3] I hereby vacate the January 16, 1984 temporary denial order entered against the Mandels and their company, TIRRCO. While the Mandels are still denied export privileges as a result of the February 4, 1992 order issued by the Director, Office of Export Licensing, neither TIRRCO nor either of the other companies named as related parties in the January 16, 1984 temporary denial order, CES and U.S. Equipment Remarketing, Inc., were charged in connection with the investigation.[4] It is therefore appropriate to remove those companies from the list of those individuals and firms that are denied export privileges by the Department.

Dated: November 10, 1992.

**Douglas E. Lavin,**

*Acting Assistant Secretary for Export Enforcement.*

[FR Doc. 92–28020 Filed 11–18–92; 8:45 am]

BILLING CODE 3510–DT–M

[1] The Regulations are currently codified at 15 CFR parts 768–799 (1991).

[2] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)), continuing in effect the Regulations, and, to the extent permitted by law, the provisions of the EAA.

[3] Under § 788.19 of the Regulations, the Assistant Secretary for Export Enforcement is now authorized to issue temporary denial orders.

[4] To the best of the Department's information and belief, none of these companies still exist. To the extent that the Mandels may still be related to any of these companies, however, the February 4, 1992 order provides a mechanism for adding related persons to that order.

## Foreign-Trade Zones Board

**[Docket 34–92]**

### Foreign-Trade Zone 47—Campbell County, Kentucky; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 47, requesting authority to reorganize and expand its zone in Campbell County, Kentucky. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 12, 1992.

FTZ 47 was approved on January 12, 1979 (Board Order 141, 44 FR 4003, 1/19/79), and it currently consists of two sites in the Campbell County, Kentucky, area: *Site 1* (17 acres)—Knepfle Riverport Industrial Park, Campbell County, owned and operated by the Northern Kentucky Port Authority; and, *Site 2* (7 acres)—a temporary site at Dolwick and Interstate Drives, within the Northern Kentucky Business Center, Boone County, 3 miles from the Greater Cincinnati International Airport (A–24–90, 10/24/90; A–29–92, 10/9/92, expires 12/31/93).

The applicant is now requesting authority to reorganize and expand the zone by deleting Site 1, adding Site 2 to the zone project on a permanent basis and expanding Site 2 (to a total of 22 acres) by including two adjacent parcels. The facilities at Site 2 (including the proposed new parcels) are owned and operated by Brendamour Yokkaichi Worldwide Distribution Corporation and the Miller Valentine Group.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 601 W. Broadway, room 636B, Louisville, Kentucky 40202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 13, 1992.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 92–28166 Filed 11–18–92; 8:45 am]

BILLING CODE 3510–DS–M

## International Trade Administration

### United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of completion of panel review.

**SUMMARY:** Pursuant to Rule 82 of the Article 1904 Panel Rules, as amended, notice is hereby given that the Binational Panel review of the final determination made by the Deputy Minister for National Revenue (Customs & Excise) respecting Certain Beer Originating in or Exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and The Stroh

Brewery Company for Use or Consumption in the Province of British Columbia was completed and the panelists were discharged from their duties on November 3, 1992 (Secretariat File No. CDA–91–1904–01).

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review whether to conform with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

**Background**

In a decision dated August 6, 1992, the Binational Panel remanded in part and affirmed in part the Deputy Minister's final determination. The Duty Minister filed a Determination on Remand as ordered by the Panel on September 18, 1992, pursuant to Rule 75 of the Rules. No Notice of Motion for review of the Determination on Remand and no request for the formation of an extraordinary challenge committee were filed with the Responsible Secretary.

Pursuant to Rules 82 and 85 of the Rules, this Notice of Completion took effect on November 3, 1992 and the panelists were discharged from their duties on the same date.

Dated: November 13, 1992.

**Caratina Alston,**

*Deputy U.S. Secretary, FTA Binational Secretariat.*

[FR Doc. 92–28083 Filed 11–18–92; 8:45 am]

**BILLING CODE 3510–GT–M**

## National Oceanic and Atmospheric Administration

### 1991 Survey of Atlantic Striped Bass Fisheries

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

**ACTION:** Summary and notice of availability of survey results.

**SUMMARY:** NMFS summarizes and announces the availability of the results of a survey of Atlantic coast striped bass fisheries for 1991, as required by the Atlantic Striped Bass Conservation Act (the Act), to provide information on the status of the fisheries.

**ADDRESSES:** Copies of the survey results are available from David G. Deuel, NOAA/NMFS/FCM3, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** David G. Deuel, NOAA/NMFS, (301–713–2347).

**SUPPLEMENTARY INFORMATION:** The Act requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. The following is a summary of the survey for 1991. Management measures restricting the harvest of striped bass by commercial and recreational fisheries remained in place during 1991, as the stocks continue to rebuild. The 1991 commercial harvest of striped bass was 1,155,000 pounds (523.9 mt), an increase of 332,000 pounds (150.6 mt) above the landings of 823,000 pounds (373.3 mt) in 1990. The Chesapeake Bay area (Maryland, Virginia and the Potomac River) accounted for 66 percent of the 1991 landings. The recreational catch in 1991 was an estimated 3,957,000 fish, of which 332,000 were harvested; the remaining 3,625,000 were released alive. The estimated weight of the recreational harvest was 3,502,000 pounds (1,558.5 mt), about three times that of the commercial harvest. Juvenile production in 1991 was below the long-term averages in Maryland, North Carolina, and New York; and about average in Virginia and Delaware. Information from sampling the population of striped bass shows an increased relative abundance of striped bass from recent year classes. Copies of the survey are available upon request (see **ADDRESSES**).

Dated: November 16, 1992.

**David S. Crestin,**

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

[FR Doc. 92–28165 Filed 11–18–92; 8:45 am]

**BILLING CODE 3510–22–M**

### Marine Mammals; Permits

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

**ACTION:** Issuance of modification No. 1 to permit No. 754 (P77#56).

**SUMMARY:** On October 8, 1992, notice was published in the **Federal Register** (57 FR 46375) that a request to modify Permit No. 754 had been submitted by Dr. Howard W. Braham, Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg. 4, Seattle, WA 98115, to capture, tag, handle and release Antarctic fur seals up to six times per year in order to monitor pup growth over the breeding season for the four-year period that the Permit remains valid.

Notice is hereby given that on November 13, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the National Marine Fisheries Service issued the requested modification to Permit 754 for the above activities subject to the Special Conditions set forth therein.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150).

Dated: November 13, 1992.

**Michael F. Tillman,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 92–28167 Filed 11–18–92; 8:45 am]

**BILLING CODE 3510–22–M**

## National Technical Information Service

### Notice of Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 5,108,708 (Serial No. 7–210,005), titled "Aliquot Collection Adapter for HPLC Automatic Injection Enabling Simultaneous Sample Analysis and Sample Collection," to Hanson Research Corp., having a place of business in Chatsworth, CA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent No. 5,108,708 describes a method and apparatus permitting automated tablet dissolution testing. A multi-channel pump removes liquid dissolution media from a plurality of kettles and transfers this media to a plurality of vials held within the carousel of an autoinjector for HPLC analysis. Passages for returning dissolution media is provided between the supply pump or pumps and the vials. A mechanism is provided for cyclically switching the media flow from one mode, where the media flows from kettles to the vials, and another mode, where the media flows from the kettles to the return passages. Each vial in the apparatus may thus be simultaneously filled from a separate respective kettle at an appropriate time and the supply passages may be rinsed with the new dissolution media after a set of vials are filled with the previous dissolution media. The filled vials can be analyzed without manual transfer to an HPLC column. Cycling between filling and rinsing may be accomplished by a microprocessor.

The availability of Patent No. 5,108,708 for licensing was published in the **Federal Register**, Vol. 53, No. 138, p. 27213 (July 19, 1988). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, D.C. 20231 for $3.00 (payable by check or money order).

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

**Douglas J. Campion,**

*Acting Director, Office of Federal Patent Licensing.*

[FR Doc. 92–28112 Filed 11–18–92; 8:45 am]

BILLING CODE 3510–04–M

## Minority Business Development Agency

### Business Development Center Applications: Oklahoma City MBDC, Project I.D. No. 06–10–93001–01

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $.165,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount. The total funding breakdown is as follows: $169,125 Federal and $29,846 non-Federal for a total of $198,971. The period of performance will be from April 1, 1993 to March 31, 1994. The MBDC will operate in the Oklahoma City, Oklahoma geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget period. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and

Suspension (Nonprocurement) requirements as stated in 15 CFR Part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

**CLOSING DATE:** The closing date for applications is December 31, 1992. Applications must be postmarked on or before December 31, 1992.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75227.

**FOR APPLICATION KIT OR OTHER INFORMATION CONTACT:** Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on December 15, 1992 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 13, 1992.

**Melda Cabrera,**

*Regional Director, Dallas Regional Office.*

[FR Doc. 92–28099 Filed 11–18–92; 8:45 am]

BILLING CODE 3510–21–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 16, 1992.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** November 18, 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 these limits, 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.

**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 Categories 351/651 and 635 are 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 1146, published on January 10, 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.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 16, 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 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on November 18, 1992, you are directed to amend further the directive dated January 7, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of Bangladesh:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 351/651 | 502,789 dozen. |
| 635 | 258,991 dozen. |

[1] The limits have not been adjusted to account for any imports exported after January 31, 1992.

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. 92–28084 Filed 11–18–92; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Ocean Beach Storm Damage Reduction Project, City and County of San Francisco, CA

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** By resolution adopted by the Committee on Public Works and Transportation on August 3, 1989, "* * * the Secretary of the Army in accordance

with section 110 of the Rivers and Harbors Act of 1962, is requested to make, under the direction of the Chief of Engineers, studies of the shores in San Francisco County, California, from the south county line to the Golden Gate Bridge and such adjacent shores as may be necessary in the interest of providing protection to public facilities, storm damage protection, and other related purposes."

In accordance with the National Environmental Policy Act of 1969 as amended, (42 U.S.C. 4321 et seq.) the Corps has determined that the proposed action may have a significant effect on the quality of the human environment and therefore requires the preparation of an Environmental Impact Statement (EIS).

**FOR FURTHER INFORMATION CONTACT:** For further information about the project and the alternatives, contact Mr. Leonard J. Madalon, USAED San Francisco, 211 Main Street, California 94105, telephone (415) 744–3363. For further information about the DEIS contact Mr. Peter E. LaCivita, USAED San Francisco, 211 Main Street, California 94105, telephone: (415) 744–3342.

**ADDRESSES:** Written statements should be mailed no later than December 24, 1992 to the District Engineer, USAED San Francisco, 211 Main Street, San Francisco, California 94105.

**SUPPLEMENTARY INFORMATION:**

Alternatives

*a. Dune Nourishment*

Based on the results of the reconnaissance study, the feasibility study will focus on three critical areas of erosion, but will allow for additional dune nourishment as necessary, at other locations along Ocean Beach. These areas are: Moraga Street to 180 feet south of Noriega Street (870 feet), Taraval Street to Ulloa Street (700 feet), and 225 feet South of Sloat Boulevard to the Fort Funston Bluffs (2,375 feet). The sand source being considered for the dune nourishment plan is the Point Knox Shoal off Angel Island in San Francisco Bay.

*b. Seawall*

In the event that dune nourishment proves to be unfeasible, the construction of three seawalls would be considered in the three areas already discussed for the dune nourishment alternative. The wall at Moraga and Ortega Streets would tie into the existing seawall at Ortega Street and the wall in the central reach would tie into the existing Traval seawall.

Construction would involve removing the existing dunes and installing a recurved seawall with steps, similar to the existing seawalls. The sand in excess required for backfill could be used for project mitigation in the form of dune reconstruction, or beach and dune nourishment. Plantings as described for the dune nourishment alternative would be used to stabilize backfill areas, the dunes, and to create new habitat.

*c. No Federal Action*

The coast would remain in its semi-altered natural state. Erosion of the dune embankment in the project areas will continue at the estimated rate of two to five feet per year. Portions of Ocean Beach will continue to erode and the Great Highway and associated underground sewer box will be increasingly vulnerable to wave erosion and damage. These conditions would also reduce the recreational appeal of the area.

Scoping

The San Francisco District, in association with the non-federal sponsor, the City and County of San Francisco, will hold a meeting to invite public and agency participation in identifying the important issues and information to be included in the DEIS. A scoping meeting will be held on Thursday, December 10, 1992 at Lowell High School Auditorium, 1101 Eucalyptus Drive, San Francisco, California 94312, from 7 p.m. to 9 p.m.

Agencies and the public are encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meeting. To be most helpful, the scoping comments should clearly describe specific environmental topics or issues which the commentator believes the document should address: Oral and written comments receive equal consideration. Written statements should be mailed no later than December 24, 1992 to the District Engineer, USAED San Francisco, 211 Main Street, San Francisco, California 94105.

Topics which have already been identified as needing consideration in the DEIS are: marine archaeology, historic preservation, wildlife conservation, recreation, aesthetics, and traffic circulation.

The DEIS will be used as the primary information document to secure concurrence in a Federal Coastal Zone Consistency Determination. In addition, the DEIS will be used by the local sponsor to meet its responsibilities under the California Environmental Quality Act, and may also be used by the San Francisco Regional Water Quality Control Board to meet its responsibilities under the Porter-Cologne Act. Other reviews in which tne DEIS will be a source of information are: Fish and Wildlife Coordination Act, Marine Protection, Research and Sanctuaries Act, Endangered Species Act, Clean Water Act, and "trustee agency" reviews by the State of California. The DEIS will be available for public review on or about May 14, 1995.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 92–28100 Filed 11–18–92; 8:45 am]

BILLING CODE 3710–FC–M

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## Department of the Navy

### Intention To Prepare An Environmental Impact Statement/ Environmental Impact Report for the Sewage Effluent Compliance Project at Marine Corps Base, Camp Pendleton, Oceanside, California.

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and the California Environmental Quality Act (CEQA) of 1970, the Department of the Navy announces its intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to evaluate alternative actions necessary to respond to a cease and desist order levied on Marine Corps Base, Camp Pendleton, Oceanside, California, by the Regional Water Quality Control Board (RWQCB).

The EIS/EIR will assess the relevant environmental issues associated with all government plans and actions to determine environmentally preferred locations for project components. Major environmental issues to be addressed include potential changes in water quality, geology, hydrology, water quantity, air quality, land use and biological resources in accordance with NEPA, ESA, CEQA, RWQCG requirements, and other applicable guidelines and regulations.

The proposed action consists of securing sewage compliance by constructing pipelines and evaluating new disposal options including: relocation of percolation ponds, leach fields, injection wells, land disposal, reclamation, and ocean outfall. The effluent is received from Sewage Treatment Plant (STP) Number 9, at area 43 located in the Las Pulgas Basin, and Sewage Treatment Plant Number 12, at

area 62 located in the San Mateo Basin. Pipeline alignments and disposal options will be evaluated to determine environmentally preferred locations and disposal options will be evaluated to determine environmentally preferred locations and disposal components.

The Marine Corps will initiate a scoping process for the purpose of determining the scope of issues to be addressed in the EIS/EIR and for identifying significant issues relevant to this action. The Marine Corps will hold a public scoping meeting on 17 December 1992, from 7:00 p.m. to 9:30 p.m., at the Oceanside Senior Citizens Center, 455 Country Club Lane, Oceanside, California. This meeting will be announced in local newspapers.

A short formal presentation will precede the request for public comment. A Marine Corps representative from Camp Pendleton will be present at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS/EIR. In the interest of time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comment at the public meeting. To be most helpful, comments should clearly describe specific issues on the topics which the commentator believes the EIS/EIR should address. Written statements and/or questions regarding the scoping process should be mailed no later than 30 days from the date of this notice to: Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132-5190, Attn: Mr. Stuart Sunderland, Code 232.SS, telephone: (619) 532-3624.

Dated: November 12, 1992.

**Michael P. Rummel**

*Lieutenant Commander, JAGC, USN, Federal Register LiaisonOfficer.*

[FR Doc. 92-28102; Filed 11-18-92 8:45 am]

BILLING CODE 3810-AE-F

## Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet December 11, 1992, from 9:00 a.m. to 3:30 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: LT J. E. Williams (N871E3), Pentagon, Room 4D534, Washington, DC 20350, telephone number (703) 697-8887.

Dated: November 12, 1992.

**Michael P. Rummel**

*Lieutenant Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 92-28104 Filed 11-18-92; 8:45 am]

BILLING CODE 3810-AE-F

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### Availability of the 1992-93 National Defense, National Direct and Perkins Loan Programs Directory of Designated Low-Income Schools

**AGENCY:** Department of Education.

**ACTION:** Notice of availability of the 1992-93 National Defense, National Direct and Perkins Loan Programs Directory of Designated Low-Income Schools.

**SUMMARY:** The Secretary announces that the 1992-93 National Defense, National Direct and Perkins Loan Programs Directory of Designated Low-Income Schools (Directory) is now available at institutions of higher education participating in the Federal Perkins Loan Program, at State and Territory Departments of Education and at the United States Department of Education. Under the National Defense, National Direct, and Federal Perkins Loan programs, a borrower may have a portion of his or her loan cancelled if the borrower teaches full-time for complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1992-93 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1992-93 school year to qualify for cancellation benefits.

**DATES:** The Directory is available.

**ADDRESSES:** Information concerning specific schools listed in the Directory may be obtained from Ronald W. Allen, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4621, ROB-3), Washington, DC 20202-5453, Telephone (202) 708-6730. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

**FOR FURTHER INFORMATION CONTACT:** Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; and (3) the U.S. Department of Education.

**SUPPLEMENTARY INFORMATION:** The Secretary selects the schools that qualify the borrower for cancellation benefits under the procedures set forth in 34 CFR 674.53 and 674.54 of the Federal Perkins Loan Program regulations.

The Secretary has determined that, for the 1992-93 academic year, full-time teaching in the schools set forth in the 1992-93 Directory qualifies a borrower for cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, or the Office of Postsecondary Education of the U.S. Department of Education concerning the identity of qualifying schools for the 1992-93 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of all past and current Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense, National Direct, and Federal Perkins Loan Cancellations)

Dated: November 6, 1992.

**Carolynn Reid-Wallace,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 92-28068 Filed 11-18-92; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Advisory Committee on Environmental Restoration and Waste Management; 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 Advisory Committee meeting:

Name: Environmental Restoration & Waste Management Advisory Committee (EMAC).

Dates and Times: Wednesday, December 9, 1992, 7:30 a.m. to 5:30 p.m.; Wednesday, December 9, 1992, 7 p.m. to 10:30 p.m.; Thursday, December 10, 1992, 8 a.m. to 5:30 p.m.

Place: Cavanaugh's Inn at Columbia Center, North 1101 Columbia Center Blvd., Kennewick, WA 99336.

Contact: James T. Melillo, Executive Secretary, EMAC, EM–1, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 479–1191.

Purpose of the Committee: The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The EMAC will help to improve the Environmental Restoration and Waste Management Program by assisting in the process of securing consensus recommendations, and providing the department's numerous publics with opportunities to make their views known on the Environmental Restoration & Waste Management Program.

**Tentative Agenda**

*Wednesday, December 9, 1992*

7:30 a.m.—Chairman Glenn Paulson Opens Meeting. Waste Management Activities at Hanford. Hanford Tri-Party Agreement Discussion.
12 p.m.—Lunch.
1 p.m.—Hanford Tri-Party Agreement Discussion Continued. National Waste Compliance Plan Strategy. Committee Business.
5:30 p.m.—Meeting Adjourns.
7 p.m.—Public Comment Session.
10:30 p.m.—Meeting Adjourns.

*Thursday, December 10, 1992*

8 a.m.—Chairman Paulson Reconvenes Public Meeting. Committee Business. Land Use Planning Discussion.
12:30 p.m.—Lunch.
1:30 p.m.—DOE Hanford Presentations. Committee Business.
5:30 p.m.—Meeting Ends.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 16, 1992.

**Marcia L. Morris,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 92–28157 Filed 11–18–92; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

**[Docket Nos. ST92–5481–000 through ST92–5827–000]**

### Self-Implementing Transactions; Enogex, Inc.

November 13, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

| Docket No. | Transporter/seller | Recipient | Date filed | Part 284, subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-5481 | Enogex Inc | Arkla Energy Resources | 09-01-92 | C | 10,000 | N | I | 07-01-92 | Indef. |
| ST92-5482 | Enogex Inc | Panhandle Eastern Pipe Line Co | 09-01-92 | C | 5,000 | N | I | 07-02-92 | Indef. |
| ST92-5483 | Enogex Inc | Arkla Energy Resources | 09-01-92 | C | 50,000 | N | I | 07-21-92 | Indef. |
| ST92-5484 | Enogex Inc | Northern Natural Gas Co | 09-01-92 | C | 60,000 | N | I | 07-31-92 | Indef. |
| ST92-5485 | Natural Gas P/L Co. of America | Sonat Marketing Co | 09-01-92 | G-S | 50,000 | N | I | 08-14-92 | Indef. |
| ST92-5486 | Tennessee Gas Pipeline Co | MG Natural Gas Corp | 09-01-92 | G-S | 160,000 | N | I | 08-02-92 | Indef. |
| ST92-5487 | Natural Gas Fuel Supply Corp | Interstate Gas Supply, Inc | 09-01-92 | G-S | 3,700 | N | I | 08-02-92 | 11-30-92. |
| ST92-5488 | Williams Natural Gas Co | Union Pacific Fuels, Inc | 09-01-92 | G-S | 20,000 | N | I | 08-01-92 | Indef. |
| ST92-5489 | Transcontinental Gas P/L Corp | Equitable Resources Marketing Co. | 09-01-92 | G-S | 50,000 | N | I | 08-01-92 | Indef. |
| ST92-5490 | Transcontinental Gas P/L Corp | Coastal Gas Marketing Co | 09-01-92 | B | 500,000 | N | I | 08-04-92 | Indef. |
| ST92-5491 | Williams Natural Gas Co | Trident NGL, Inc | 09-01-92 | G-S | 500,000 | N | I | 08-01-92 | Indef. |
| ST92-5492 | Texas Gas Transmission Corp | Tejas Power Corp | 09-01-92 | G-S | 100,000 | Y | I | 08-19-92 | Indef. |
| ST92-5493 | Texas Gas Transmission Corp | Enron Gas Marketing, Inc | 09-01-92 | G-S | 425,000 | Y | I | 08-14-92 | Indef. |
| ST92-5494 | Columbia Gas Transmission Corp. | Energy Marketing Service, Inc | 09-01-92 | G-S | 211 | Y | F | 08-01-92 | Indef. |
| ST92-5495 | Trunkline Gas Co | Enron Gas Marketing, Inc | 09-02-92 | G-S | 100,000 | N | I | 08-01-92 | Indef. |
| ST92-5496 | Trunkline Gas Co | Interstate Gas Supply, Inc | 09-02-92 | G-S | 5,000 | N | I | 08-01-92 | Indef. |
| ST92-5497 | Trunkline Gas Co | Hadson Gas Systems, Inc | 09-02-92 | G-S | 100,000 | N | I | 08-01-92 | Indef. |
| ST92-5498 | Trunkline Gas Co | Coast Energy Group, Inc | 09-02-92 | G-S | 5,000 | N | I | 08-05-92 | Indef. |
| ST92-5499 | Trunkline Gas Co | NGC Transportation, Inc | 09-02-92 | G-S | 50,000 | N | I | 08-01-92 | Indef. |
| ST92-5500 | Trunkline Gas Co | Clinton Gas Transmission, Inc | 09-02-92 | G-S | 5,000 | N | I | 08-01-92 | Indef. |
| ST92-5501 | Natural Gas P/L Co. of America | Tristar Gas Co | 09-02-92 | G-S | 50,000 | N | I | 08-01-92 | Indef. |
| ST92-5502 | Natural Gas P/L Co. of America | Tristar Gas Co | 09-02-92 | G-S | 50,000 | N | I | 07-01-92 | Indef. |
| ST92-5503 | Natural Gas P/L Co. of America | Texarkoma Transportation Co | 09-02-92 | G-S | 20,000 | N | I | 08-01-92 | Indef. |
| ST92-5504 | Natural Gas P/L Co. of America | O & R Energy, Inc | 09-02-92 | G-S | 50,000 | N | I | 07-18-92 | Indef. |
| ST92-5505 | Gas Transport, Inc | Hope Gas, Inc | 09-02-92 | B | 75 | N | I | 08-01-92 | 06-30-93. |
| ST92-5506 | Lone Star Gas Co | Texas Gas Gathering Co | 09-03-92 | C | 15,000 | N | I | 08-04-92 | Indef. |
| ST92-5507 | ONG Transmission Co | Caprock P/L Co | 09-03-92 | C | 75,000 | N | I | 08-04-92 | Indef. |
| ST92-5508 | ONG Transmission Co | Panhandle Eastern Pipe Line Co | 09-03-92 | C | 50,000 | N | I | 08-06-92 | Indef. |
| ST92-5509 | ONG Transmission Co | Arkla Energy Resources | 09-03-92 | C | 50,000 | N | I | 08-15-92 | Indef. |
| ST92-5510 | ONG Transmission Co | Panhandle Eastern Pipe Line Co | 09-03-92 | C | 28,000 | N | I | 08-13-92 | Indef. |
| ST92-5511 | Tennessee Gas P/L Co | Pennzoil Gas Marketing Co | 09-03-92 | G-S | 25,000 | N | I | 08-07-92 | Indef. |
| ST92-5512 | Tennessee Gas P/L Co | Mobil Natural Gas, Inc | 09-03-92 | G-S | 100,000 | N | I | 08-27-92 | Indef. |
| ST92-5513 | Northwest Pipeline Corp | Gas Co. of New Mexico | 09-04-92 | B | 1,500 | N | I | 08-23-92 | Indef. |
| ST92-5514 | East Texas Gas Systems | Texas Gas Transmission Co | 09-04-92 | C | 20,000 | N | I | 08-04-92 | Indef. |
| ST92-5515 | United Gas Pipe Line Co | Endevco Oil & Gas Co | 09-04-92 | G-S | 26,200 | N | I | 08-25-92 | 12-23-92. |
| ST92-5516 | United Gas Pipe Line Co | Shell Gas Trading Co | 09-04-92 | G-S | 209,600 | N | I | 08-24-92 | 12-22-92. |
| ST92-5517 | United Gas Pipe Line Co | MG Natural Gas Corp | 09-04-92 | G-S | 41,920 | N | I | 08-25-92 | 12-23-92. |
| ST92-5518 | Tennessee Gas Pipeline Co | NGC Transportation, Inc | 09-04-92 | G-S | 600,000 | N | I | 08-08-92 | Indef. |
| ST92-5519 | Tennessee Gas Pipeline Co | Stand Energy Corp | 09-04-92 | G-S | 10,000 | N | I | 08-06-92 | Indef. |
| ST92-5520 | North Penn Gas Co | CNG Transmission Corp | 09-04-92 | G-ST | 20,000 | N | I | 04-01-92 | 03-31-93. |
| ST92-5521 | Gulf Energy Pipeline Co | Tennessee Gas Pipeline Co | 09-04-92 | C | 319 | N | I | 08-25-92 | Indef. |
| ST92-5522 | Colorado Interstate Gas Co | Kiowa Gas Co | 09-04-92 | G-S | 10,000 | N | I | 08-01-92 | Indef. |
| ST92-5523 | Colorado Interstate Gas Co | Koch Hydrocarbon Co | 09-04-92 | G-S | 10,000 | N | I | 08-04-92 | Indef. |
| ST92-5524 | Gulf Energy Pipeline Co | Natural Gas P/L Co. of America | 09-04-92 | C | 1,300 | N | I | 08-11-92 | Indef. |
| ST92-5525 | El Paso Natural Gas Co | Access Energy Corp | 09-08-92 | G-S | 51,500 | N | I | 08-25-92 | Indef. |
| ST92-5526 | Enogex Inc | ANR Pipeline Co | 09-08-92 | C | 10,000 | N | I | 08-01-92 | Indef. |
| ST92-5527 | Enogex Inc | Arkla Energy Resources | 09-08-92 | C | 50,000 | N | I | 08-01-92 | Indef. |
| ST92-5528 | Delhi Gas Pipeline Corp | United Gas Pipeline Co | 09-08-92 | C | 8,000 | N | I | 08-12-92 | Indef. |
| ST92-5529 | Delhi Gas Pipeline Co | Panhandle Eastern Pipeline Co | 09-08-92 | C | 13,000 | N | I | 08-15-92 | Indef. |
| ST92-5530 | Nueces Co | Colorado Interstate Gas Co | 09-08-92 | C | 1,000 | N | I | 08-14-92 | Indef. |
| ST92-5531 | Houston Pipe Line Co | Black Marlin Pipeline Co | 09-08-92 | C | 22,000 | N | I | 05-01-92 | Indef. |
| ST92-5532 | Houston Pipe Line Co | Transcontinental Gas P/L Corp | 09-08-92 | C | 22,000 | N | I | 05-01-92 | Indef. |
| ST92-5533 | Houston Pipe Line Co | Northern Natural Gas Co | 09-08-92 | C | 22,000 | N | I | 05-01-92 | Indef. |
| ST92-5534 | Houston Pipe Line Co | Black Marlin Pipeline Co | 09-08-92 | C | 50,000 | N | I | 06-01-92 | Indef. |
| ST92-5535 | Houston Pipe Line Co | Black Marlin Pipeline Co | 09-08-92 | C | 30,000 | N | I | 06-01-92 | Indef. |
| ST92-5536 | Houston Pipe Line Co | Black Marlin Pipeline Co | 09-08-92 | C | 100,000 | N | I | 06-09-92 | Indef. |
| ST92-5537 | Houston Pipe Line Co | Transcontinental Gas P/L Corp | 09-08-92 | C | 15,000 | N | I | 06-18-92 | Indef. |
| ST92-5538 | Houston Pipe Line Co | Transcontinental Gas P/L Corp | 09-08-92 | C | 100,000 | N | I | 05-07-92 | Indef. |
| ST92-5539 | Houston Pipe Line Co | Black Marlin Pipeline Co | 09-08-92 | C | 100,000 | N | I | 06-07-92 | Indef. |
| ST92-5540 | Oasis Pipe Line Co | Northern Natural Gas Co | 09-08-92 | C | 100,000 | N | I | 06-16-92 | Indef. |
| ST92-5541 | Colorado Interstate Gas Co | Coastal Gas Marketing Co | 09-08-92 | G-S | 10,000 | A | I | 08-01-92 | Indef. |
| ST92-5542 | Colorado Interstate Gas Co | Panda Resources, Inc | 09-08-92 | G-S | 25,000 | N | I | 08-01-92 | Indef. |
| ST92-5543 | Coloardo Interstate Gas Co | Grand Valley Gas Co | 09-08-92 | G-S | 5,500 | N | I | 08-01-92 | 02-28-93. |
| ST92-5544 | Colorado Interstate Gas Co | Coastal Chem, Inc | 09-08-92 | G-S | 3,200 | Y | I | 08-01-92 | 02-28-93. |
| ST92-5545 | Gas Co. of New Mexico | El Paso Natural Gas Co | 09-08-92 | G-HT | 5,000 | N | I | 08-01-92 | 07-31-93. |
| ST92-5546 | Gas Co. of New Mexico | El Paso Natural Gas Co | 09-08-92 | G-HT | 25,000 | N | I | 08-01-92 | 07-31-93. |
| ST92-5547 | Northern Natural Gas Co | Midwest Power Systems, Inc | 09-08-92 | B | 1,000,000 | N | F/I | 08-28-92 | 08-27-93. |
| ST92-5548 | Northern Natural Gas Co | Enron Gas Marketing, Inc | 09-08-92 | G-S | 10,000,000 | A | F/I | 08-27-92 | 08-26-93. |
| ST92-5549 | Northern Natural Gas Co | Enron Oil & Gas Co | 09-08-92 | G-S | 50,000 | A | F/I | 07-08-92 | Indef. |
| ST92-5550 | Equitrans, Inc | Philadelphia Electric Co | 09-08-92 | G-S | 44,870 | N | I | 09-01-92 | Indef. |
| ST92-5551 | Delhi Gas Pipeline Corp | Arkla Energy Resources | 09-09-92 | C | 4,000 | N | I | 09-15-92 | Indef. |
| ST92-5552 | Tennessee Gas Pipeline Co | Vesta Energy Co | 09-09-92 | G-S | 10,000 | N | I | 08-12-92 | Indef. |
| ST92-5553 | Tennessee Gas Pipeline Co | M & B Industrial Development Corp. | 09-09-92 | G-S | 57,000 | N | I | 08-14-92 | Indef. |
| ST92-5554 | Questar Pipeline Co | Celsius Energy Co | 09-09-92 | G-S | 90,000 | N | I | 09-01-92 | Indef. |
| ST92-5555 | Panhandle Eastern Pipe Line Co | Western Gas Marketing Inc | 09-08-92 | G-S | 50,000 | N | I | 08-11-92 | Indef. |
| ST92-5556 | Southern Natural Gas Co | Texican Natural Gas Co | 09-08-92 | G-S | 1,370 | N | F | 08-21-92 | 08-31-93. |
| ST92-5557 | Panhandle Eastern Pipe Line Co | Eli Lilly and Co | 09-08-92 | G-S | 3,000 | N | F | 04-01-92 | Indef. |

| Docket No. | Transporter/seller | Recipient | Date filed | Part 284, subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-5558 | Panhandle Eastern Pipe Line Co.. | Continental Natural Gas, Inc | 09-08-92 | G-S | 25,000 | N | I | 08-15-92 | Indef. |
| ST92-5559 | Southern Natural Gas Co | Freeport McMoran Oil & Gas Co.. | 09-08-92 | G-S | 20,000 | N | I | 08-18-92 | 01-31-93. |
| ST92-5560 | Southern Natura Gas Co | Gasmark, Ltd | 09-08-92 | G-S | 20,000 | N | I | 08-21-92 | Indef. |
| ST92-5561 | Southern Natural Gas Co | Packaging Corp. of America | 09-08-92 | G-S | 5,000 | N | I | 08-26-92 | Indef. |
| ST92-5562 | Williams Natural Gas Co | Citation Oil & Gas Corp | 09-09-92 | G-S | 1,000 | N | I | 08-06-92 | Indef. |
| ST92-5563 | Gulf Energy Pipeline Co | Natural Gas P/L Co. of America .. | 09-09-92 | C | 15,000 | N | I | 08-01-92 | Indef. |
| ST92-5564 | U-T Offshore System | MG Natural Gas Corp | 09-09-92 | K-S | 100,000 | N | I | 06-03-92 | 06-02-97. |
| ST92-5565 | U-T Offshore System | Transco Energy Marketing Co | 09-09-92 | K-S | 500,000 | N | I | 09-01-92 | 08-31-93. |
| ST92-5566 | Natural Gas P/L Co. of America .. | American Central Gas Cos., Inc .. | 09-09-92 | B | 100,000 | N | I | 04-01-92 | Indef. |
| ST92-5567 | Natural Gas P/L Co. of America .. | Catex Energy, Inc | 09-09-92 | G-S | 100,000 | N | I | 06-01-92 | Indef. |
| ST92-5568 | Natural Gas P/L Co. of America .. | Catex Energy, Inc | 09-09-92 | G-S | 150,000 | N | I | 07-01-92 | Indef. |
| ST92-5569 | Natural Gas P/L Co. of America .. | Northern Illinois Gas Co | 09-10-92 | G-S | 25,000 | N | I | 05-01-92 | 11-30-94. |
| ST92-5570 | Tennessee Gas Pipeline Co | Transco Energy Marketing Co | 09-10-92 | G-S | 396 | N | I | 08-15-92 | Indef. |
| ST92-5571 | Florida Gas Transmission Co | St. Joe Natural Gas Co | 09-10-92 | G-S | 5,156 | N | F | 08-01-92 | Indef. |
| ST92-5572 | Florida Gas Transmission Co | St. Joe Natural Gas Co | 09-10-92 | G-S | 760 | N | I | 08-01-92 | Indef. |
| ST92-5573 | Natural Gas P/L Co. of America .. | Richardson Products Co., Ltd | 09-11-92 | G-S | 75,000 | N | I | 09-01-92 | Indef. |
| ST92-5574 | Natural Gas P/L Co. of America .. | Chevron U.S.A., Inc | 09-11-92 | G-S | 40,000 | N | I | 10-01-92 | Indef. |
| ST92-5575 | Natuarl Gas P/L Co. of America .. | Williams Gas Marketing Co | 09-11-92 | G-S | 100,000 | N | I | 07-03-92 | Indef. |
| ST92-5576 | Natural Gas P/L Co. of America .. | Texaco Marketing, Inc | 09-11-92 | G-S | 100,000 | N | I | 01-01-92 | Indef. |
| ST92-5577 | Natural Gas P/L Co. of America .. | Enserch Gas Co | 09-11-92 | G-S | 100,000 | N | I | 07-25-92 | Indef. |
| ST92-5578 | Florida Gas Transmission Co | West Florida Natural Gas Co | 09-11-92 | G-S | 12,415 | N | F | 08-01-92 | Indef. |
| ST92-5579 | Florida Gas Transmission Co | Peoples Gas, System, Inc | 09-11-92 | G-S | 148,361 | N | F | 08-01-92 | Indef. |
| ST92-5580 | Florida Gas Transmission Co | Peoples Gas System, Inc | 09-11-92 | G-S | 1,975 | N | F | 08-01-92 | Indef. |
| ST92-5581 | Florida Gas Transmission Co | Peoples Gas System, Inc | 09-11-92 | B | 1,370 | N | I | 08-01-92 | Indef. |
| ST92-5582 | Columbia Gas Transmission Corp. | Producers Gas Sales, Inc | 09-11-92 | G-S | 4,000 | N | I | 09-01-92 | Indef. |
| ST92-5583 | Columbia Gas Transmission Corp. | Oliver M. Roberts | 09-11-92 | G-S | 940 | N | F | 09-01-92 | Indef. |
| ST92-5584 | Columbia Gas Transmission Corp. | North Canadian Marketing Corp | 09-11-92 | G-S | 50,000 | Y | I | 09-01-92 | Indef. |
| ST92-5585 | Columbia Gas Transmission Corp. | Osborne Oil & Gas | 09-11-92 | G-S | 240 | N | F | 09-01-92 | Indef. |
| ST92-5586 | Trunkline Gas Co | Panhandle Eastern Pipe Line Co.. | 09-11-92 | G | 2,200 | Y | F | 11-01-92 | Indef. |
| ST92-5587 | Trunkline Gas Co | Panhandle Eastern Pipe Line Co.. | 09-11-92 | G | 1,300 | Y | F | 11-01-92 | Indef. |
| ST92-5588 | Tennessee Gas Pipeline Co | Woodward Marketing Inc | 09-11-92 | G-S | 20,000 | N | I | 08-14-92 | Indef. |
| ST92-5589 | Transcontinental Gas P/L Corp | Coastal Gas Marketing Co | 09-11-92 | G-S | 300,000 | N | F | 09-01-92 | Indef. |
| ST92-5590 | Florida Gas Transmission Co | Champion International Corp | 09-14-92 | G-S | 100 | N | I | 08-12-92 | Indef. |
| ST92-5591 | Florida Gas Transmission Co | Seminole Fertilizer Corp | 09-14-92 | G-S | 2,055 | N | I | 08-01-92 | Indef. |
| ST92-5592 | Florida Gas Transmission Co | City of Clearwater | 09-14-92 | G-S | 5,110 | N | F | 08-01-92 | Indef. |
| ST92-5593 | Enogex Inc | Phillips Gas Pipeline Co | 09-14-92 | C | 10,000 | N | I | 09-01-92 | Indef. |
| ST92-5594 | Enogex Inc | Natural Gas P/L Co. of America .. | 09-14-92 | C | 10,000 | N | I | 09-01-92 | Indef. |
| ST92-5595 | Williams Natural Gas Co | Gastrak Corp | 09-14-92 | G-S | 1,277 | N | I | 11-04-92 | 04-01-93. |
| ST92-5596 | Transcontinental Gas P/L Corp | Texaco Refining and Marketing, Inc. | 09-14-92 | G-S | 9,300 | N | F | 09-01-92 | 08-31-07 |
| ST92-5597 | Gateway Pipeline Co | Conoco Inc | 09-14-92 | G-S | 100,000 | N | I | 09-01-92 | 12-30-92. |
| ST92-5598 | Gateway Pipeline Co | NGC Transportation, Inc | 09-14-92 | G-S | 500,000 | N | I | 09-01-92 | 12-30-92. |
| ST92-5599 | United Gas Pipe Line Co | National Steel Corp | 09-14-92 | G-S | 41,920 | N | I | 08-29-92 | 12-27-92. |
| ST92-5600 | United Gas Pipe Line Co | NGC Transportation, Inc | 09-14-92 | G-S | 157,200 | N | I | 09-02-92 | 12-31-92. |
| ST92-5601 | United Gas Pipe Line Co | NGC Transportation, Inc | 09-14-92 | G-S | 31,440 | N | I | 08-21-92 | 12-19-92. |
| ST92-5602 | Gateway Pipeline Co | Transco Energy Marketing Co | 09-14-92 | G-S | 50,000 | N | I | 09-01-92 | 12-30-92. |
| ST92-5603 | Tennessee Gas Pipeline Co | Coast Energy Group, Inc | 09-14-92 | G-S | 398 | N | I | 08-22-92 | Indef. |
| ST92-5604 | Colorado Interstate Gas Co | Enron Gas Marketing, Inc | 09-14-92 | G-S | 100,000 | N | I | 08-01-92 | Indef. |
| ST92-5605 | Colorado Interstate Gas Co | Montana Power Co | 09-14-92 | B | 5,000 | N | I | 07-01-92 | Indef. |
| ST92-5606 | Texas Gas Transmission Corp | Indiana Gas Co., Inc | 09-14-92 | G-S | 10,000 | N | I | 09-01-92 | Indef. |
| ST92-5607 | Texas Gas Transmission Corp | Entrade Corp | 09-14-92 | G-S | 27,000 | N | I | 09-01-92 | Indef. |
| ST92-5608 | Texas Gas Transmission Corp | AGF Direct Gas Sales, Inc | 09-14-92 | G-S | 20,000 | N | I | 09-01-92 | Indef. |
| ST92-5609 | Colorado Interstate Gas Co | Montana Power Co | 09-15-92 | B | 10,000 | N | I | 07-03-92 | Indef. |
| ST92-5610 | Florida Gas Transmission Co | Citrus Marketing, Inc | 09-15-92 | G-S | 400,000 | N | I | 08-28-92 | Indef. |
| ST92-5611 | Northern Natural Gas Co | Hadson Gas Systems, Inc | 09-15-92 | G-S | 100,000 | N | F/I | 08-01-92 | Indef. |
| ST92-5612 | Florida Gas Transmission Co | Peoples Gas System, Inc | 09-15-92 | B | 4,205 | N | I | 08-20-92 | Indef. |
| ST92-5613 | Northern Natural Gas Co | Anadarko Trading Co | 09-15-92 | G-S | 50,000 | N | F/I | 08-01-92 | Indef. |
| ST92-5614 | Northern Natural Gas Co | Exxon Co. USA | 09-15-92 | G-S | 50,000 | N | F/I | 08-11-92 | Indef. |
| ST92-5615 | Northern Natural Gas Co | Peoples Natural Gas Co | 09-15-92 | G-S | 10,000 | N | F | 09-01-92 | Indef. |
| ST92-5616 | Northern Natural Gas Co | Texpar Energy, Inc | 09-15-92 | G-S | 25,000 | N | F/I | 08-01-92 | Indef. |
| ST92-5617 | Columbia Gulf Transmission Co | Prior Intrastate Corp | 09-15-92 | G-S | 60,000 | N | I | 08-22-92 | Indef. |
| ST92-5618 | Equitrans, Inc | Equitable Gas Co- | 09-15-92 | G-S | 2,500 | N | F | 09-01-92 | Indef. |
| ST92-5619 | Equitrans, Inc | Brooklyn Union Gas | 09-15-92 | G-S | 48,425 | N | I | 09-01-92 | Indef. |
| ST92-5620 | Williams Natural Gas Co | Western Gas Interstate Co | 09-15-92 | G | 200 | N | I | 04-30-92 | 06-01-92. |
| ST92-5621 | K N Energy, Inc | Enron Gas Marketing, Inc | 09-16-92 | G-S | 75,000 | N | I | 05-01-92 | Indef. |
| ST92-5622 | K N Energy, Inc | Transok, Inc | 09-16-92 | B | 50,000 | N | I | 05-21-92 | Indef. |
| ST92-5623 | Transwestern Pipeline Co | Midcon Marketing Corp | 09-16-92 | G-S | 200,000 | N | I | 05-19-92 | Indef. |
| ST92-5624 | Transwestern Pipeline Co | Chevron USA Inc | 09-16-92 | G-S | 200,000 | N | I | 05-15-92 | Indef. |
| ST92-5625 | Colorado Interstate Gas Co | Associated Intrastate P/L Co | 09-17-92 | G-S | 60,000 | N | I | 08-25-92 | Indef. |
| ST92-5626 | Texas Eastern Trans. Corp | United States Gypsum Co | 09-17-92 | G-S | 120,000 | N | I | 08-27-92 | Indef. |
| ST92-5627 | Kentucky West Virginia Gas Co | Columbia Natural Resources | 09-17-92 | G-S | 1,600 | N | I | 09-10-92 | Indef. |
| ST92-5628 | Kentucky West Virginia Gas Co | Oliver Roberts | 09-17-92 | G-S | 300 | N | I | 09-10-92 | Indef. |
| ST92-5630 | ONG Transmission Co | Arkla Energy Resources | 09-17-92 | C | 50,000 | N | I | 08-28-92 | Indef. |
| ST92-5631 | ONG Transmission Co | Arkla Energy Resources | 09-17-92 | C | 35,000 | N | I | 08-19-92 | Indef. |
| ST92-5632 | Florida Gas Transmission Co | Florida Public Utilities Co | 09-17-92 | G-S | 14,452 | N | F | 09-01-92 | Indef. |
| ST92-5633 | Northern Natural Gas Co | Continental Natural Gas, Inc | 09-17-92 | G-S | 1,000 | N | F/I | 09-01-92 | Indef. |

| Docket No. | Transporter/seller | Recipient | Date filed | Part 284, subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-5634 | Northern Natural Gas Co | Texas Utility Fuel Co | 09-17-92 | B | 90,000 | A | F/I | 08-01-92 | Indef. |
| ST92-5635 | Columbia Gas Transmission Corp. | Gasmark, Ltd | 09-17-92 | G-S | 100,000 | A | I | 09-01-92 | Indef. |
| ST92-5636 | Trunkline Gas Co | Panhandle Trading Co | 09-17-92 | G-S | 50,000 | A | I | 09-01-92 | Indef. |
| ST92-5637 | Trunkline Gas Co | CMS Gas Marketing Co | 09-17-92 | G-S | 50,000 | N | I | 08-27-92 | Indef. |
| ST92-5638 | Trunkline Gas Co | Aquila Energy Marketing Corp | 09-17-92 | G-S | 100,000 | N | I | 08-25-92 | Indef. |
| ST92-5639 | Trunkline Gas Co | Gasmark, LTD | 09-17-92 | G-S | 50,000 | N | I | 09-01-92 | Indef. |
| ST92-5640 | Trunkline Gas Co | Stellar Gas Co | 09-17-92 | G-S | 50,000 | N | I | 09-01-92 | Indef. |
| ST92-5641 | Trunkline Gas Co | Amerada Hess Corp | 09-17-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5642 | Trunkline Gas Co | Panhandle Trading Co | 09-17-92 | G-S | 100,000 | A | I | 09-01-92 | Indef. |
| ST92-5643 | Trunkline Gas Co | Louis Dreyfus Energy Corp | 09-18-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5644 | Trunkline Gas Co | BP Gas, Inc | 09-18-92 | G-S | 1,000 | N | I | 09-01-92 | Indef. |
| ST92-5645 | Trunkline Gas Co | Chevron U.S.A., Inc | 09-18-92 | G-S | 20,000 | N | I | 09-01-92 | Indef. |
| ST92-5646 | Trunkline Gas Co | Panhandle Trading Co | 09-18-92 | G-S | 100,000 | Y | I | 09-13-92 | Indef. |
| ST92-5647 | Trunkline Gas Co | Gulf Coast Energy, Inc | 09-18-92 | G-S | 5,000 | N | I | 09-14-92 | Indef. |
| ST92-5648 | Natural Gas P/L Co. of America | Stellar Gas Co | 09-18-92 | G-S | 50,000 | N | I | 08-28-92 | Indef. |
| ST92-5649 | Natural Gas P/L Co. of America | Stellar Gas Co | 09-18-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5650 | Natural Gas P/L Co. of America | Stand Energy Corp | 09-18-92 | G-S | 10,000 | N | I | 05-01-92 | Indef. |
| ST92-5651 | Natural Gas P/L Co. of America | ARCO Oil and Gas Co | 09-18-92 | G-S | 75,000 | N | I | 05-01-92 | Indef. |
| ST92-5652 | Natural Gas P/L Co. of America | Midcon Marketing Corp | 09-18-92 | G-S | 100,000 | N | I | 08-01-92 | Indef. |
| ST92-5653 | Lone Star Gas Co | Transcontinental Gas P/L Corp | 09-18-92 | C | 70,000 | N | I | 08-26-92 | Indef. |
| ST92-5654 | Lone Star Gas Co | Transwestern Pipeline Co | 09-18-92 | C | 75,000 | N | I | 08-27-92 | Indef. |
| ST92-5655 | Lone Star Gas Co | Texas Eastern Transmission Co | 09-18-92 | C | 75,000 | N | I | 08-18-92 | Indef. |
| ST92-5656 | Lone Star Gas Co | Texas Eastern Transmission Co | 09-18-92 | C | 20,000 | N | I | 08-25-92 | Indef. |
| ST92-5657 | Northern Natural Gas Co | AMAX Gas Marketing, Inc | 09-18-92 | G-S | 150,000 | N | F/I | 09-02-92 | Indef. |
| ST92-5658 | Northern Natural Gas Co | Transok Gas Co | 09-18-92 | G-S | 50,000 | N | F/I | 08-06-92 | Indef. |
| ST92-5659 | Montana Power Co | Colorado Interstate Gas Co | 09-18-92 | C | 40,000 | N | I | 06-01-92 | 10-31-92. |
| ST92-5660 | Montana Power Co | Colorado Interstate Gas Co | 09-18-92 | C | 40,000 | N | I | 07-01-92 | 10-31-92. |
| ST92-5661 | Montana Power Co | Colorado Interstate Gas Co | 09-18-92 | C | 20,000 | N | I | 06-01-92 | 10-31-92. |
| ST92-5662 | Williams Natural Gas Co | Mobil Natural Gas, Inc | 09-18-92 | G-S | 100,000 | N | I | 08-20-92 | Indef. |
| ST92-5667 | Tennessee Gas Pipeline Co | Midwestern Gas Transmission Co. | 09-21-92 | B | 60,000 | N | I | 09-01-92 | Indef. |
| ST92-5668 | El Paso Natural Gas Co | LFC Financial Corp | 09-21-92 | G-S | 6,180 | N | I | 09-01-92 | Indef. |
| ST92-5669 | Northern Natural Gas Co | American Hunter Exploration, LTD. | 09-21-92 | G-S | 200,000 | N | F/I | 09-01-92 | Indef. |
| ST92-5670 | Florida Gas Transmission Co | Chesapeake Utilities Corp | 09-21-92 | B | 13,741 | N | F | 09-01-92 | Indef. |
| ST92-5671 | Florida Gas Transmission Co | Citrus World, Inc | 09-21-92 | G-S | 1,671 | N | F | 09-01-92 | Indef. |
| ST92-5672 | Northwest Pipeline Corp | Blackwood & Nichols Co., LTD | 09-21-92 | G-S | 20,000 | N | I | 09-01-92 | Indef. |
| ST92-5673 | Northwest Pipeline Corp | Tristar Gas Co | 09-21-92 | G-S | 50,000 | N | I | 09-08-92 | Indef. |
| ST92-5674 | Northwest Pipeline Corp | Atlantic Richfield Co | 09-21-92 | G-S | 50,000 | N | F | 08-01-92 | Indef. |
| ST92-5675 | Kern River Gas Transmission Co. | Nevada Cogeneration Associates. | 09-21-92 | G-S | 50,000 | N | I | 08-21-92 | Indef. |
| ST92-5676 | Kern River Gas Transmission Co. | Salmon Resources LTD | 09-21-92 | G-S | 30,000 | N | I | 08-20-92 | Indef. |
| ST92-5677 | Kern River Gas Transmission Co. | Nevada Cogeneration Associates. | 09-21-92 | G-S | 50,000 | N | I | 08-21-92 | Indef. |
| ST92-5678 | Northern Natural Gas Co | Marathon Oil Co | 09-21-92 | G-S | 23,000 | N | I | 09-02-92 | Indef. |
| ST92-5679 | Midwestern Gas Transmission Co. | Southern Indiana Gas & Elect. Co. | 09-22-92 | G-S | 75,000 | N | I | 09-01-92 | Indef. |
| ST92-5680 | Arkla Energy Resources | Triumph Gas Marketing Co | 09-22-92 | G-S | 100,000 | N | I | 07-01-92 | Indef. |
| ST92-5681 | Kern River Gas Transmission Co. | Women's National Gas Corp | 09-22-92 | G-S | 100,000 | N | I | 08-24-92 | Indef. |
| ST92-5682 | Tennessee Gas Pipeline Co | ANR Gathering Co | 09-22-92 | G-S | 300,000 | N | I | 09-01-92 | Indef. |
| ST92-5683 | Tennessee Gas Pipeline Co | Tejas Power Corp | 09-22-92 | G-S | 103,000 | N | I | 09-02-92 | Indef. |
| ST92-5684 | Tennessee Gas Pipeline Co | Lockport Energy Associates, L.P. | 09-22-92 | G-S | 12,000 | N | F | 09-01-92 | Indef. |
| ST92-5685 | Tennessee Gas Pipeline Co | Endevco Oil & Gas Co | 09-22-92 | G-S | 220,000 | N | I | 08-26-92 | Indef. |
| ST92-5686 | Tennessee Gas Pipeline Co | Energynorth Natural Gas, Inc | 09-22-92 | B | 25,130 | N | I | 09-11-92 | Indef. |
| ST92-5687 | Tennessee Gas Pipeline Co | Orange & Rockland Utilities, Inc | 09-22-92 | B | 62,000 | N | I | 09-01-92 | Indef. |
| ST92-5688 | Tennessee Gas Pipeline Co | City of Holyoke Gas & Elect. Dept. | 09-22-92 | B | 900 | N | F | 09-02-92 | Indef. |
| ST92-5689 | Tennessee Gas Pipeline Co | Energynorth Natural Gas, Inc | 09-22-92 | B | 1,900 | N | F | 09-01-92 | Indef. |
| ST92-5690 | Tennessee Gas Pipeline Co | Chevron U.S.A., Inc | 09-22-92 | G-S | 450,000 | N | I | 09-01-92 | Indef. |
| ST92-5691 | Tennessee Gas Pipeline Co | CNG Transmission Corp | 09-22-92 | G | 701,215 | N | I | 08-25-92 | Indef. |
| ST92-5692 | Tennessee Gas Pipeline Co | Energy Development Corp | 09-22-92 | G-S | 500,000 | N | I | 09-01-92 | Indef. |
| ST92-5693 | Tennessee Gas Pipeline Co | Equitrans, Inc | 09-22-92 | B | 65,134 | N | F | 09-01-92 | Indef. |
| ST92-5694 | Tennessee Gas Pipeline Co | AGIP Petroleum Co., Inc | 09-22-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5695 | Tennessee Gas Pipeline Co | Southern Indiana Gas and Elect. Co. | 09-22-92 | G-S | 75,000 | N | I | 09-01-92 | Indef. |
| ST92-5696 | Tennessee Gas Pipeline Co | Superior Natural Gas Corp | 09-22-92 | G-S | 50,000 | N | I | 09-01-92 | Indef. |
| ST92-5697 | Southern Natural Gas Co | Aquila Energy Marketing | 09-22-92 | G-S | 20,000 | N | I | 09-02-92 | Indef. |
| ST92-5698 | Southern Natural Gas Co | Unigas Energy, Inc | 09-22-92 | G-S | 50,000 | N | I | 09-09-92 | Indef. |
| ST92-5699 | Monterey Pipeline Co | Exxon Co., U.S.A | 09-23-92 | C | 80,000 | N | I | 08-24-92 | Indef. |
| ST92-5700 | Llano, Inc | Minerals, Inc | 09-23-92 | C | 65,000 | N | I | 09-01-92 | Indef. |
| ST92-5701 | Monterey Pipeline Co | Exxon Co., U.S.A | 09-23-92 | C | 80,000 | N | I | 08-24-92 | Indef. |
| ST92-5702 | Tennessee Gas Pipeline Co | CNG Transmission Corp | 09-23-92 | B | 161,992 | N | F | 08-25-92 | Indef. |
| ST92-5703 | Kern River Gas Transmission Co. | Nevada Cogerneration Associates. | 09-23-92 | G-S | 13,000 | N | F | 08-24-92 | Indef. |
| ST92-5704 | Midwestern Gas Transmission Co. | Peoples Gas Light & Coke Co | 09-23-92 | B | 100,000 | N | I | 08-23-92 | Indef. |

| Docket No. | Transporter/seller | Recipient | Date filed | Part 284, subpart | Est. max. daily quantity[2] | Aff. Y/A/ N[3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-5705 | Midwestern Gas Transmission Co. | Northern Illinois Gas Co | 09-23-92 | B | 100,000 | N | I | 08-23-92 | Indef. |
| ST92-5706 | ANR Pipeline Co | Stellar Gas Co | 09-23-92 | G-S | 50,000 | N | I | 08-29-92 | Indef. |
| ST92-5707 | ANR Pipeline Co | Chevron U.S.A. Inc | 09-23-92 | G-S | 50,000 | N | I | 08-27-92 | Indef. |
| ST92-5708 | ANR Pipeline Co | Unigas Energy, Inc | 09-23-92 | G-S | 60,000 | N | I | 08-27-92 | Indef. |
| ST92-5709 | ANR Pipeline Co | Continental Natural Gas, Inc | 09-23-92 | G-S | 10,000 | N | I | 08-27-92 | Indef. |
| ST92-5710 | ANR Pipeline Co | West Ohio Gas Co | 09-23-92 | B | 60,000 | N | I | 08-29-92 | Indef. |
| ST92-5711 | Transcontinental Gas P/L Corp | Wintershall Louisiana Corp | 09-23-92 | B | 25,000 | N | I | 08-26-92 | Indef. |
| ST92-5712 | Delhi Gas Pipeline Corp | Arkla Energy Resources | 09-24-92 | C | 250,000 | N | I | 08-31-92 | Indef. |
| ST92-5713 | Delhi Gas Pipeline Corp | Natural Gas P.L Co. of America | 09-24-92 | C | 20,000 | N | I | 09-01-92 | Indef. |
| ST92-5714 | Delhi Gas Pipeline Corp | Arkla Energy Resources | 09-24-92 | C | 2,000 | N | I | 09-01-92 | Indef. |
| ST92-5715 | Tennessee Gas Pipeline Co | Valley Gas Co | 09-24-92 | B | 1,900 | N | F | 09-01-92 | Indef. |
| ST92-5716 | Tennessee Gas Pipeline Co | Pennsylvania & Southern Gas Co. | 09-24-92 | B | 2,000 | N | F | 09-01-92 | Indef. |
| ST92-5717 | Valero Transmission, L.P | Northern Natural Gas Co | 09-24-92 | C | 60,302 | N | I | 09-01-92 | Indef. |
| ST92-5718 | Valero Transmission, L.P | United Gas Pipe Line Co | 09-24-92 | C | 4,500 | N | I | 09-02-92 | Indef. |
| ST92-5719 | Valero Transmission, L.P | Texas Eastern Transmission Corp. | 09-24-92 | C | 2,000 | N | I | 08-25-92 | Indef. |
| ST92-5720 | Valero Transmission, L.P | El Paso Natural Gas Co | 09-24-92 | C | 10,000 | N | I | 09-03-92 | Indef. |
| ST92-5721 | Natural Gas P/L Co. of America | American Central Gas Cos., Inc | 09-24-92 | G-S | 100,000 | N | I | 05-04-90 | Indef. |
| ST92-5722 | Transtexas Pipeline | El Paso Natural Gas Co | 09-24-92 | C | 10,000 | N | I | 09-03-92 | Indef. |
| ST92-5723 | Valero Transmission, L.P | Trunkline Gas Co | 09-24-92 | C | 8,000 | N | I | 08-26-92 | Indef. |
| ST92-5724 | Valero Transmission, L.P | Texas Gas Transmission | 09-24-92 | C | 30,000 | N | I | 09-10-92 | Indef. |
| ST92-5725 | Valero Transmission, L.P | Natural Gas P/L Co. of America | 09-24-92 | C | 10,000 | N | I | 09-03-92 | Indef. |
| ST92-5726 | Valero Transmission, L.P | Texas Gas Transmission | 09-24-92 | C | 10,000 | N | I | 08-26-92 | Indef. |
| ST92-5727 | Transtexas Pipeline | Texas Gas Transmission | 09-24-92 | C | 30,000 | N | I | 09-10-92 | Indef. |
| ST92-5728 | Transtexas Pipeline | Natural Gas P/L Co. of America | 09-24-92 | C | 20,000 | N | I | 09-03-92 | Indef. |
| ST92-5729 | Channel Industries Gas Co | Amoco Gas Co | 09-25-92 | C | 50,000 | N | I | 09-01-92 | Indef. |
| ST92-5730 | Channel Industries Gas Co | Tennessee Gas Pipeline Co | 09-25-92 | C | 75,000 | N | I | 09-01-92 | Indef. |
| ST92-5731 | Channel Industries Gas Co | Trunkline Gas Co | 09-25-92 | C | 100,000 | N | I | 09-02-92 | Indef. |
| ST92-5732 | Channel Industries Gas Co | Trunkline Gas Co | 09-25-92 | C | 50,000 | N | I | 09-04-92 | Indef. |
| ST92-5733 | Tennessee Gas Pipeline Co | Polaris Pipeline Corp | 09-25-92 | G-S | 150,000 | N | I | 09-10-92 | Indef. |
| ST92-5734 | Tennessee Gas Pipeline Co | Colonial Gas Co | 09-25-92 | B | 17,300 | N | F | 09-01-92 | Indef. |
| ST92-5735 | Tennessee Gas Pipeline Co | Atlas Gas Marketing, Inc | 09-25-92 | G-S | 20,000 | N | I | 09-01-92 | Indef. |
| ST92-5736 | Tennessee Gas Pipeline Co | AGF, Inc | 09-25-92 | G-S | 5,000 | N | I | 09-01-92 | Indef. |
| ST92-5737 | Tennessee Gas Pipeline Co | Northern Indiana Public Service Co. | 09-25-92 | G-S | 70,707 | N | F | 09-10-92 | Indef. |
| ST92-5738 | Tennessee Gas Pipeline Co | Fitchburg Gas and Elect. Light Co. | 09-25-92 | B | 500 | N | F | 09-03-92 | Indef. |
| ST92-5739 | Tennessee Gas Pipeline Co | Berkshire Gas Co | 09-25-92 | B | 1,900 | N | F | 09-01-92 | Indef. |
| ST92-5740 | Llano, Inc | Gas Energy Development Co | 09-25-92 | C | 500 | N | I | 09-21-92 | Indef. |
| ST92-5741 | Williston Basin Inter. P/L Co | William Herbert Hunt Trust Estate. | 09-25-92 | G-S | 500 | Y | I | 08-25-92 | 07-31-94. |
| ST92-5742 | Panhandle Eastern Pipe Line Co | Mobile Natural Gas Inc | 09-25-92 | G-S | 100,000 | N | I | 08-31-92 | Indef. |
| ST92-5743 | United Gas Pipe Line Co | Victoria Gas Corp | 09-25-92 | G-S | 33,536 | N | I | 09-14-92 | 01-12-93. |
| ST92-5744 | United Gas Pipe Line Co | Schuller International Inc | 09-25-92 | G-S | 26,200 | N | I | 08-29-92 | 12-27-92. |
| ST92-5745 | United Gas Pipe Line Co | Shell Gas Trading Co | 09-25-92 | G-S | 209,600 | N | I | 09-14-92 | 01-12-93. |
| ST92-5746 | United Gas Pipe Line Co | Coast Energy Group, Inc | 09-25-92 | G-S | 31,440 | N | I | 09-10-92 | 01-08-93. |
| ST92-5747 | United Gas Pipe Line Co | Phibro Energy USA Inc | 09-25-92 | G-S | 314,400 | N | I | 09-11-92 | 01-09-93. |
| ST92-5748 | United Gas Pipe Line Co | Eastex Gas Transmission Co | 09-25-92 | G-S | 146,720 | N | I | 09-15-92 | 01-13-93. |
| ST92-5749 | United Gas Pipe Line Co | Fina Natural Gas Co | 09-25-92 | G-S | 104,800 | N | I | 09-15-92 | 01-12-93. |
| ST92-5750 | United Gas Pipe Line Co | Associated Intrastate Pipeline Co. | 09-25-92 | G-S | 209,600 | N | I | 09-14-92 | 01-13-93. |
| ST92-5751 | United Gas Pipe Line Co | Rally Pipeline Corp | 09-25-92 | G-S | 59,736 | N | I | 09-16-92 | 01-14-93. |
| ST92-5752 | Columbia Gulf Transmission Co | PKV Limited Partnership | 09-25-92 | G-S | 2,100 | N | F | 09-01-92 | Indef. |
| ST92-5753 | Columbia Gulf Transmission Co | J.W. Kinzer | 09-25-92 | G-S | 12,540 | N | F | 09-01-92 | Indef. |
| ST92-5754 | Columbia Gulf Transmission Co | KCS Energy Marketing, Inc | 09-25-92 | G-S | 60,000 | N | I | 09-04-92 | Indef. |
| ST92-5755 | Columbia Gulf Transmission Co | Superior Natural Gas Corp | 09-25-92 | G-S | 60,000 | N | I | 09-05-92 | Indef. |
| ST92-5756 | Columbia Gulf Transmission Co | Valero Gas Marketing, L.P | 09-25-92 | G-S | 75,000 | N | I | 09-01-92 | Indef. |
| ST92-5757 | Columbia Gulf Transmission Co | Union Texas Products Corp | 09-25-92 | G-S | 3,500 | N | I | 09-01-92 | Indef. |
| ST92-5758 | Columbia Gulf Transmission Co | Eagle Natural Gas Co | 09-25-92 | G-S | 30,000 | N | I | 09-01-92 | Indef. |
| ST92-5759 | Texas Gas Transmission Corp | Transco Energy Marketing Co | 09-25-92 | G-S | 50,000 | A | I | 09-10-92 | Indef. |
| ST92-5760 | Texas Gas Transmission Corp | Oryx Gas Marketing L.P | 09-25-92 | G-S | 50,000 | N | I | 09-11-92 | Indef. |
| ST92-5761 | Texas Gas Transmission Corp | Meridian Oil Trading, Inc | 09-25-92 | G-S | 100,000 | N | I | 09-10-92 | Indef. |
| ST92-5762 | ANR Pipeline Co | Basf Corp | 09-28-92 | G-S | 2,500 | N | I | 09-01-92 | Indef. |
| ST92-5763 | ANR Pipeline Co | Fina Natural Gas Co | 09-28-92 | B | 50,000 | N | I | 09-03-92 | Indef. |
| ST92-5764 | ANR Pipeline Co | Premier Gas Co | 09-28-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5765 | ANR Pipeline Co | Wisconsin Gas Co | 09-28-92 | G-S | 557 | N | F | 09-01-92 | Indef. |
| ST92-5766 | ANR Pipeline Co | Agip Petroleum Co., Inc | 09-28-92 | G-S | 100,000 | N | I | 09-03-92 | Indef. |
| ST92-5767 | ANR Pipeline Co | Meridian Oil Trading, Inc | 09-28-92 | G-S | 30,000 | N | I | 09-10-92 | Indef. |
| ST92-5768 | ANR Pipeline Co | Transco Energy Marketing Co | 09-28-92 | G-S | 25,000 | N | I | 09-01-92 | Indef. |
| ST92-5769 | ANR Pipeline Co | Midcon Marketing Corp | 09-28-92 | G-S | 50,000 | N | I | 09-09-92 | Indef. |
| ST92-5770 | Texas Eastern Transmission Corp. | Amax Gas Marketing, Inc | 09-28-92 | G-S | 400,000 | N | I | 09-09-92 | Indef. |
| ST92-5771 | Texas Eastern Transmission Corp. | Yuma Gas Corp | 09-28-92 | G-S | 25,000 | N | I | 07-18-92 | Indef. |
| ST92-5772 | Valero Transmission, L.P | Texas Eastern Transmission Co | 09-28-92 | C | 6,000 | N | I | 07-10-92 | Indef. |
| ST92-5773 | El Paso Natural Gas Co | Natural Gas Processing Co | 09-28-92 | G-S | 5,150 | N | F | 09-03-92 | Indef. |
| ST92-5774 | Ong Transmission Co | Phillips Gas Pipeline Co | 09-28-92 | C | 50,000 | N | I | 09-01-92 | Indef. |
| ST92-5775 | Ong Transmission Co | Panhandle Eastern Pipe Line Co | 09-28-92 | C | 50,000 | N | I | 09-06-92 | Indef. |

| Docket No. | Transporter/seller | Recipient | Date filed | Part 284, subpart | Est. max. daily quantity[2] | Aff. Y/A/N[3] | Rate schedule | Date commenced | Projected termination date |
|---|---|---|---|---|---|---|---|---|---|
| ST92-5776 | U-T Offshore System | Nomeco Oil & Gas Co | 09-28-92 | K-S | 120,000 | N | I | 09-01-92 | 08-31-93. |
| ST92-5777 | Transcontinental Gas P/L Corp | Pentex Pipeline Co | 09-28-92 | B | 80,000 | N | I | 05-24-92 | 10-09-90. |
| ST92-5778 | Florida Gas Transmission Co | Consolidated Minerals, Inc | 09-28-92 | G-S | 3,451 | N | I | 09-06-92 | Indef. |
| ST92-5779 | Florida Gas Transmission Co | City of Homestead | 09-28-92 | G-S | 1,560 | N | I | 09-04-92 | Indef. |
| ST92-5780 | Natural Gas P/L Co. of America | Enron Gas Marketing, Inc | 09-28-92 | G-S | 100,000 | N | I | 08-28-92 | Indef. |
| ST92-5781 | Columbia Gas Transmission Corp. | Stand Energy Corp | 09-28-92 | G-S | 4,000 | Y | I | 09-01-92 | Indef. |
| ST92-5782 | Panhandle Eastern Pipe Line Co | Mobil Natural Gas Inc | 09-29-92 | G-S | 100,000 | N | I | 08-31-92 | Indef. |
| ST92-5783 | Panhandle Eastern Pipe Line Co | AMGAS, Inc | 09-29-92 | G-S | 150 | N | I | 07-01-92 | Indef. |
| ST92-5784 | Panhandle Eastern Pipe Line Co | Ball-Incon Gas Packaging Corp | 09-29-92 | G-S | 1,300 | N | F | 09-01-92 | Indef. |
| ST92-5785 | Lone Star Gas Co | Trunkline Gas Co | 09-29-92 | C | 20,000 | N | I | 09-01-92 | Indef. |
| ST92-5786 | Equitrans, Inc | Equitable Gas Co | 09-29-92 | G-S | 16, 870 | N | F | 09-01-92 | Indef. |
| ST92-5787 | Kern River Gas Transmission Co. | Pacific Gas & Electric Co | 09-29-92 | B | 40,000 | N | I | 09-01-92 | Indef. |
| ST92-5790 | Panhandle Eastern Pipe Line Co | Grand Prairie Co-op, Inc | 09-29-92 | G-S | 4,000 | N | I | 09-01-92 | Indef. |
| ST92-5791 | Panhandle Eastern Pipe Line Co | Enorn Gas Marketing, Inc | 09-29-92 | G-S | 50,000 | N | I | 09-02-92 | Indef. |
| ST92-5792 | Panhandle Eastern Pipe Line Co | Transok Gas Co | 09-29-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5793 | Panhandle Eastern Pipe Line Co | Maple Lawn Home | 09-29-92 | G-S | 45 | N | I | 09-01-92 | Indef. |
| ST92-5794 | Transcontinental Gas P/L Corp | TXG Gas Marketing | 09-29-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5795 | Transcontinental Gas P/L Corp | Coastal Eagle Point Oil Co | 09-29-92 | G-S | 10,000 | N | F | 09-01-92 | 08-31-12. |
| ST92-5796 | Transcontinental Gas P/L Corp | South Carolina Pipeline Corp | 09-29-92 | B | 800,000 | N | I | 09-03-92 | Indef. |
| ST92-5797 | Transcontinental Gas P/L Corp | Consolidated Edison Co. of NY, Inc. | 09-29-92 | B | 30,000 | N | I | 09-01-92 | Indef. |
| ST92-5798 | Trunkline Gas Co | Northern Indiana Public Service Co. | 09-29-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5799 | Natural Gas P/L Co. of America | Olympic Fuels Co | 09-29-92 | G-S | 20,000 | N | I | 08-01-92 | Indef. |
| ST92-5800 | Natural Gas P/L Co. of America | El Paso Natural Gas Co | 09-29-92 | G | 200,000 | N | I | 09-01-92 | Indef. |
| ST92-5801 | Natural Gas P/L Co. of America | Meridian Oil Trading Inc | 09-29-92 | G-S | 100,000 | N | I | 09-04-92 | Indef. |
| ST92-5802 | Natural Gas P/L Co. of America | Access Energy Group | 09-29-92 | G-S | 100,000 | N | I | 09-01-92 | Indef. |
| ST92-5803 | Natural Gas P/L Co. of America | Equitable Resources Marketing Co. | 09-29-92 | G-S | 50,000 | N | I | 07-15-92 | Indef. |
| ST92-5804 | Delhi Gas Pipeline Corp | Natural Gas P/L Co. of America | 09-30-92 | C | 11,000 | N | I | 09-01-92 | Indef. |
| ST92-5805 | Carnegie Natural Gas Co | Marathon Oil Co | 09-30-92 | G-S | 24,000 | A | I | 09-01-92 | 08-31-93. |
| ST92-5806 | Channel Industries Gas Co | Trunkline Gas Co | 09-30-92 | C | 50,000 | Y | I | 03-01-92 | Indef. |
| ST92-5807 | Channel Industries Gas Co | Natural Gas P/L Co. of America | 09-30-92 | C | 50,000 | Y | I | 05-01-92 | Indef. |
| ST92-5808 | Kern River Gas Transmission Co. | Union Pacific Fuels, Inc | 09-30-92 | G-S | 100,000 | N | F | 09-03-92 | 03-01-07. |
| ST92-5809 | Kern River Gas Transmission Co. | Pacific Gas & Electric Co | 09-30-92 | B | 100,000 | N | F | 09-01-92 | Indef. |
| ST92-5810 | Kern River Gas Transmission Co. | Chevron U.S.A., Inc | 09-30-92 | G-S | 100,000 | N | F | 09-02-92 | Indef. |
| ST92-5811 | Questar Pipeline Co | Chevron U.S.A., Inc | 09-30-92 | G-S | 86,400 | N | I | 09-23-92 | Indef. |
| ST92-5812 | Transwestern Pipeline Co | Continental Natural Gas, Inc | 09-30-92 | G-S | 30,000 | N | I | 09-02-92 | Indef. |
| ST92-5813 | Florida Gas Transmission Co | Hardee Power Partners Ltd | 09-30-92 | G-S | 3,325 | N | I | 09-01-92 | 04-30-93. |
| ST92-5814 | Natural Gas P/L Co. of America | Coastal Gas Marketing Co | 09-30-92 | G-S | 150,000 | N | I | 09-01-92 | Indef. |
| ST92-5815 | Panhandle Eastern Pipe Line Co | Panhandle Trading Co | 09-30-92 | G-S | 10,000 | Y | I | 09-01-92 | Indef. |
| ST92-5816 | Panhandle Eastern Pipe Line Co | SPX Corp | 09-30-92 | G-S | 500 | N | I | 09-01-92 | Indef. |
| ST92-5817 | Panhandle Eastern Pipe Line Co | City of Pittsboro | 09-30-92 | G-S | 500 | N | I | 09-01-92 | Indef. |
| ST92-5818 | Iroquis Gas Trans. System, L.P | Direct Gas Supply Corp | 09-30-92 | G-S | 35,000 | N | I | 09-01-92 | 10-31-92. |
| ST92-5819 | Transcontinental Gas P/L Corp | Virginia Natural Gas Co | 09-30-92 | B | 400,000 | N | I | 09-02-92 | Indef. |
| ST92-5820 | Transcontinental Gas P/L Corp | South Carolina Pipeline Corp | 09-30-92 | B | 10,000 | N | I | 09-12-92 | Indef. |
| ST92-5821 | Transcontinental Gas P/L Corp | Commonwealth Gas Pipeline Corp. | 09-30-92 | B | 20,000 | N | I | 09-03-92 | Indef. |
| ST92-5822 | Transcontinental Gas P/L Corp | Texaco Gas Marketing, Inc | 09-30-92 | G-S | 50,000 | N | I | 09-14-92 | Indef. |
| ST92-5823 | Mississippi River Trans. Corp | Coastal Gas Marketing Co | 09-30-92 | G-S | 250,000 | A | F | 09-01-92 | Indef. |
| ST92-5824 | Mississippi River Trans. Corp | TXG Gas Marketing Co | 09-30-92 | G-S | 50,000 | A | F | 09-01-92 | 07-31-94. |
| ST92-5825 | Mississippi River Trans. Corp | Production Gathering Co | 09-30-92 | G-S | 100 | N | I | 09-01-92 | Indef. |
| ST92-5826 | Mississippi River Trans. Corp | Associated Natural Gas Co | 09-30-92 | G-S | 8,001 | A | F | 09-01-92 | Indef. |
| ST92-5827 | Mississippi River Trans. Corp | Arkla Energy Marketing Co | 09-30-92 | G-S | 25,000 | A | F | 09-01-92 | Indef. |

[1]Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2]Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3]Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

**[Docket No. JD93-00762T Colorado-52]**

## NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation; State of Colorado

November 13, 1992.

Take notice that on November 6, 1992, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Shannon Formation underlying certain lands in Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as follows:

**Township 5 North, Range 66 West**

Section 28: S/2
Section 32: S/2
Section 33: All
Section 34: W/2SW/4

**Township 4 North, Range 66 West**

Section 3: W/2W/2
Sections 4-5: All
Section 6: SE/4
Section 8: N/2NE/4

The notice of determination also contains Colorado's findings that the referenced portion of the Shannon Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Linwood A. Watson, Jr.,**
*Acting Secretary.*

[FR Doc. 92-28172 Filed 11-18-92; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. RM93-3-000]

## Request for Public Comments on Regional Transmission Group Proposal

November 10, 1992.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is requesting public comments on a consensus proposal concerning Regional Transmission Groups or RTGs, that was reached by a cross-section of the electric utility industry during Congress' deliberations on the Energy Policy Act of 1992 (Act). While the consensus proposal was not included in the Act, it was placed in the public record by Senator Wallop. 138 Cong. Rec. S. 17,616 and S. 17,620-22 (daily ed. Oct. 8, 1992). The Commission solicits comments on the consensus proposal and how it could be adapted into a proposed rulemaking which would address Commission consideration of RTG agreements affecting matters subject to Commission jurisdiction.

**DATES:** An original and 14 copies of written comments must be filed with the Commission by December 10, 1992. All comments should refer to Docket No. RM93-3-000.

**ADDRESSES:** Comments should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Daniel L. Larcamp, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208-2088.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register,** the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, at 941 North Capitol Street, NE., Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this Request for Public Comments will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corp., also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

### Request for Public Comments

With the passage of the Energy Policy Act of 1992, which was signed into law on October 24, 1992, the Commission faces a new challenge in implementing the transmission provisions in the new legislation. In this regard, the potential of creating "Regional Transmission Groups" (RTGs) could provide substantial benefits to the public and the Commission by relieving some of the regulatory burden created by the legislation, and also by providing a forum for consensual agreements within new regional institutions. In particular, properly structured RTGs could channel the expertise of the electric utility industry toward resolving difficult technical issues relating to transmission system operations and planning in a manner that would benefit all industry participants in a fair and non-discriminatory manner.

The Commission believes it is important to encourage consensual resolutions of transmission issues on a regional basis, consistent with our responsibilities under the Federal Power Act (FPA) and with reliable, efficient and competitive wholesale power markets. By encouraging all segments of the electric utility industry to work toward consensual resolution of complex issues relating to the transmission of electric energy in interstate commerce, the Commission can better fulfill its responsibilities under the FPA, as amended by the Energy Policy Act, and reduce expensive and time-consuming litigation before the Commission.

Before the end of the conference committee deliberations on the Energy Policy Act, a cross-section of the electric utility industry [1] presented to the conferees a consensus proposal for RTG legislation under which this Commission would be required to certify RTGs which meet certain statutory criteria.[2] The proposal was submitted after the conferees had voted on the electric portions of H.R. 776 and was not included in the bill.

The Commission solicits comments on the consensus proposal, which is attached to this notice,[3] and on how it could be adapted into a proposed rulemaking which would address Commission consideration of RTG agreements affecting matters subject to Commission jurisdiction.[4] Although the consensus proposal may contain provisions which can only be promulgated by statute, the major elements of the proposal could be incorporated in a rulemaking. Specifically, the Commission could propose a rule under which it would approve jurisdictional RTG agreements [5] containing the essential

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[1] This cross-section of the electric utility industry included representatives of investor-owned utilities, independent power producers, qualifying facilities, public power, electric cooperatives, environmental and consumer groups.

[2] The consensus proposal was placed in the public record by Senator Wallop. 138 Cong. Rec. S. 17,616 and S. 17,620-22 (daily ed. Oct. 8, 1992).

[3] The consensus proposal, dated September 30, 1992, has been attached verbatim.

[4] RTG agreements may affect not only the rates, terms and conditions of transmission of electric energy in interstate commerce by public utilities—matters within the Commission's exclusive jurisdiction—but may also affect other matters within the Commission's jurisdiction. For example, RTG agreements under the consensus proposal would provide for voluntary transmission access that is consistent with the newly amended FPA sections 211 and 212 (involving mandatory transmission access), and section 211 requires that the Commission give "consideration to consistently applied regional or national reliability standards, guidelines, or criteria" in making findings on whether a section 211 order "would unreasonably impair the continued reliability of electric systems affected by the order." Thus, new RTGs presumably would have input into establishing or at least "consistently applying" such regional reliability standards.

[5] The consensus proposal contemplates RTG governing agreements which apply to rates and/or terms and conditions of voluntary transmission service in interstate commerce—matters which, to the extent the transmission provider is a public utility, are exclusively within the Commission's jurisdiction. Since virtually every RTG would include one or more public utilities, most if not all such agreements would need to be filed with, and accepted or approved by, the Commission.

elements in the consensus proposal. If commenters believe the Commission should propose such a rule, we solicit specific comments on how the consensus language could be adapted into rulemaking language.[6]

All interested persons are invited to comment on the consensus proposal no later than 30 days from issuance of this notice. An original and 14 copies of the comments must be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, and should refer to Docket No. RM93–3–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capital Street, NE., Washington, DC 20426, during regular business hours.

By direction of the Commission. Commissioner Trabandt concurred.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

**Consensus Draft**

September 30, 1992 9:37 p.m.

*Regional Transmission Groups*

Section 216. Regional Transmission Groups

(a) Commission Certification—(1) On application, the Commission shall certify a regional transmission group ("RTG") if it determines, after notice and opportunity for hearing, that such RTG's Governing Agreement ("Governing Agreement") (and any revision thereof) is just, reasonable, is not unduly discriminatory or preferential, is otherwise consistent with this Part, and meets the following specific requirements:

(A) The Governing Agreement provides for membership of sufficient scope, and a region of sufficient size, (not inconsistent with determinations, if any, made under section 202(a)), to provide transmission services consistent with this Part and with reliable, efficient, and competitive wholesale power markets;

(B) the Governing Agreement allows any entity which is subject to, or eligible to apply for, an order under section 211, and which has an interest in transmission services in the region, to join the RTG;

(C) the Governing Agreement (i) imposes on member transmitting utilities an affirmative obligation to provide transmission services to other members on a basis that is consistent with (and no less comprehensive than) sections 211, 212, and 213, including an affirmative obligation, (except as provided in section 211(d)(1)(C)), to enlarge transmission capacity when needed to provide requested transmission service; and (ii) requires members to maintain electric system reliability, as measured by continued conformance with generally applicable and recognized guidelines;

(D) The Governing Agreement requires members: (i) To coordinate in a timely manner transmission planning on a regional basis; and (ii) to share transmission planning information as provided for in the Governing Agreement, and on request; with the goals of (1) ensuring that members' forecasted loads, resources and requirements for transmission services, and as provided in the Governing Agreement, the known requirements of non-members, within, into, out of, and through the region are accommodated in a reasonable and efficient manner, consistent with applicable state utility, siting, and environmental regulation; (2) ensuring efficient utilization, expansion and coordination of interconnected transmission systems; and (3) planning for transmission needs of members to enable reasonable and efficient utilization of their power supply resources.

(E) the Governing Agreement includes governance and decision-making procedures that are fair, are structured in a manner that takes into account the interests of all members, and are consistent with this Part;

(F) the Governing Agreement includes one or more dispute resolution procedures which provide fair and equitable process for all members, and which provide for the timely resolution of any dispute; provided, however, that a member shall not be required to limit Commission review as provided in subsection (b)(2) as a condition of RTG membership or of the exercise of any right of RTG membership; and

(G) the Governing Agreement includes a requirement that the rates, charges, terms and conditions applicable to transmission service provided by members that are not public utilities to other members shall be consistent with the requirements of section 212(a), shall be filed with the Commission, and if the Governing Agreement so provides, may be subject to suspension and refund as if subject to sections 205 and 206.

(2) A Governing Agreement may establish service priorities when transmission capacity is constrained and may provide for reciprocal transmission services that extend beyond the RTG's region and for other arrangements consistent with sections 211, 212, and 213.

(3) The Commission, in certifying an RTG, may impose such terms and conditions as it finds necessary to ensure the RTG's Governing Agreement conforms with paragraph (1) and is consistent with the public interest under this Part. The RTG shall have 60 days to notify the Commission whether it accepts or rejects a Commission certification order under paragraph (1) of this subsection. The Commission shall not certify an RTG under this section if each state commission that has retail rate jurisdiction over RTG members in the region files a notice of disapproval of the Governing Agreement with the Commission under the procedures established under paragraph (1) of this subsection. The Commission may not impose as a condition of certification a requirement that a member must accept a planning decision of the RTG. A member's decision, if permitted by the Governing Agreement, not to accept a planning decision shall not relieve, affect, or qualify in any way that member's obligations to provide transmission service or enlarge transmission capacity pursuant to the Governing Agreement.

(b) Commission Authority Over RTGs—

(1) On complaint or on its own motion, the Commission may at any time:

(A) Require an RTG, or a member thereof, to submit such information as the Commission determines by rule or order to be necessary or appropriate to carry out this section;

(B) Modify or revoke the certification of an RTG if it finds that the Governing Agreement or actions taken thereunder, do not meet the requirements of subsection (a); and

(C) Determine whether any action taken under the Governing Agreement (including any agreement among members or the resolution of any dispute) by a member or by the RTG or action under a filed rate implementing the Governing agreement, is inconsistent with, or beyond the scope of, such Governing Agreement or filed rate, or is otherwise inconsistent with the Commission's certification order, or is unjust, unreasonable, unduly discriminatory or preferential, and on that basis: (i) remand the action to the RTG for timely modification consistent with the Commission's determination; or (ii) as the Commission determines is necessary or appropriate, set aside the action, or issue an order to comply with the Governing Agreement or filed rate. In taking action under this subparagraph (C), the Commission shall give a rebuttable presumption that any action by an RTG, and any action by a member (or agreement among members) that is not contested by another member, is within the scope of and consistent with the Governing Agreement or filed rate. For purposes of any proceeding under paragraph (1)(C), decisions rendered on an adequate record by an independent arbitrator in accordance with the Governing Agreement and a dispute resolution procedure that assures due process for members shall be accorded substantial deference by the Commission. For purposes of this subparagraph, the term "filed rate" means a rate referred to in subsection (b)(4)(B) or (C) that is filed and effective (not subject to refund) under section 205 or any rate described in subsection (a)(1)(G) that is in effect.

(2) If a member consents, on a case-by-case basis, not to seek Commission review under paragraph (1)(C) of a final resolution of a dispute, the Commission may not, on the basis of a complaint or protest filed by, or on behalf of, such member, set aside, remand, or issue a compliance order respecting such dispute, including any agreement among members (or any arbitration award) that resolves such dispute, except on the grounds available to a court exercising jurisdiction over the matter under applicable contract law (or sections 10 and 11 of title 9, United States Code in the case of an arbitration award).

(3) A member of a certified RTG may not apply for an order under section 211 requiring another member of such RTG to provide transmission services within the RTG's region unless the RTG's dispute resolution

[6] There are also some technical corrections that may need to be made. For example, the definition of "filed rate" at pp. 4–5 of the consensus proposal, and the reference to only "initial" rates in 4(B) at p. 6.

mechanism has failed to provide a final resolution of a dispute related to such services within a reasonable time specified in the Governing Agreement. A transmitting utility that is a member of an RTG is exempt from the application of section 213(a) with respect to other members of the RTG. The Commission may not compel any entity to be a member of an RTG. Any member may withdraw from an RTG, provided, that such member's withdrawal is in accordance with the Governing Agreement. No member shall be subject to other provisions of this Act solely by reason of compliance with a Governing Agreement approved by the Commission. Nothing in this section shall prohibit an eligible applicant for transmission service that is not a member of an RTG from exercising any rights under this Part with respect to such RTG or any member thereof.

(4) Sections 205 and 206 shall apply to (A) the Governing Agreement (including, but not limited to, any rates, terms and conditions specified therein for transmission services by public utilities) and any changes in the Governing Agreement, (B) Any initial rates, terms and conditions not specified in the Governing Agreement for transmission services by public utilities under the Governing Agreement, and (C) any changes in such rates, terms and conditions. The Governing Agreement may not require that any dispute resolution procedure under subsection (a)(1)(F) must be utilized with respect to such changes, unless such procedure applies to changes under both sections 205 and 206. A member seeking a change in the Governing Agreement may be required to first seek such change under the Governing Agreement.

(c) Federal Entities—A Federal agency or instrumentality to which section 211 applies may be a member of an RTG and may subject legal and factual disputes with respect to a matter arising under an RTG's Governing Agreement to the RTG's dispute resolution mechanism, including binding arbitration which conforms to the requirements of subsection (b), except that:

(1) The establishment and review of rates and other terms of transmission service provided by the Federal Columbia River Transmission System shall be consistent with section 212(i); and

(2) Notwithstanding subsection (b)(2), the Commission shall review and approve or set aside any binding arbitration decision.

(d) Other Law—(1) Certification of an RTG under this section shall not affect State siting, environmental or utility regulatory authority that could otherwise be lawfully exercised over members of such RTG.

Also make the following conforming changes to section 212(e)(1) and (2) in the Johnston/Sharp compromise, circulated on September 28, 1992 at 4:41 pm:

On page 21, line 10, add cross reference to new section 216 dealing with regional transmission groups.

On page 21, line 13, add cross reference to new section 216 dealing with regional transmission groups.

On page 21, line 16, add cross reference to new section 216 dealing with regional transmission groups.

On page 21, line 18, insert before the period, "except that nothing herein shall foreclose any claim or defense under those laws which may be applicable."

[FR Doc. 92-27992 Filed 11-18-92; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 10897-002 Oregon]

## Russell Canyon Corp.; Surrender of Preliminary Permit

November 13, 1992.

Take notice that Russell Canyon Corporation, permittee of the Russell Canyon Pumped Storage Project No. 10897, has requested that its permit be terminated. The permit was issued November 23, 1990, and would have expired October 31, 1993. The project would have been located in Russell Canyon in Klamath County, Oregon.

The permittee filed the request on October 23, 1992, and the permit for Project No. 10897 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-28162 Filed 11-18-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ92-5-1-005]

## Proposed Change in FERC Gas Tariff; Alabama-Tennessee Natural Gas Co.

November 13, 1992.

Take notice that on November 9, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Revised Substitute 32nd Revised Sheet No. 4

According to Alabama-Tennessee, this filing is being made to comply with the Commission's October 29, 1992 Letter Order in this proceeding. Alabama-Tennessee states that, as directed by the Commission, it has modified the computation of the jurisdictional contract demand levels which it originally used in calculating the demand charge proposed in this docket.

According to Alabama-Tennessee, it has achieved a settlement in principle with its jurisdictional resale customers which, if approved, will resolve all issues raised by the Tennessee Valley Municipal Gas Association in this proceeding, including the issue of the correct jurisdictional contract demand levels to be used. Alabama-Tennessee has requested that the Commission accept its compliance filing in fulfillment of its requirements under the Letter Order, but that no further action by the Commission be taken at this time, pending its review of the forthcoming offer of settlement which Alabama-Tennessee states it intends to file by the end of this month.

In any event, according to Alabama-Tennessee, Substitute 32nd Revised Sheet No. 4 was superseded August 1, 1992, pursuant to the Commission's August 28, 1992 order issued in Docket No. TQ92-6-1-000. Alabama-Tennessee states that, as a result, its jurisdictional resale customers will not be harmed by Alabama-Tennessee's proposal that no action by the Commission be taken at this time on its compliance filing.

Alabama-Tennessee has requested such waivers of the Commission's Regulations that may be necessary to permit the tariff sheet to become effective as proposed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 20, 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.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 92-28160 Filed 11-18-92; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ93-1-21-001]

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 13, 1992.

Take notice that Columbia Gas Transmission Corp. (Columbia) on November 9,1992, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

**October 1, 1992 Level**

Sub Twenty-fourth Revised Sheet No. 26
Sub Sixteenth Revised Sheet No. 26.1
Sub Twenty-third Revised Sheet No. 26A
Sub Sixteenth Revised Sheet No. 26A.1
Sub Thirteenth Revised Sheet No. 26B.1
Sub Twenty-third Revised Sheet No. 163

**November 1, 1992 Level**

Sub Seventeenth Revised Sheet No. 26.1
Sub Seventeenth Revised Sheet No. 26A.1

Columbia states the foregoing tariff sheets are being filed in compliance with the Commission's order issued October 29, 1992, in Docket Nos. TQ93–1–21–000, TM93–3–21–000, and RP88–207, *et al.* Such order directed Columbia to refile its PGA tariff sheets to be effective October 1, 1992, to reflect the proper demand rates of Kentucky–West Virginia Gas Co.

The sales rates set forth on Sub Sixteenth Revised Sheet No. 26.1 reflect a decrease of $.035 per Dth in the Demand rate when compared with the rates contained in Columbia's September 30, 1992 Out–of–Cycle PGA filing.

Columbia states that copies of the filing were served on Columbia's jurisdiction cutstomers 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 November 20, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28171 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 1951 Georgia]**

## Georgia Power Co.; Intent To File an Application for a New License

November 13, 1992.

Take notice that Georgia Power Company, the existing licensee for the Sinclair Hydroelectric Project No. 1951, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1951 was issued effective September 1, 1947, and expires August 31, 1997.

The project is located on the Little and Oconee Rivers in Baldwin, Hancock, Jones and Putnam Counties, Georgia. The principal works of the Sinclair Project include a reservoir, earth embankments, concrete gravity structures, powerhouse, switch yard, tailrace channel, and electrical generation equipment with a total installed capacity of 45,000 kW.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 333 Piedmont Avenue, Atlanta, GA 30308.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be file by August 31, 1995.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28174 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 2663 Minnesota]**

## Minnesota Power & Light Co.; Intent To File an Application for a New License

November 13, 1992.

Take notice that Minnesota Power & Light Company, the existing licensee for the Pillager Hydroelectric Project No. 2663, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2663 was issued effective May 12, 1967, and expires May 11, 1997.

The project is located on the Crow Wing River in Cass and Morrison Counties, Minnesota. The principal works of the Pillager Project include a low remote earth dike section 1,332 feet long; the main dam composed of a concrete gravity rollway and integral powerhouse 455 feet long; 18 slide gates on the 357 foot rollway section; a powerhouse capacity of 1,520 kW; a right earth embankment 223 feet long and a left earth embankment 225 feet long; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 30 West Superior Street, Duluth, Minnesota 55802.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 11, 1995.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28173 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–20–000 and RP91–166–016]**

## Change in FERC Gas Tariff; Northwest Pipeline Corp.

November 13, 1992.

Take notice that on November 6, 1992, Northwest Pipeline Corporation (Northwest) tendered the tariff sheets listed below to comply with Commission Orders issued May 1, 1992 and October 7, 1992.

*Second Revised Volume No. 1*

First Revised Sheet No. 1
First Rev Twentieth Revised Sheet No. 10
First Rev Nineteenth Revised Sheet No. 11
First Revised Sheet No. 19
First Revised Original Sheet No. 20
First Revised Original Sheet No. 22
First Revised First Revised Sheet No. 25
First Revised Sheet No. 28
First Revised First Revised Sheet No. 31
First Revised First Revised Sheet No. 32
First Revised Sheet No. 35
First Revised First Revised Sheet No. 37
First Revised Sheet No. 41
First Revised Sheet No. 43
First Revised Sheet No. 51
First Revised First Revised Sheet No. 100
First Revised Sheet No. 113
First Revised Original Sheet No. 120
First Revised Original Sheet No. 122
First Revised Original Sheet No. 123
First Revised Sheet No. 124
First Revised Sheet No. 125
First Revised Sheet No. 126
First Revised Sheet No. 127
First Revised Sheet No. 128
First Revised Sheet No. 129
First Revised Sheet No. 130
First Rev Sheet Nos. 131 through 135
Second Revised Sheet No. 136
Second Revised Sheet Nos. 148 and 149
Third Revised Sheet No. 150
First Revised Sheet Nos. 151 and 152
Second Revised Sheet No. 207
First Rev Fourth Revised Sheet No. 300
First Rev Third Revised Sheet No. 301
First Rev Third Revised Sheet No. 302
First Rev First Revised Sheet No. 303
First Revised Original Sheet No. 304

*First Revised Volume No. 1–A*

First Revised Original Sheet No. 400
First Revised Sheet No. 425
Original Sheet No. 447
Sheet Nos. 448 through 500
First Rev Fourth Revised Sheet No. 601
First Rev Sub Fourth Rev Sheet No. 602

*Original Volume No. 2*

Seventh Revised Sheet No. 1–A
Original Sheet Nos. 1635 through 1715

Northwest states that the above listed tariff sheets are filed to reflect the implementation of the Commission approved Docket No. CP92–79 sales conversions. Northwest is concurrently filing a Notice of Acceptance of Order relating to the conversions. Northwest requests a November 1, 1992 effective date for all tariff sheets contained in this filing. A copy of this filing has been served upon all parties of record in Docket No. CP92–79

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 20, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28168 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 1927 Oregon]**

## PacifiCorp Electric Operations; Intent To File an Application for a New License

November 13, 1992.

Take notice that PacifiCorp Electric Operations, the existing licensee for the North Umpqua Hydroelectric Project No. 1927, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1927 was issued effective January 30, 1947, and expires January 30, 1997.

The project is located on the North Umpqua River in Douglas County, Oregon. The principal works of the North Umpqua Project include all of the dams, powerhouses, waterways, transmission lines and appurtenant facilities associated with the following eight developments: Soda Springs, Slide Creek, Fish Creek, Toketee, Clearwater No. 2, Clearwater No. 1, Lemola No. 2 and Lemola No. 1; with a total installed capacity of 185.500 kW.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 920 SW. Sixth Avenue, room 610 PSB, Portland, Oregon 97204.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by January 30, 1995.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28163 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP91–202–003]**

## Compliance Filing; Paiute Pipeline Co.

November 13, 1992.

Take notice that on November 9, 1992, Paiute Pipeline Company (Paiute) tendered for filing the following tariff sheets to be part of its FERC Gas Tariff, First Revised Volume No. 1–A:

2nd Sub First Revised Sheet No. 10.
1st Rev 2nd Substitute First Revised 10.
1st Revised Second Revised Sheet No. 10.
Substitute First Revised Sheet No. 130.

Paiute indicates that the purpose of its filing is to comply with the Commission's order issued October 9, 1992 in Docket Nos. RP91–202–000 and RP88–227–000, et al., by which the Commission approved an offer of settlement filed by Paiute. Paiute requests that the proposed tariff sheets be permitted to become effective consistent with the effective dates prescribed in the settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 20, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28169 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–21–000]**

## South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

November 13, 1992.

Take notice that on November 10, 1992, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 10, 1992:

First Revised Sheet No. 16E.
First Revised Fourth Revised Sheet No. 16T.
First Revised Sheet No. 16U.
First Revised Sheet No. 34Z.08.
First Revised Sheet No. 34Z.09.

South Georgia proposes to revise its nomination deadlines to coincide with the nomination deadlines of the upstream transporter of gas serving South Georgia's system. These revisions will give shippers additional time to submit nominations for the first of the month and two (2) more hours to submit nominations electronically. South Georgia has also proposed a provision to allow it to accept late nominations on a nondiscriminatory basis if to do so will not impair the processing of timely nominations.

South Georgia states that copies of the filing will be served upon all of its shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be on file on or before November 20, 1992. Protests will be considered by the Commission in determining the 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28161 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–23–000]**

## Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 13, 1992.

Take notice that on November 12, 1992, Transcontinental Gas Pipe Line Corp. (Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised

Sheet No. 62, with a proposed effective date of November 20, 1992.

Transco states that the purpose of the filing is to permit Transco to discount its Commodity Producer Settlement Payment (PSP) Charge for quantities of gas received and redelivered by Transco in its Rate Zones 1, 2, or 3 under Transco's Rate Schedules IT and FT.

Transco states that Transco proposes for transportation within Zones 1–3 a minimum PSP Charge of 1.5¢ per dt (1.6¢ per Mcf) and a maximum PSP Charge of 10.2¢ per dt (10.6¢ per Mcf), the latter charge being the PSP Charge for transportation within Zones 1–3 which became effective September 1, 1992, and is currently being charged, subject to refund, in accordance with Transco's rate case filing in Docket No. RP92–137–000.

Transco requests waiver of the Commission's thirty-day notice requirement contained in Section 154.22 of the Commission's regulations to permit the tendered tariff sheet to become effective November 20, 1992.

Transco states that copies of the filing were mailed to its customers and interested state commissions.

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 November 19, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28046 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP91–126–011]**

## United Gas Pipe Line Co.; Filing of Revised Tariff Sheet

November 13, 1992.

Take notice that on October 30, 1992, United Gas Pipe Line Company (United) tendered for filing the following tariff sheet to be effective November 1, 1992:

*Third Revised Volume No. 1,* First Revised Third Revised Sheet No. 4C

United states that the above referenced tariff sheet serves to extend the operation of the provisions of the Joint Stipulation and Agreement (Settlement) in the above-referenced proceeding governing the pricing of United's gas commodity charge and customers' R & C purchase commitments for the period November 1, 1992, through March 31, 1993, the date the Settlement expires.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 20, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 92–28164 Filed 11–18–92; 8:45 am]

BILLING CODE 6717–01–M

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# Office of Fossil Energy

**[FE Docket No. 92–81–NG]**

## Anthem Energy Marketing, Inc.; Blanket Authorization to Export Natural Gas to Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Anthem Energy Marketing, Inc. to export up to 65.7 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 13, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–28158 Filed 11–18–92; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 92–127–NG]**

## CanadianOxy Marketing Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of an order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CanadianOxy Marketing Inc. blanket authorization to import up to 100 Bcf on natural gas from Canada over a two-year term, beginning on the date of first import delivery after February 21, 1993.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 13, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–28153 Filed 11–18–92; 8:45 am]

BILLING CODE 6450–01–M

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## Essex County Gas Company, Docket No. 92–140–NG, et al.; Orders Granting Blanket Authorization to Import Natural Gas from Canada

In the matter of City of Holyoke Gas & Electric Department, Docket No. 92–141–NG; The Berkshire Gas Company, Docket No. 92–142–NG; Energynorth Natural Gas, Inc., Docket No. 92–143–NG; The Valley Gas Company, Docket No. 92–144–NG; Fitchburg Gas and Electric Light Company, Docket No. 92–145–NG.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued orders to the six gas distribution companies listed above authorizing each one to import up to 4 Bcf of natural gas from Canada over a two-year period beginning on the date of the first delivery.

These orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open

between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 13, 1992.

**Charles F. Vacek,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 92–28159 Filed 11–18–92; 8:45 am]

BILLING CODE 6450–01–M

## Office of Hearings and Appeals

## Proposed Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of proposed implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $5,982.32, plus accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of a Remedial Order entered into with Doma Corporation (DOMA) and Don Martin (Martin), Case No. LEF–0049. The OHA has tentatively determined that the funds obtained from DOMA and Martin, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

**DATE AND ADDRESS:** Comments must be filed in duplicate on or before December 21, 1992 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case Number LEF–0049.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–2390.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $5,982.32, plus accrued interest, obtained by the DOE under the terms of a Remedial Order entered into with Doma Corporation (DOMA) and Don Martin (Martin) on July 25, 1985. Under the Remedial Order, DOMA and Martin were found to have violated the Federal petroleum price and allocation regulations involving the sale of crude oil during the period November 1973 through June 1977.

The OHA has proposed to distribute the Remedial Order funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (the MSRP). 51 FR 27899 (August 4, 1986). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states are distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers are based on the total volume of petroleum products purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 12, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### Proposed Decision and Order of the Department of Energy—Implementation of Special Refund Procedures

November 12, 1992.

*Name of Firm:* Doma Corporation and Don Martin.

*Date of Filing:* September 17, 1992.

*Case Number:* LEF–0049.

This Proposed Decision and Order considers a Petition, filed by the Economic Regulatory Administration (ERA), for the Implementation of Special Refund Procedures (Petition) for crude oil overcharge funds. Under the procedural regulations of the Department of Energy (DOE), the ERA may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. See Petition for Implementation of Special Refund Procedures, 10 CFR 205.281. These procedures are used to refund monies to those persons who were injured by actual or alleged violations of the DOE price regulations. We have considered the ERA's September 17, 1992, request to implement subpart V procedures with respect to the monies received from Doma Corporation (DOMA) and Don Martin (Martin) and have determined that such procedures are appropriate.

The Petition filed by the ERA seeks to implement special refund procedures for monies that were remitted by DOMA and Martin pursuant to Final Remedial Order No. HRO–0209 (the Order) issued on July 25, 1985, by the OHA. Under this Order, DOMA and Martin were found to have violated provisions of the Federal petroleum price and allocation regulations during the period November 1973 through June 1977 (the audit period). A total amount of $5,982.32 has been remitted to the DOE.[1] This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

### I. Background

DOMA was incorporated in the state of Texas on May 31, 1973, and was headed by Don Martin, President. Its crude oil trading activities, during the audit period, were based in Abilene, Texas and consisted primarily of purchasing and reselling crude oil (without substantially changing its form) to purchaser other than ultimate consumers. DOMA was, therefore, a reseller as that term is defined at 10 CFR 212.31.

On June 13, 1979, the ERA issued a Notice of Probable Violation (NOPV) alleging that during the audit period DOMA committed violations of DOE regulations in its sales of crude oil. On February 7, 1984, the ERA issued an Amended Proposed Remedial Order (APRO) Case No. 6A0X00111. The APRO alleged that both DOMA and Martin charged prices in excess of the maximum legal selling price; purchased uncertified barrels of bottoms oil and sold them as new or stripper oil; and miscertified various petroleum products as new or stripper crude oil in violation of the following statutory provisions: 10 CFR 205.202, 210.62(c), 212.10, .93, .131.

This Office issued the APRO as a Final Remedial Order to DOMA and Martin on July 25, 1985. See Final Remedial Order at 29. DOMA and Martin have remitted $5,982.32, plus

[1] The alleged violations referred to in this Proposed Decision and Order involve the sales of both crude oil and refined petroleum products. However, in view of the size of the payment and the fact that most of the overcharges relate to crude oil, the OHA has determined that the interests of administrative efficiency would best be served by considering all monies received to be the result of crude oil violations.

interest to the Office of Controller, of the Department of Energy. These funds are available for distribution through subpart V and currently are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

**II. Jurisdiction and Authority**

The general guidelines that govern the OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

**III. The Proposed Crude Oil Refund Procedures**

*A. Crude Oil Refund Policy*

The monies remitted by DOMA and Martin will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 FR 27899 (August 4, 1986). This policy has been utilized in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (the August 1986 Order). Under the MSRP, 40 percent of the crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims by injured parties. The MSRP also specified that, after all valid claims by injured purchasers are paid, any remaining monies will be disbursed to the federal government and the states in equal amounts. See, *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (the Stripper Well Settlement Agreement) for a more detailed discussion of the MSRP.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981, crude oil price control period; and (2) prove they were injured by the alleged crude oil overcharges. End-users of petroleum products whose businesses are unrelated to the petroleum industry would be presumed to have been injured by the alleged crude oil overcharges and would not be required to submit any additional proof of injury beyond documentation of their purchase volumes. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

*B. Refund Claims*

We propose to adopt the DOE's standard procedures, as set forth in the MSRP, to distribute the crude oil monies obtained from DOMA and Martin. The amount of money covered by this Proposed Decision and Order, as previously stated, is $5,982.32, plus accrued interest. We have chosen initially to reserve 20 percent of these funds ($1,196.46) for direct refunds to claimants.

The OHA proposes to evaluate claims for the DOMA and Martin crude oil refund proceeding in exactly the same manner as we have evaluated claims submitted in other crude oil proceedings. Claimants generally will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations. We will adopt a presumption that the crude oil overcharges were absorbed, rather then passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988).

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury; and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* Finally, if a claimant has executed and submitted a valid waiver, pursuant to one of the escrow accounts established by the Stripper Well Settlement Agreement, then he has waived his right to file an application for Subpart V crude oil refund monies. *See Mid-American Dairymen* v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 11267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

Refunds to eligible claimants that purchased refined petroleum products will be calculated on the basis of a volumetric amount obtained by dividing the crude oil refund monies involved in this determination ($5,982.32) by the total U.S. consumption of petroleum products during the price control period (2,020,997,335,000 gallons). See *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). The calculation results in a volumetric refund amount of $0.000000003 per gallon for the monies submitted by DOMA and Martin.

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See e.g., *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The current deadline for filing an Application for Refund is June 30, 1994. See *Anchor Gasoline Corp.*, 22 DOE ¶ 85,071 (1992). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $.0008 per gallon. We anticipate that applicants who filed their claims by June 30, 1988, will receive a supplemental refund payment, however, we will decide in the future whether claimants that filed later applications should receive additional refunds. Applicants may be required to submit additional information to support their refund claims for future amounts. Notice of any such additional amounts will be published in the **Federal Register.**

*C. Payments to the States and Federal Government*

Under the terms of the MSRP, we propose that the remaining 80 percent of the crude oil violation amounts subject to this Proposed Decision or $4,785.86 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds allocated to each state is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements that apply to any other crude oil funds received by the states in

accordance with the Stripper Well Agreement.

*It Is Therefore Ordered That:*

The refund amount remitted to the Department of Energy by Doma Corporation and Don Martin, pursuant to the Remedial Order finalized on July 25, 1985, will be distributed in accordance with the foregoing Decision.

[FR Doc. 92-28154 Filed 11-18-92; 8:45 am]
BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $288,327, plus accrued interest, obtained by the DOE pursuant to a Consent Judgment In Action for Restitution and Civil Penalties between the United States and Cresent Refining and Oil Company and Petroleum Fuel Company. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

**DATE AND ADDRESS:** Applications for Refund submitted for a portion of these funds must be filed in duplicate, postmarked no later than June 30, 1993. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All Applications for Refund should display a reference to case number LEF-0044.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-2390.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $288,327 that has been remitted by Crescent Refining & Oil Company (Crescent) and Petroleum Fuel Company (PFC) to the DOE to settle possible pricing violations with respect to their sales of No. 2-D diesel fuel, PS 200 fuel oil, PS 300 fuel oil, PS 400 fuel oil and bunker fuel during the period September 1, 1973 through October 31, 1975. The DOE is currently holding the funds in an interest bearing account pending distribution.

Applications for refund will be accepted from customers who purchased controlled refined petroleum products from Crescent and PFC in transactions that were the subject of the DOE's enforcement proceedings against those firms. These customers are listed in the Appendix to the Decision and Order. Applications for Refund must be postmarked no later than June 30, 1993 to meet the filing deadline.

Dated: November 12, 1992.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

### Decision and Order of the Department of Energy—Implementation of Special Refund Procedures

November 12, 1992.

*Name of Firms:* Crescent Refining & Oil Company; Petroleum Fuel Company.

*Date of Filing:* April 17, 1992.

*Case Number:* LEF-0044.

On April 17, 1992, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of an enforcement proceeding involving Crescent Refining & Oil Company (Crescent) and Petroleum Fuel Company (PFC) pursuant to 10 CFR part 205, subpart V. On July 20, 1992, the OHA issued a Proposed Decision and Order (PD&O) that tentatively set forth procedures for distributing these funds to qualified refund applicants. 57 FR 32982 (July 24, 1992). We established a 30-day period for the submission of comments regarding the proposed procedures. We received no comments. The present Decision will set forth final procedures for the distribution of the Crescent and PFC funds.

### I. Background

Crescent and PFC were reseller-retailers as defined by 10 CFR 212.31 and were subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firms' pricing practices, the ERA determined that during the period September 1, 1973, through October 31, 1975 (the Consent Order period), Crescent and PFC overcharged specific customers in certain sales of No. 2-D diesel fuel, PS 200 fuel oil, PS 300 fuel oil, PS 400 fuel oil and bunker fuel. On September 28, 1979, the ERA issued a Proposed Remedial Order (PRO) to Crescent and PFC. Crescent and PFC were owned by the same individuals and were treated as a single firm for purposes of the PRO. Therefore, we will hereinafter refer to the firms collectively as Crescent. On February 21, 1980, Crescent filed its Statement of Objections to the PRO. The OHA issued a Remedial Order (RO) on April 27, 1981 which found that Crescent had overcharged those customers as alleged in the PRO during the period from September 1, 1973, through October 31, 1975. *Crescent Refining & Oil Co.*, 8 DOE ¶ 83,003 (1981). Crescent appealed the RO to the Federal Energy Regulatory Commission (FERC). On December 21, 1983, the FERC's Presiding Officer, Richard Howe, Jr., issued a Proposed Order (PO) that affirmed the RO in all respects. *Crescent Refining and Oil Co.*, 25 FERC ¶ 62,404 (1983). On March 23, 1984, FERC issued an Order adopting the PO. *Crescent Refining and Oil Co.*, 26 FERC ¶ 61,377 (1984). On November 5, 1990, the United States of America filed for damages and summary enforcement of the RO in the United States District Court for the Central District of California. In order to settle the matter, the United States and Crescent entered into a Consent Judgment In Action for Restitution and Civil Penalties (Consent Judgment) which was approved by the Court on September 18, 1991. The Consent Judgment stipulated that Crescent remit a total of $350,000 over a period of seven years to the United States. However, pursuant to a settlement between the DOE and Crescent approved by the Court on December 27, 1981, the DOE received $288,327 from Crescent as a Receipt and Full Satisfaction of Judgment.

This Decision and Order concerns the distribution of the $288,327, plus interest accrued on this amount in escrow, that Crescent remitted to the DOE for direct restitution to the identified customers found by the RO to have been overcharged. The RO found that Crescent overcharged a number of its customers on certain sales of No. 2-D diesel fuel, PS 200 fuel oil, PS 300 fuel oil, PS 400 fuel oil, and bunker fuel. We will hereinafter refer to those products as covered products. The Appendix attached to this Decision is based on information contained in the PRO. The Appendix sets forth the covered products, the names of the Crescent customers who were overcharged on each particular product, and the amount that each customer was allegedly overcharged by Crescent. Accordingly, the potential refund claimants in this proceeding are the customers listed in the Appendix of this Decision.

In order to give notice to all affected parties, a copy of the PD&O was published in the Federal Register and comments regarding the proposed refund procedures were solicited. 57 FR 32982 (July 24, 1992). We received no comments concerning the proposed refund procedures for Crescent.[1] Therefore, we will adopt the procedures in the PD&O as final procedures for the distribution of the Crescent escrow account.

## II. Refund Procedures

As indicated above, the Crescent customers listed in the Appendix of this Decision constitute the set of potential refund claimants. Therefore, we will consider refund applications only from these customers, including the successor in interest of any customer. Because the Consent Judgement funds are substantially less than the amount of the violations found by the RO, it is necessary to recalculate each purchaser's potential refund amount. We therefore have calculated the fraction of the alleged overcharge represented by the Consent Judgement funds. We have then multiplied that fraction (.562400959) by the amount of alleged overcharge specified in the RO for each customer to yield the maximum amount that each customer is entitled to receive.[2] These amounts are listed as the Pro-Rata Share next to each potential claimant's name in the Appendix to this Decision. We recognize that any eligible firm could have been overcharged in amounts greater than the alleged RO overcharges listed in the Appendix of this Decision. However, unless an applicant is able to demonstrate, with respect to specific transactions covered by the RO, that the amount listed is not reflective of the overcharges that it sustained, we will conclude that an applicant should not be eligible to receive a refund in an amount greater than its pro-rata share of the Consent Judgement funds as calculated from the violation amounts found by the RO.

### *A. Requirements for Refund Claimants*

In order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. See, e.g., *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). However, as we have done in many prior refund cases, we will adopt specific injury presumptions that will simplify and streamline the refund process for some categories of customers: small claims, end-users, and regulated firms and cooperatives. These presumptions will excuse members of certain applicant categories from proving that they were injured by Crescent's alleged overcharges, and are discussed below.

#### 1. Reseller Applicants Seeking Refunds for $5,000 or less

We are adopting the presumption, as we have in many previous cases, that resellers seeking small refunds were injured by Crescent's pricing practices. See, e.g., *E.D.G., Inc.*, 17 DOE ¶85,679 (1988).[3] We recognize that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant who claims a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing that it is one of the eligible customers that purchased the covered products listed in the Appendix. However, a reseller applicant must follow the procedures that are outlined below if the applicant is seeking a refund in excess of $5,000, plus interest accrued on that amount while in escrow.

#### 2. Reseller Applicants Seeking Larger Refunds

If a reseller claims an amount in excess of $5,000, it will be required to provide a detailed demonstration of its injury. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those increased costs. Se e.g., *Quintana Energy Corp.*, 21 DOE ¶85,032 at 88,117 (1991). If a reseller that is eligible for a refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $5,000 plus accrued interest from the escrow fund.

#### 3. End-users

We are adopting the presumption that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by Crescent's alleged overcharges, and are entitled to their full share of the settlement monies obtained from Crescent. Unlike regulated firms in the petroleum industry, end-users were not subject to price controls during the Consent Judgment period. Moreover, these unregulated firms were not required to keep records that justified selling price increases by reference to cost increases. Therefore, an analysis of the impact of the alleged overchanges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See, e.g., *American Pacific International, Inc.*, 14 DOE ¶85,158 at 88,294 (1986). Accordingly, any applicant claiming to be an end-user must establish that it is one of the Crescent customers listed in the Appendix or a successor thereto and that the nature of its business made it an ultimate consumer of the Crescent covered products listed for it in the Appendix. If an applicant establishes those two facts, it will receive its full pro-rata share as its refund without making a detailed demonstration of injury.

#### 4. Regulated Firms and Cooperatives

Regulated firms (such as public utilities) and agricultural cooperatives, which are required to pass on to their

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[1] In an August 28, 1992 letter, Howard Phifer of the Defense Fuel Supply Center of the Defense Logistics Agency stated only that that office is responsible for obtaining oil overcharge refunds for all Federal purchasers of petroleum products. Accordingly, we will accept claims on behalf of the Defense Fuel Supply Center for the Federal purchasers listed in the Appendix of this Decision.

[2] The PRO and RO found that Crescent committed violations in the amount of $514,454.03. However, our review of the individual violations listed in the exhibits to the PRO reveals that two errors were made in the calculation of the violation amount for the PS 200 customers. As an initial matter, we have determined that the individual overcharges listed in the PRO for PS 200 Class 4 customers total only $20,339.13 rather than the $22,126.56 listed. The difference between the actual and listed total violation for the PS 200 Class 4 customers is therefore $1,787.43. In addition, a separate error was made in calculating the total violation amount for all classes of PS 200 customers, which resulted in the PRO's total violation amount for all classes of purchasers of PS 200 ($151,100.20) being understated by $5.00. The actual violation amount, using the erroneous figure for class 4 customers, should have been $151,105.20 and the total erroneous violation amount for all products and classes of customers should have been $514,459.03 rather than $514,454.03. Accordingly, the actual violation amount, as derived by a tally of all the individual violations listed in the exhibits to the PRO, equals $512,671.60 [($514,454.03 + $5.00) − $1,787.43 = $512,671.60]. Accordingly, we will calculate the customers' pro-rata shares based upon a total violation amount of $512,671.60.

[3] Exhibit L of the PRO indicates that the customers classified as resellers were overcharged a total of $17,503.91 on purchases of No. 2-D diesel fuel. The remainder of the overcharges went to purchasers classified as end-users by the PRO. By the process of elimination, the OHA has determined that the reseller customers were Verne's Truck Center, LODS Furniture Freight, and Bandini Truck Terminal.

customers the benefit of any refund received, are exempted from the requirement that they make a detailed showing of injury. *Marathon Petroleum Co.*, 14 DOE ¶85,269 at 88,515 (1986); see also *Office of Special Counsel*, 9 DOE ¶ 82,536 at 85,203 (1982). We do require a regulated firm or cooperative to establish that it is one of the Crescent customers listed in the Appendix or a successor thereto. In addition, we require each such claimant to certify that it will pass any refund received through to its customers, to provide us with a full explanation of the manner in which it plans to accomplish this restitution to its customers and to notify the appropriate regulatory or membership body of the receipt of the refund money. If a regulated firm or cooperative meets these requirements, it will receive a refund equal to its full pro-rata share. However, any public utility claiming a refund of $5,000 or less will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered product to non-members will be treated in the same manner as sales by other resellers under section A (2) above.

*B. Distribution of the Remainder of the Crescent Consent Judgement Funds*

In the event that money remains after all refund claims from the Crescent fund have been analyzed, those funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–4507 (1988). Pursuant to the PODRA, the funds will be distributed to state governments for use in energy conservation programs.

**III. General Refund Application Requirements**

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from the Crescent customers listed in the Appendix of this Decision, and the successor in interest of any of these customers. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the Consent Order firms, Crescent Refining & Oil Company and Petroleum Fuel Company (Crescent); the case number (LEF–0044); the name and address of the applicant during the period for which the claim is filed; the applicant's current address; the applicant's taxpayer identification number; and the name to whom the refund check should be made and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the application;

(3) The manner in which the applicant used the Crescent product, *i.e.*, whether it was a reseller, retailer, consignee, end-user, etc.;

(4) Evidence necessary to establish that the applicant is the entity listed in the Appendix as a Crescent purchaser, and all relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(5) If the applicant was or is in any way affiliated with Crescent, an explanation of the nature of that affiliation;

(6) The form of the business, whether it was a corporation, a partnership or a sole proprietorship;

(7) The dates of ownership including the month and year. The applicant must also submit a statement as to whether there has been a change in ownership of the applicant's firm during or since the refund period. The applicant must inform the OHA of any change in status while its Application for Refund is pending. See CFR 205.9(d);

(8) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d);

(9) A statement as to whether the applicant or a related firm has filed any other Application for Refund in the Crescent proceeding;

(10) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Crescent proceeding; and

(11) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 10001."

Applications for Refund should be sent to: Crescent Refund Proceeding, Case No. LEF–0044, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

All applications must be filed in duplicate and must be postmarked by June 30, 1993. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

*It Is Therefore Ordered That:*

(1) Applications for Refund from the funds remitted to the Department of Energy by Crescent Refining & Oil Company and Petroleum Fuel Company, pursuant to the Consent Judgement approved on September 18, 1990, may now be filed.

(2) All applications must be postmarked by June 30, 1993.

Dated: November 12, 1992.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

APPENDIX

| Product/customer type | Name | Alleged overcharge | Pro-rate share |
|---|---|---|---|
| PS 300 | American Cement | $245.24 | $137.92 |
| PS 300 | American Pipe | 73.38 | 41.27 |
| PS 300 | Holly Sugar | 38,056.92 | 21,403.25 |
| PS 300 | Riverside Cement | 717.51 | 403.53 |
| PS 300 | City of Pasadena | 111,812.21 | 62,883.29 |
| PS 300 | City of Burbank | 52,351.25 | 29,442.39 |
| Diesel Fuel | Active Trucking | 5,554.15 | 3,123.66 |

APPENDIX—Continued

| Product/customer type | Name | Alleged overcharge | Pro-rate share |
|---|---|---|---|
| Diesel Fuel | American Pacific | 51.48 | 28.95 |
| Diesel Fuel | Bandini Truck Service | 940.95 | 529.19 |
| Diesel Fuel | Fitzgerald Bros. Truck Service | 4,330.30 | 2,435.36 |
| Diesel Fuel | U.S. Army Fort MacArthur | 1,128.60 | 634.73 |
| Diesel Fuel | Kenney Truck Tires | 780.80 | 439.12 |
| Diesel Fuel | Lods Furniture Freight | 322.00 | 181.09 |
| Diesel Fuel | NAS | 40.00 | 22.50 |
| Diesel Fuel | Verne's Truck Center | 16,240.96 | 9,133.93 |
| Bunker | Refining Associates, Inc. | 30,383.13 | 17,087.50 |
| PS 400 | American Cement | 40,630.15 | 22,850.44 |
| PS 400 | Imperial Irrigation | 59,694.80 | 33,572.41 |
| PS 200 Class 1 | City of Los Angeles | 19,044.45 | 10,710.62 |
| PS 200 Class 1 | Naval Air Station Los Alamitos | 2,237.05 | 1,258.12 |
| PS 200 Class 2 | Alhambra City Schools | 4,567.77 | 2,568.92 |
| PS 200 Class 2 | City of Glendale | 783.49 | 440.64 |
| PS 200 Class 2 | Los Angeles City Schools | 24,035.41 | 13,517.54 |
| PS 200 Class 2 | Pacific Telephone, Orange | 236.54 | 133.03 |
| PS 200 Class 2 | Pasadena City School | 18,096.98 | 10,177.76 |
| PS 200 Class 13 | Gaylord Hotel | 91.38 | 51.39 |
| PS 200 Class 13 | Kleen Towel | 67.34 | 37.87 |
| PS 200 Class 13 | Little Sister of the Poor | 81.00 | 45.55 |
| PS 200 Class 13 | Reliable Grease | 353.80 | 198.98 |
| PS 200 Class 13 | Soft Water Laundry | 128.00 | 71.99 |
| PS 200 Class 13 | Southern Serv. Pamona | 276.04 | 155.25 |
| PS 200 Class 14 | ANSCO Steel Co. | 180.00 | 101.23 |
| PS 200 Class 14 | Bank of America | 63.67 | 35.81 |
| PS 200 Class 14 | California Piece D. Works | 70.00 | 39.37 |
| PS 200 Class 14 | California Hosp. Medical Center | 238.63 | 134.21 |
| PS 200 Class 14 | CBS TV | 108.80 | 61.19 |
| PS 200 Class 14 | F.C. Braun & Co. | 202.50 | 113.89 |
| PS 200 Class 14 | Charles Dunn Co. | 59.40 | 33.41 |
| PS 200 Class 14 | Compton Forge | 886.50 | 498.57 |
| PS 200 Class 14 | Dart Industries | 47.00 | 26.43 |
| PS 200 Class 14 | Earle Jorgensen | 599.20 | 336.99 |
| PS 200 Class 14 | Furo Corp. | 46.35 | 26.07 |
| PS 200 Class 14 | U.S. Army Fort MacArthur | 686.00 | 385.81 |
| PS 200 Class 14 | Geltman Industries | 104.70 | 58.88 |
| PS 200 Class 14 | Inmont Corp. | 19.43 | 10.93 |
| PS 200 Class 14 | Los Angeles Paper Box | 247.00 | 138.91 |
| PS 200 Class 14 | Los Angeles Times | 87.00 | 48.93 |
| PS 200 Class 14 | M & H Investment | 23.06 | 12.97 |
| PS 200 Class 14 | National Tank | 9.00 | 5.06 |
| PS 200 Class 14 | Naval Supply Center Long Beach | 2,968.83 | 1,669.67 |
| PS 200 Class 14 | Peterson Mfg. Co. | 63.00 | 35.43 |
| PS 200 Class 14 | Renta Uniform | 45.90 | 25.81 |
| PS 200 Class 4 | Signal Insurance | 483.00 | 271.64 |
| PS 200 Class 4 | Standard Mat Co. | 212.53 | 119.53 |
| PS 200 Class 4 | University of Southern Cal | 2,844.69 | 1,599.86 |
| PS 200 Class 4 | Western Brass Works | 3,117.15 | 1,753.09 |
| PS 200 Class 4 | Western Wire & Cable | 155.47 | 87.44 |
| PS 200 Class 5 | Mt. St. Mary's College | 14,456.52 | 8,130.36 |
| PS 200 Class 6 | Cargill, Inc. | 585.23 | 329.13 |
| PS 200 Class 6 | Chapman Bldg. | 1,141.27 | 641.85 |
| PS 200 Class 6 | Charles Chapman | 556.33 | 312.88 |
| PS 200 Class 6 | Hollywood Bldg. | 1.50 | 0.84 |
| PS 200 Class 6 | Hollywood Cemetery | 173.32 | 97.48 |
| PS 200 Class 6 | Hollywood Penehouse | 34.28 | 19.28 |
| PS 200 Class 6 | 9th & Broadway | 1,078.81 | 606.72 |
| PS 200 Class 6 | Saint Monica School | 328.51 | 184.75 |
| PS 200 Class 6 | Stanley Apartments | 642.95 | 361.60 |
| PS 200 Class 6 | U.S. Borax | 117.72 | 66.21 |
| PS 200 Class 6 | Veterans Hospital, Westwood | 115.11 | 64.74 |
| PS 200 Class 7 | Guy Webster | 55.10 | 30.99 |
| PS 200 Class 7 | Pacific Mutual Life Ins. Co. | 138.00 | 77.61 |
| PS 200 Class 7 | Rockwell International | 698.06 | 392.59 |
| PS 200 Class 7 | Tompkin-Towell | 47.63 | 26.79 |
| PS 200 Class 8 | Southern California Edison | 4,098.53 | 2,305.02 |
| PS 200 Class 9 | Arthur C. Withson | 1,694.30 | 952.88 |
| PS 200 Class 10 | California Non-Metallics | 16.67 | 9.38 |
| PS 200 Class 11 | Huntington Beach H.S. | 423.50 | 238.18 |
| PS 200 Class 12 | Movie Lab Hollywood | 225.80 | 126.88 |
| PS 200 Class 12 | St. Vincent's Hospital | 160.24 | 90.12 |
| PS 200 Class 3 | Consolidated Hotel of Cal. | 362.25 | 203.73 |
| PS 200 Class 3 | Falcon Foam Plastics | 229.23 | 128.92 |
| PS 200 Class 3 | Occidental College | 540.12 | 303.76 |
| PS 200 Class 3 | Southern Service, Ontario | 16.20 | 9.11 |
| PS 200 Class 3 | Vincent Creco | 82.80 | 46.57 |
| PS 200 Class 4 | Alexandria Hotel | 258.81 | 145.55 |
| PS 200 Class 4 | Alex Foods | 395.00 | 222.15 |

APPENDIX—Continued

| Product/customer type | Name | Alleged overcharge | Pro-rate share |
|---|---|---|---|
| PS 200 Class 4 | Allied Properties | 193.71 | 108.94 |
| PS 200 Class 4 | Andrew Jergens | 1,209.40 | 680.17 |
| PS 200 Class 4 | California Hosptial | 259.24 | 145.80 |
| PS 200 Class 4 | Chapel Brass Co. | 22.22 | 12.50 |
| PS 200 Class 4 | Chapel of the Pines | 1,175.52 | 661.11 |
| PS 200 Class 4 | Chef's Linen | 194.83 | 109.57 |
| PS 200 Class 4 | First Western Bank Bldg. | 66.00 | 37.12 |
| PS 200 Class 4 | General Felt | 58.80 | 33.07 |
| PS 200 Class 4 | Good Samaritan Hospital | 894.35 | 502.98 |
| PS 200 Class 4 | Great Western Malt | 2,332.72 | 1,311.92 |
| PS 200 Class 4 | Intra-Cal Properties | 708.06 | 398.21 |
| PS 200 Class 4 | Los Angeles Community Coll. | 170.78 | 96.05 |
| PS 200 Class 4 | National Sponge | 233.21 | 131.16 |
| PS 200 Class 4 | N.L. Industries | 579.25 | 325.77 |
| PS 200 Class 4 | Pasadena City College | 1,986.11 | 1,116.99 |
| PS 200 Class 4 | Prudential Insurance, La | 611.23 | 343.76 |
| PS 200 Class 4 | Queen of the Angels Hosptial | 657.80 | 369.95 |
| PS 200 Class 4 | Saint Francis Hospital | 345.98 | 194.58 |
| PS 200 Class 4 | Santa Monica Hospital | 1,119.48 | 629.60 |
| PS 200 Class 4 | Sheraton West | 53.79 | 30.25 |
| PS 200 Class 14 | State Farm | 132.00 | 74.24 |
| PS 200 Class 14 | Steel casting Co. | 203.00 | 114.17 |
| PS 200 Class 14 | Thompson Industries | 162.00 | 91.11 |
| PS 200 Class 15 | Los Angeles Asphalt | 1,709.86 | 961.63 |
| PS 200 Class 15 | Los Angeles Griffith Park | 597.21 | 335.87 |
| PS 200 Class 16 | Southern Service, Glendale | 80.50 | 45.27 |
| PS 200 Class 16 | Southern Service, Long Beach | 84.00 | 47.24 |
| PS 200 Class 17 | Ball Corp. | 2,988.51 | 1,680.74 |
| PS 200 Class 17 | Braun Towel & Linen | 316.93 | 178.24 |
| PS 200 Class 17 | Cal Tech | 933.76 | 525.15 |
| PS 200 Class 17 | Crown City Plating | 628.00 | 353.19 |
| PS 200 Class 17 | Fibreboard Corp. | 380.00 | 213.71 |
| PS 200 Class 17 | Filtrol Corp. | 2,079.00 | 1,169.23 |
| PS 200 Class 17 | Owens-Illinois | 997.87 | 561.20 |
| PS 200 Class 17 | National Linen | 1,584.72 | 891.25 |
| PS 200 Class 17 | Northrup | 1,092.39 | 614.36 |
| PS 200 Class 17 | Soule Steel Co. | 1,836.50 | 1,032.85 |
| PS 200 Class 17 | Stauffer Chemical | 8,397.39 | 4,722.70 |
| | | 512,671.60 | 288,327.00 |

[FR Doc. 92–28155 Filed 11–18–92; 8:45 am]
BILLING CODE 6450–01–M

## Western Area Power Administration

## Cooperative Agreement: Financial Assistance Award to Municipal Energy Agency of Nebraska

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Proposed Cooperative Agreement between the Western Area Power Administration (Western) and the Municipal Energy Agency of Nebraska (MEAN) to assist in the implementation of Western's Conservation and Renewable Energy (C&RE) Program for and among Western's customers.

**SUMMARY:** Western announces that, pursuant to 10 CFR Part 600.7(b), eligibility for a cooperative agreement to develop and implement a co-funded energy services/manager pilot program for 57 MEAN member communities has been restricted to MEAN. MEAN was formed in 1981 by municipal electric utilities to pool their resources and efforts in joint power supply and related activities. All of those founding communities and 57 of the existing 58 MEAN communities were, and are, long-term Western customers, served by the Billings, Loveland, and Salt Lake City Area Offices. MEAN is the central representative organization which can effectively consider all varying interest from these differently directed political bodies and supply needed energy efficiency and renewable energy related services to the target audiences—consumer-owned retail suppliers of energy services.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Mary E. Prebble, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1683.

**SUPPLEMENTARY INFORMATION:** Western's C&RE Program is designed to ensure wise stewardship of the Federal hydropower resources and to encourage energy conservation and the development of renewable energy resources. To meet these ends, Western offers a number of C&RE Program activities to its customers. The cooperative agreement being conducted with MEAN will accomplish Western's goals to provide a leadership role in conservation and renewable energy planning and development for its preference customers.

*Solicitation Number:* DE–FB65–93WB02820.

*Scope of Project:* This proposal addresses the need for an energy management circuit rider to assist MEAN and Western customer communities in providing energy services that most do not currently have. Residential, commercial, and industrial audits are to be conducted with recommendations given for cost-effective retrofits of equipment and structures. Energy management and audit training will be provided to community staff. With knowledge gained by MEAN and its members from setup and implementation of the Energy Manager program, MEAN will prepare a manual for other joint action agencies and generation and transmission utilities. The manual will focus on steps

used to implement, monitor, and evaluate the program as it impacts retail customers of member-based utility and how that information can be utilized to assist in developing an integrated resource plan for all levels of the power supply chain.

Issued at Golden, Colorado, November 5, 1992.

**William H. Clagett,**

*Administrator.*

[FR Doc. 92-28156 Filed 11-18-92; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4535-8]

### Science Advisory Board Drinking Water Committee Open Meeting; December 7-8, 1992

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB) Drinking Water Committee (DWC) will meet on December 7-8, 1992, at the U.S. Environmental Protection Agency, Andrew Breidenbach Research Center, room 130/138, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. The Committee will meet from 9 a.m. to 5 p.m. on December 7th, and 8:30 a.m. to no later than 4 p.m. on December 8th. The meeting is open to the public and seating is on a first-come basis.

At this meeting, the Committee will review the disinfectant and disinfectant by-products (D/DBP) research program at the Risk Reduction Engineering Laboratory (RREL) of EPA, focussing on in-house and extramural research on D/DBP, distribution of resources for drinking water research, and identification of research needs for D/DBP. This is a Committee-initiated review, following the Committee's earlier discussions on this issue and its recent written commentary to the EPA Administrator on alternative disinfectant and disinfectant by-products (for a copy of this Commentary, please contact Ms. Lori Gross of the SAB Staff on (202) 260-4126 and ask for SAB report number EPA-SAB-DWC-COM-92-008, dated August 18, 1992).

For details concerning this meeting, including a draft agenda, please contact Mrs. Frances Dolby, Staff Secretary for the DWC, or Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202/FTS) 260-6552; FAX: (202/FTS) 260-7118.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak no later than Tuesday, December 1, 1992 in order to be included on the Agenda. Written statements of any length (at least 25 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes.

Dated: November 6, 1992.

**A. Robert Flaak,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 92-28175 Filed 11-18-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4535-7]

### Science Advisory Board, Ecological Processes and Effects Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Ecological Processes and Effect Committee (EPEC) of the Science Advisory Board of EPA will meet on December 15-17, 1992 at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, VA 22202. The meeting will begin at 8:30 a.m. on December 15 and adjourn by 5 p.m. on December 17. The meeting is open to the public and seating will be on a first come basis.

EPEC will receive briefings on the Landscape Characterization Component for the Environmental Monitoring and Assessment Program and the Global Climate Research Program within the Office of Research and Development and conduct a consultation on elements of a Habitat Strategy which is being developed by the Habitat Cluster of EPA.

For additional information concerning this meeting or to obtain an agenda, please contact Mrs. March Jolly, Staff Secretary, Ecological Processes and Effects Committee (EPEC), or Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 260-6552; Fax: (202) 260-7118. Copies of the briefing materials will be available at the meeting. Anyone wishing to make a presentation at the meeting should forward twenty-five copies of a written statement to Mr. Flaak no later than December 7, 1992 in order to be included on the Agenda. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Speakers should bring copies of their statements for the SAB and the audience.

Dated: November 6, 1992.

**A. Robert Flaak,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 92-28176 Filed 11-18-92; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 10, 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:* None.

*Title:* AM Broadcast Self-Inspection Survey.

*Action:* New collection.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* Each station will be surveyed every five years.

*Estimated Annual Burden:* 1,000 responses; 8 hours average burden per response; 8,000 hours total annual burden.

*Needs and Uses:* Collection of this information is needed to establish and maintain the highest rate of compliance possible in the AM Broadcast Service and to educate licensees about current FCC Rules, specifically those with which strict compliance is expected. Due to limited resources available to the Commission field offices, traditional

broadcast station inspections have occurred less frequently. The self-inspection method of collecting the data reduces the need to make regular field inspections to determine compliance.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-28035 Filed 11-18-92; 8:45 am]

BILLING CODE 6712-01-M

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**[Report No. CL-93-23]**

## Common Carrier Public Mobile Information; Date for Filing Cellular System Update Information for Unserved Areas

November 13, 1992.

On July 10, 1992, the Commission postponed the dates for filing cellular System Information Updates (SIUs) and unserved area cellular license applications, stating that it would issue future public notices specifying new dates. Amendment of Part 22 for Unserved Areas, 7 FCC Rcd 4648 (1992). This Public Notice establishes the new filing dates for SIUs.

All licensees whose five-year fill-in periods will have ended on or before March 15, 1993 must submit their SIUs on January 12, 1993. The two cellular systems serving the Gulf of Mexico market are also required to submit their SIUs on January 12, 1993. See Third Report and Order, FCC 92-472 (released Nov. 4, 1992), 57 FR 53446 (Nov. 10, 1992). For markets in which the five-year fill-in period ends after March 15, 1993, the SIU must be filed no less than 60 days before the end of the five-year fill-in period. If during this 60-day period changes to the system are made, the licensee must file an updated SIU. We remind licensees that sanctions may be imposed on licensees who do not file the required SIUs. See Amendment of Part 22 for Unserved Areas (First Report and Order), 6 FCC Rcd 6185, 6206 n. 27 (1991).

The date for the windows for filing Phase I cellular license applications for unserved areas will be announced in a future public notice.

Questions concerning this Public Notice should be addressed to Steve Markendorff at 202-653-5560.

Notice

A copy of this Public Notice will be placed in the **Federal Register**.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 92-28034 Filed 11-18-92; 8:45 am]

BILLING CODE 6712-01-M

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## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed; TMM/Tecomar Space Charter and Sailing Agreement; et. al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 232-011391.

*Title:* TMM/Tecomar Space Charter and Sailing Agreement.

*Parties:*

Transportacion Maritima Mexicana, S.A. de C.V.

Tecomar, S.A. de C.V.

*Synopsis:* The proposed Agreement authorizes the parties to charter space from one another, coordinate sailings in their respective services, share and jointly contract for services and supplies, and pool and lease containers from each other in the trade between the United States Atlantic and Gulf ports and points, and ports and points in Mexico and Europe (including Scandinavian, U.K., North European and Mediterranean ports).

*Agreement No.:* 224-200286-002.

*Title:* Tacoma/Maersk Terminal Agreement.

*Parties:*

Port of Tacoma ("Port")

Maersk, Inc. ("Maersk")

*Synopsis:* The amendment terminates the rental by Maersk of approximately two acres of space on the Port's Pier 2.

*Agreement No.:* 224-200592-001.

*Title:* Maryland Port Administration and Maersk, Inc. Terminal Lease Agreement.

*Parties:*

The Maryland Port Administration ("MPA")

Maersk, Inc. ("Maersk")

*Synopsis:* The Agreement reflects an increase of $175,000 to cover construction cost of a gate at the Dundalk Marine Terminal, including materials, fees, labor, supervision and all other necessary and incidental expenses to be paid by MPA. It also provides that Maersk will design and construct an administration building on the lease premises.

*Agreement No.:* 224-200703.

*Title:* City of Long Beach and Hiuka America Corporation Terminal Leasing Agreement.

*Parties:*

The City of Long Beach

Hiuka America Corporation ("Hiuka")

*Synopsis:* The Agreement provides for Hiuka and the City of Long Beach to enter into an agreement whereby Hiuka will lease from the City of Long Beach a parcel of land and water areas at Berth 118. The term of the lease is for 25 years.

By Order of the Federal Maritime Commission.

Dated: November 13, 1992.

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 92-28079 Filed 11-18-92; 8:45 am]

BILLING CODE 6730-01-M

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## FEDERAL RESERVE SYSTEM

### Charles Peter Abod, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1992.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Charles Peter Abod*, Chevy Chase, Maryland; to acquire 3.3 percent of the voting shares of FWB Bancorporation, Rockville, Maryland, for a total of 10.9 percent, and thereby indirectly acquire FWB Bank, Rockville, Maryland.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Charles R. Celania*, to acquire an additional 3.20 percent for a total of 4.58 percent; Harold R. Wanke, to acquire an additional 4.80 percent for a total of 9.22 percent; and Otto Baltrusch, Jr., to acquire an additional 3.20 percent for a total of 11.37 percent of the voting shares of First Security Bank of Havre, Havre, Montana.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. James F. O'Neal*, Lamar, Missouri; to acquire an additional 27.82 percent of the voting shares of Lamar Trust Bancshares, Inc., Lamar, Missouri, for a total of 51.71 percent, and thereby indirectly acquire Lamar Bank & Trust Company, Lamar, Missouri.

*2. Jon W. Pope*, Hoxie, Kansas, to acquire an additional 20.57 percent for a total of 20.98 percent; Lois A. Madison, Hoxie, Kansas, to acquire 20.98 percent; and Jerome N. Heim, Lexington, Nebraska, to acquire an additional 2.54 percent for a total of 27.5 percent of the voting shares of Northwest Bancshares, Inc., Colby, Kansas, and thereby indirectly acquire Peoples State Bank, Colby, Kansas.

**D. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. David M. Cox*, Ennis, Texas, to acquire an additional 0.21 percent of the voting shares of First National Bancorporation of Ennis, Inc., Ennis, Texas, for a total of 10.16 percent, and thereby indirectly acquire First National Bank of Ennis, Ennis, Texas.

*3. Willis Hedges and Shirley Hedges*, Sudan, Texas; to acquire an additional 12.0 percent for a total of 36.80 percent; Arthur Hedges, Sudan, Texas, to acquire 9.0 percent; Forrest Tiller, Sudan, Texas, to acquire 9.0 percent; and Billy Tiller and Christal Tiller, Sudan, Texas, to acquire 22.0 percent for a total of 32.60 percent of the voting shares of Sudan Bancshares, Inc., Sudan, Texas, and thereby indirectly acquire The First National Bank, Sudan, Texas.

*4. Fred Ronnie Myrick*, Monroe, Louisiana; to acquire an additional 3.86 percent of the voting shares of First Capital Bancorp, Inc., Delhi, Louisiana, for a total of 11.58 percent, and thereby indirectly acquire Capital Bank, Delhi, Louisiana.

Board of Governors of the Federal Reserve System, November 13, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–28093 Filed 11–18–92; 8:45 am]

BILLING CODE 6210–01–F

## Huntington Bancshares Incorporated, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 1992.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Huntington Bancshares Incorporated*, Columbus, Ohio; to acquire through its newly formed subsidiary, HBI Ohio, Inc., Columbus, Ohio; Charter Oak Financial Corporation, Cincinnati, Ohio, and thereby engage in owning and operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. AmSouth Bancorporation*, Birmingham, Alabama; to engage *de novo* in making equity and debt investments in a limited partnership, Colonial Village Apartments, L.P., Jackson, Mississippi, a low-income, multi-family, housing development pursuant to § 225.25(b)(6) of the Board's Regulation Y. This activity will be conducted in Jackson, Mississippi.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Norwest Corporation*, Minneapolis, Minnesota; to engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

*2. Ormsby Bancshares, Inc.*, Ormsby, Minnesota; to engage *de novo* in incidental lending activities by originating loans within its trade area or purchasing loans from its subsidiary banks pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in Ormsby, Minnesota.

Board of Governors of the Federal Reserve System, November 13, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92–28094 Filed 11–18–92; 8:45 am]

BILLING CODE 6210–01–F

## Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 1992.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Norwest Corporation*, Minneapolis, Minnesota; to acquire Comprehensive Computer Solutions, Inc., Spring Valley, New Jersey, and thereby engage in financial data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the United States and Canada.

Board of Governors of the Federal Reserve System, November 13, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-28096 Filed 11-18-92; 8:45 am]

BILLING CODE 6210-01-F

## Peotone Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 14, 1992.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire 100 percent of the voting shares of SC Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire The Sun City Bank, Sun City, Arizona.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Bank of Montana System*, Great Falls, Montana; to acquire 100 percent of the voting shares of Montana Bancsystem, Inc., Great Falls, Montana, and thereby indirectly acquire Montana Bank, Billings, Montana.

*2. First Wilton Bancshares, Ltd.*, Wilton, North Dakota; to become a bank holding company by acquiring at least 88 percent of the voting shares of First State Bank of Wilton, Wilton, North Dakota.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Austin Bancshares, Inc.*, Waverly, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Waverly Bancshares, Inc., Waverly, Missouri, and thereby indirectly acquire Bank of Waverly, Waverly, Missouri.

*2. Omnibancorp*, Denver, Colorado; to acquire 100 percent of the voting shares of Met-State Corp., Commerce City, Colorado, and thereby indirectly acquire Metropolitan State Bank, Commerce City, Colorado.

Board of Governors of the Federal Reserve System, November 13, 1992.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 92-28095 Filed 11-18-92; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisition to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102692 AND 110692

| Name of acquiring person, name of acquired person, name of acquiring entity | PMN No. | Date terminated |
|---|---|---|
| Mezzanine Lending Associates I, L.P., Ithaca Holdings, Inc., Ithaca Holdings, Inc. | 92-1564 | 10/26/92 |
| Mezzanine Lending Associates II, L.P., Ithaca Holdings, Inc., Ithaca Holdings, Inc. | 92-1565 | 10/26/92 |
| HM/Trident, L.P., Chevron Corporation, Chevron U.S.A. Inc. & J.H. Taylor Gas Company | 93-0017 | 10/26/92 |
| Richard Willett, Balson-Hercules Group Ltd. (The), Balson-Hercules Group Ltd. (The) | 93-0031 | 10/26/92 |
| Multimedia, Inc., Prime Cable Income Partners, L.P., Prime Cable Income Partners, L.P. | 92-1584 | 10/28/92 |
| HM/Trident, L. P., Atlantic Richfield Company, Atlantic Richfield Company | 92-1587 | 10/28/92 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102692 AND 110692—Continued

| Name of acquiring person, name of acquired person, name of acquiring entity | PMN No. | Date terminated |
|---|---|---|
| AmSouth Bancorporation, Resource Bancshares Corp., Republic National Bank & 1st Performance National Bank | 93-0006 | 10/28/92 |
| Central and South West Corporation, NICOR Inc., Reliance Gas Pipeline Company | 93-0048 | 10/28/92 |
| Welsh, Carson, Anderson & Stowe V, L.P., Smith & Nephew plc, S&N Inc | 93-0053 | 10/28/92 |
| Wellman, Inc., Robert Styer, Creative Forming, Inc | 93-0059 | 10/28/92 |
| Stephen G. Dent, Walter Bistrong, Point Blank Body Armor, Inc | 93-0081 | 10/28/92 |
| Stephen G. Dent, Richard Stone, Point Blank Body Armor, Inc | 93-0082 | 10/28/92 |
| National Service Industries, Inc., BET Public Limited Company, Initial Services Investments, Inc | 92-1393 | 10/29/92 |
| NEWFLO Corporation, DeVlieg-Bullard, Inc., Penberthy, Inc | 93-0033 | 10/30/92 |
| Code, Hennessy & Simmons Limited Partnership, W. Michael Carroll, Koller Manufacturing Corporation | 93-0105 | 10/30/92 |
| Norman Lear, Norman Lear, Act III Communications Holdings, L.P | 93-0027 | 11/02/92 |
| Bergen Brunswig Corporations, Dr. T.C. Smith Company, Dr. T.C. Smith Company | 93-0030 | 11/02/92 |
| CalMat Co., Mr. G.W. Jamieson, Pleasanton Sand & Gravel Company | 93-0049 | 11/02/92 |
| Arcadian Partners, L.P., Amoco Corporation, Amoco Production Company | 93-0065 | 11/02/92 |
| Genzyme Corporation, Neozyme Corporation, Neozyne Corporation | 93-0073 | 11/02/92 |
| Jack Eckerd Corporation, Randall's Management Corporation, Inc., Tom Thumb Stores, Inc. d/b/a Page Drug Stores | 93-0093 | 11/02/92 |
| Berkshire Hathaway Inc., Central States Health and Life Co. of Omaha, Central States of Omaha Companies, Inc | 93-0098 | 11/02/92 |
| Richard J. Donahue, NEWCO, NEWCO | 93-0108 | 11/02/92 |
| Micahel R. Boyce, NEWCO, NEWCO | 93-0109 | 11/02/92 |
| Alan James, Chrysler Corporation, Chrysler Rail Transportation Corporation | 93-0101 | 11/03/92 |
| William A. Furman, Chrysler Corporation, Chrysler Rail Transportation Corporation | 93-0102 | 11/03/92 |
| Foster & Gallagher, Inc., Knox International Corp., Knox International Corp | 93-0111 | 11/03/92 |
| Markets Cellular Limited Partnership, Cellular Information Systems, Inc., Debtor-in-Possess., C.I.S. of Billings, Inc., Debtor-in-Possession | 93-0122 | 11/03/92 |
| Parker & Parsley Petroleum Company, Western Gas Resources, Inc., Western Gas Resources, Inc | 93-0112 | 11/04/92 |
| Pioneer Electronic Corporation, LIVE Entertainment, Inc., LIVE Entertainment, Inc | 93-0121 | 11/04/92 |
| Allergan, Inc., Ligand Pharmaceuticals, Inc., Ligand Pharmaceuticals, Inc | 93-0043 | 11/05/92 |
| Reed International P.L.C., Elsevier N.V., Elsevier N.V | 93-0037 | 11/06/92 |
| Elsevier N.V., Reed International P.L.C., Reed International P.L.C | 93-0038 | 11/06/92 |
| St. Joseph Health System, Brothers of the Hospitaller Order of St. John of God, St. Mary Desert Valley Hospital | 93-0050 | 11/06/92 |
| The Estate of James Campbell, New England Mutual Life Insurance Company, Puente Hills East Shopping Center and Ground Leases | 93-0054 | 11/06/92 |
| New England Mutual Life Insurance Company, The Estate of James Campbell, Hayward Gateway Center | 93-0064 | 11/06/92 |
| Loyal Trust No. 1, Pacific Enterprises, Pacific Assets and the Sabine Colombia Corporation | 93-0094 | 11/06/92 |
| Westcoast Energy Inc., George S. Mann, Union Energy Inc | 93-0104 | 11/06/92 |
| Scott K. Ginsburg, Sheet Metal Workers National Pension Fund, Washington Radio Associates Limited Partnership | 93-0114 | 11/06/92 |
| The Sheet Metal Workers National Pension Fund, Scott K. Ginsburg, Evergreen Media Corporation | 93-0120 | 11/06/92 |
| New England Mutual Life Insurance Company, New England Mutual Life Insurance Company, Puente Hills East Shopping Center and Ground Leases | 93-0123 | 11/06/92 |
| ITT Corporation, Ray and Nadine Watt Family Trust, Plaza La Reina Hotel Venture Partnership | 93-0128 | 11/06/92 |
| American Telephone and Telegraph Company, Cincinnati Bell Inc., Cincinnati Bell Telephone Company | 93-0137 | 11/06/92 |
| Amphenol Corporation, Lawrence J. DeGeorge, LPL Technologies, Inc | 93-0140 | 11/06/92 |
| Lawrence F. DeGeorge, Amphenol Corporation, Amphenol Corporation | 93-0141 | 11/06/92 |
| The Morgan Stanley Leveraged Equity Fund II, L.P., T. Scott Fisher, Samelson-Leon Company, Inc | 93-0161 | 11/06/92 |
| CGW Southeast Partners I, L.P., NationsBank Corporation, Asset Management Resolution Company | 93-0166 | 11/06/92 |
| New England Mutual Life Insurance Company, New England Mutual Life Insurance Company, Hayward Gateway Center | 93-0170 | 11/06/92 |

**FOR FURTHER INFORMATION CONTACT:**
Sandra M. Peay
or
Renee A. Horton, Contact Representatives;
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 92-28122 Filed 11-18-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt C-3402]

## Pompeian, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent Order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Maryland manufacturer of Pompeian Olive Oil from representing that eating olive oil lowers cholesterol more than eating vegetable oil, and is more heart healthy than eating vegetable oil, or that any edible oil has the relative or absolute ability to cause or contribute to any health benefit, or has a favorable impact on any physiologic function or risk factor for disease, unless the respondent has a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representations.

**DATES:** Complaint and Order issued October 27, 1992.[1]

**FOR FURTHER INFORMATION CONTACT:**
Nancy Warder, FTC/S-4002, Washington, D.C. 20580. (202) 326-3048.

**SUPPLEMENTARY INFORMATION:** On Wednesday, November 13, 1991, there was published in the **Federal Register**, 56 FR 57654, a proposed consent agreement with analysis In the Matter of Pompeian, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

*Secretary.*

[FR Doc. 92-28121 Filed 11-18-92; 8:45 am]

BILLING CODE 6750-01-M

Docket C-2797

## Tarra Hall Clothes, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Modifying order.

**SUMMARY:** This order reopens the proceeding and modifies the Commission's cease and desist order issued on February 24, 1976 (87 FTC 294), by narrowing the conditions under which Abraham Cohen, former president of Tarra Hall Clothes, Inc., must post a bond before importing wool products. The Commission concluded that the petition to modify the order should be granted to require bonding only for importation of recycled wood products.

**DATES:** Consent Order issued February 24, 1976. Modifying Order issued October 27, 1992.[1]

**FOR FURTHER INFORMATION CONTACT:** Justin Dingfelder or Ronald Lewis, FTC/S-4631, Washington, D.C. 20580. (202) 326-3017 or 326-2985.

**SUPPLEMENTARY INFORMATION:** In the Matter of Tarra Hall Clothes, Inc., et al. The prohibited trade practices and/or corrective actions as set forth at 41 FR 13581, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68)

Donald S. Clark,

*Secretary.*

[FR Doc. 92-28120 Filed 11-18-92; 8:45 am]

BILLING CODE 6750-01-M

## GENERAL SERVICES ADMINISTRATION

## Environmental Impact Statement: Purchase of Land in Atlanta, GA

The General Services Administration (GSA) intends to prepare an Environmental Impact Statement (EIS) for the purchase of about 100 acres, and the construction of a 52,000 square foot laboratory and a 300,000 square foot office building, to be occupied by the Centers for Disease Control (CDC). The EIS will also examine the impacts of consolidating three CDC Government owned campus locations and nine CDC leased locations in metropolitan Atlanta. The project will be part of a long term 25-year master plan to consolidate the CDC World Headquarters by permanently locating to the Mercer University campus. The high containment laboratory would remain at the Clifton Road Emory University campus location. The site is currently owned by Mercer University and is located near the intersection of the I-285 Perimeter Highway and I-85 North, just inside the Perimeter Highway.

In accordance with 40 CFR part 1502, GSA intends to prepare an Environmental Impact Statement (EIS) for this proposed action. The EIS will evaluate the impact of this action on the human and natural environment. To identify the scope of issues that will be addressed in the EIS, the public is invited to participate 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: November 9, 1992.

Judith M. Cobb,

*Director, Planning Staff.*

[FR Doc. 92-28103 Filed 11-18-92; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

[Docket No. 92C-0348]

## Biomet, Inc.; Filing of Color Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Biomet, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of FD&C Blue No. 2-Aluminum Lake to color bone cement.

**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 2C0239) has been filed by Biomet, Inc., P.O. Box 587, Warsaw, IN 46581-0587. The petition proposes to amend the color additive regulations to provide for the safe use of FD&C Blue No. 2-Aluminum Lake to color bone cement.

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 22, 1992.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-28010 Filed 11-18-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 89F-0442]

## Alex C. Fergusson, Inc.; Withdrawal of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 8H4099) proposing that the food additive regulations be amended to provide for the safe use of a solution containing *n*-alkyl($C_{12}$-$C_{18}$)benzyldimethylammonium chloride, *alpha*[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-*omega*-hydroxypoly(oxyethylene) produced with one mole of the phenol and 4 to 14 moles of ethylene oxide, and ethanol as a sanitizer on food-processing equipment and utensils. The petition was withdrawn by Alex C. Fergusson, Inc. (formerly Alex C. Fergusson Co.).

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, 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:** In a notice published in the **Federal Register** of November 9, 1989 (54 FR 47132), FDA announced that a food additive petition (FAP 8H4099) had been filed by Alex C.

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave., N.W., Washington, D.C. 20580.

Fergusson Co., Spring Mill Dr., Frazer, PA 19355. This petition proposed that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of a solution containing *n*-alkyl($C_{12}$–$C_{18}$)benzyldimethylammonium chloride, *alpha*[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-*omega*-hydroxypoly(oxyethylene) produced with one mole of the phenol and 4 to 14 moles of ethylene oxide, and ethanol as a sanitizer on food-processing equipment and utensils. Alex C. Fergusson, Inc., (formerly Alex C. Fergusson Co.) has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 19, 1992.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–28008 Filed 11–18–92; 8:45 am]

BILLING CODE 4160–01–F

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[Docket No. 91F–0177]

## Seiwa Technological Laboratories, Ltd.; Withdrawal of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition proposing that the food additive regulations be amended to provide for the safe use of 4-isopropyltropolone as a preservative for fresh fruits and vegetables.

**FOR FURTHER INFORMATION CONTACT:** F. Owen Fields, 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:** In the Federal Register of June 18, 1991 (56 FR 27964), FDA published a notice announcing that a food additive petition (FAP 9A4156) had been filed by Seiwa Technological Laboratories, Ltd. The petition proposed that the food additive regulations be amended to provide for the safe use of 4-isopropyltropolone as a preservative for fresh fruits and vegetables. Seiwa Technological Laboratories, Ltd., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 19, 1992.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92–28009 Filed 11–18–92; 8:45 am]

BILLING CODE 4160–01–F

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[Docket No. 92P–0205]

## Sour Cream Deviating from Identity Standard; Amendment of Temporary Permit for Market Testing

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it is amending a temporary permit issued to Land O'Lakes, Inc., to market test a product designated as "no-fat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160), by increasing the amount of test product to be distributed and by increasing the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the product.

**FOR FURTHER INFORMATION CONTACT:** Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5007.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17, FDA issued a temporary permit (57 FR 30224, July 8, 1992) to Land O'Lakes, Inc., 4001 Lexington Ave. North, Arden Hills, MN 55126, to market test a product designated as "no-fat sour cream." The agency issued the permit to facilitate market testing of a food that deviates from the requirements of a standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covers limited interstate market testing of "no-fat sour cream" that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to less than 0.5 percent, (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) safe and suitable coloring is added so that the product more closely resembles the color of regular sour cream. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and a negligible quantity of fat.

Land O'Lakes, Inc., has requested that FDA amend its temporary permit to provide for an increase of 3,000,000 pounds (lb) (1,360,778 kilograms (kg)) of the test product during the 15-month test period and to increase the area of distribution. This increase will raise the total quantity involved in market testing from 2,000,000 lb (907,185 kg) to 5,000,000 lb (2,267,964 kg). The increase of 3,000,000 lb (1,360,778 kg) will be distributed in Alabama, Alaska, Colorado, Indiana, Kentucky, Maryland, Minnesota, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. FDA finds that this amendment will not alter the substance of the temporary permit (57 FR 30224) and that consumers will benefit from the expanded tests to determine whether a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat is acceptable.

Therefore, under the provisions of 21 CFR 130.17(f), FDA is amending the temporary permit by increasing the amount of test product by 3,000,000 lb (1,360,778 kg) during the 15-month market test and increasing the area of distribution by including 14 additional States. All other terms and conditions of this permit remain the same.

The agency would like to point out that the test product and labeling comply with FDA's current regulations. However, the agency proposed in the Federal Register of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light," "reduced calories," "reduced fat," "low fat," "nonfat," "no fat," and "fat free," as well as criteria for the use of these terms on food labels. In addition, the agency published two proposals in the Federal Register that would: (1) Amend the current regulations pertaining to the content of nutrition information on food labels (56 FR 60366, November 27, 1991) and (2) revise the nutrition labeling format on food labels (57 FR 32058, July 20, 1992). The test product may need to be reformulated or relabeled to comply with the relevant definition and regulations that the agency ultimately adopts. All products, including the test product, introduced into interstate commerce after the effective date of these regulations will have to comply.

Dated: October 22, 1992.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-28011 Filed 11-18-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92P-0321]

## Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Crowley Foods, Inc., to market test a product designated as "nonfat sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 17, 1993.

**FOR FURTHER INFORMATION CONTACT:** Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4701.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Crowley Foods, Inc., Metro Center, P.O. Box 549, 49 Court St., Binghamton, NY 13902.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to less than 0.3 percent, (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) safe and suitable coloring is added so that the product more closely resembles the color of regular sour cream. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and a negligible quantity of fat.

For the purpose of this permit, the name of the product is "nonfat sour cream." In accordance with FDA's current views, "nonfat" food labeling is acceptable because the product contains less than 0.10 gram of fat per serving and contains no added ingredient that is a fat or an oil. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 1,000,000 pounds (453,600 kilograms) of the test product. The product will be manufactured at Crowley Foods, Inc., Theresa Rd., LaFargeville, NY 13636, and distributed in Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.

The agency would like to point out that the test product and labeling comply with FDA's current regulations. However, the agency proposed in the **Federal Register** of November 27, 1991 (56 FR 60421 and 60478), in response to the Nutrition Labeling and Education Act of 1990, to establish definitions for terms such as "light," "reduced calories," "reduced fat," "lowfat," "nonfat," "no fat," and "fat free," as well as criteria for the use of these terms on food labels. In addition, the agency published two proposals in the **Federal Register** that would (1) amend the current regulations pertaining to the content of nutrition information on food labels (56 FR 60366, November 27, 1991) and (2) revise the nutrition labeling format on food labels (57 FR 32058, July 20, 1992). The test product may need to be reformulated or relabeled to comply with the relevant definition and regulations that the agency ultimately adopts. All products, including the test product, introduced into interstate commerce after the effective date of these regulations will have to comply.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 17, 1993.

Dated: October 22, 1992.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 92-28012 Filed 11-18-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92E-0375]

## Determination of Regulatory Review Period for Purposes of Patent Extension; NORVASC®

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for NORVASC® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nicholas P. Reuter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants

permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product NORVASC®. NORVASC® (amlodipine besylate) is indicated for the treatment of hypertension, chronic stable angina, and confirmed or suspected vasospastic angina. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NORVASC® (U.S. Patent No. 4,572,909) from Pfizer Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated October 14, 1992, advised the Patent and Trademark Office that this human drug product had under gone a regulatory review period and that the approval of NORVASC® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for NORVASC® is 3,313 days. Of this time, 1,630 days occurred during the testing phase of the regulatory review period, while 1,683 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: July 8, 1983. FDA has verified the applicant's claim that July 8, 1983, was the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: December 23, 1987. The applicant claims December 22, 1987, as the date the new drug application (NDA) for NORVASC® (NDA 19-787) was submitted. However, FDA records indicate that NDA 19-787 was submitted on December 23, 1987.

3. *The date the application was approved*: July 31, 1992. FDA has verified the applicant's claim that NDA 19-787 was approved on July 31, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,252 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 19, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 18, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 10, 1992.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 92-28013 Filed 11-18-92; 8:45 am]

BILLING CODE 4160-01-F

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, November 6, 1992. (Call PHS Reports Clearance Officer on 202-690-7100 for copies of requests).

1. National Hospital Discharge Survey—0920-0212—The National Hospital Discharge Survey provides detailed information on characteristics, diagnoses, and surgical and other procedures for patients discharged from short-stay non-Federal hospitals in the United States. The information collected is available in written reports, in unpublished form through standardized in-house tabulations or special tabulations, on public use tapes, and diskettes. *Respondents:* State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations; *Number of Respondents:* 485; *Number of Responses per Respondent:* 196; *Average Burden Per Response:* 0.047 hours; *Estimated Annual Burden:* 4,438 hours.

2. End-State Renal Disease Study (New York)—New—This case-control study attempts to determine the association between end-stage renal disease and exposures to contaminants from hazardous waste sites. Cases enlisted from the New York End-Stage Renal Disease Network will be compared to population controls. *Respondents:* Individuals or households. *Number of Respondents:* 375; *Number of Responses per Respondent:* 1; *Average Burden Per Response:* .75 hours; *Estimated Annual Burden:* 281 hours.

3. Epidemiology of Specific Language Impairment (SLI)—New—This study is part of a research project of children who have specific language impairment (SLI). This impairment causes unexpected and unexplained difficulties learning and using spoken language. Well-designed studies of this disorder have not been done. *Respondents:* Individuals or households. *Number of Respondents:* 3,756; *Number of Responses per Respondent:* 2; *Average Burden Per Response:* 1 hour; *Estimated Annual Burden:* 7,512 hours.

4. Infant Feeding Practices Survey—0910-0220—A sample of women will be followed by mail questionnaires from late pregnancy through the baby's first year to provide data for describing infant feeding patterns, health promotion activities, and market related behaviors. The information will be used to meet FDA's commitments in the feeding safety and health promotion of infants. *Respondents:* Individuals or households. *Number of Respondents:* 610; *Number of Responses per Respondent:* 11; *Average Burden Per Response:* .228 hours; *Estimated Annual Burden:* 1,530 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: November 13, 1992.

James Scanlon,

*Director, Division of Data Policy, Office of Health Planning and Evaluation.*

[FR Doc. 92-28098 Filed 11-18-92; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-92-3102; FR-2835-N-04]

### Single Family Property Disposition; Demonstration Program for Sale of Properties to Nonprofits and Governmental Entities

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

**ACTION:** Notice of extension of demonstration.

**SUMMARY:** This Notice announces the extension of the deadline for acquiring properties under approved proposals to December 31, 1992, or until the authorized cap of 1500 properties has been reached, whichever comes first. These sales are being conducted through a demonstration program, announced on November 28, 1990 (55 FR 49490), to test the cost-effectiveness of an alternative way of reducing the inventory of HUD-acquired properties consistent with the need to help preserve neighborhoods and expand affordable homeownership opportunities.

**DATES:** The deadline for acquiring properties is December 31, 1992.

**FOR MORE INFORMATION CONTACT:** Marion F. Connell, Single Family Property Disposition Division, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708-0740 or, for hearing and speech-impaired, (202) 708-4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** In a Notice published on November 28, 1990 (55 FR 49490), HUD announced a demonstration program to explore a method of reducing the inventory of HUD-acquired single family properties, while helping to preserve neighborhoods and expand affordable homeownership opportunities for low and moderate income owner-occupants. (Public comment on the demonstration had been solicited in a previous Notice published on August 9, 1990, (55 FR 32562). The November 28, 1990 Notice invited proposals from private, nonprofit organizations and governmental entities for the purchase of properties at special discounted prices on an all-cash basis. No HUD subsidy was involved. Program participants arranged their own financing to carry out rehabilitation of the properties prior to resale to low and moderate income families.

The demonstration is limited to 1,500 vacant, single family properties nationwide. Eligible properties are located in neighborhoods with significant concentrations of HUD-acquired properties and other characteristics as described in the November 28, 1990 Notice. Purchasers are required to buy a minimum of five properties to obtain the significantly discounted pricing.

The November 28, 1990 Notice announced that approved applicants could continue to acquire properties in their approved demonstration neighborhood(s) for one year from the date of the Notice. Subsequently, several program participants requested and obtained an extension of this deadline to September 30, 1992. This extension was announced in a Notice published on October 16, 1991 (56 FR 51913).

In recent months several program participants have requested a second extension of time to purchase HUD properties at the special discount prices. Because there has been significant interest in the demonstration, and because the cap of 1,500 properties has not been met, HUD is extending the deadline for property acquisition under the program guidelines to December 31, 1992, or until the 1,500 cap has been reached, whichever occurs first; however, no new applications are being invited at this time.

Approved participants will not be required to submit another application to continue acquiring properties as long as their neighborhoods remain the same and the number of properties to be purchased is within the limit previously approved for their project. If an approved participant wishes to expand its demonstration area, or to acquire more properties than the number originally approved, the participant must request approval, in writing, from the Area Manager, or Regional Director of Housing, in the appropriate HUD office. The request must demonstrate continuing capacity to acquire, rehabilitate, and resell properties in a timely manner within the requirements of the demonstration as announced in the November 28, 1990 Notice. A request to amend a current proposal must also include a brief status report on progress made towards implementation of the participant's project as previously approved.

**Other Matters**

Findings made by the Department under the National Environmental Policy Act of 1969 and under Executive Orders 12606 (The Family) and 12612 (Federalism) were announced in the November 28, 1990 Notice and are unchanged by this extension.

Dated: November 6, 1992.

Arthur J. Hill,

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 92-28017 Filed 11-18-92; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES-940-5700-10-241A]

### General Land Office Automated Records Project

**AGENCY:** Bureau of Land Management; Interior.

**ACTION:** Notice is availability.

**SUMMARY:** Notice is given of the public availability of the Bureau of Land Management (BLM) General Land Office (GLO) Automated Records Project. This Project has optically scanned images of the original GLO patents and deeds and contains a data base of key information derived from the patents.

**DATES:** December 1, 1992.

**ADDRESSES:** The GLO Automated Records Project system is available and supported from 8 a.m. to 4 p.m., Monday through Friday (excluding holidays) at the following location: Bureau of Land Management, Eastern States, Public Service Section, 7450 Boston Boulevard, Springfield, Virginia 22153.

**SUPPLEMENTARY INFORMATION:** The BLM Eastern States maintains the original GLO tract books that show how, when, and to whom title to public domain lands passed from the United States—in the States of Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Ohio, and Wisconsin. The tract books record land transactions that date back to the late 1700's. Eastern States also maintains a complete set of field notes and township plats for the 13 States listed above.

The BLM initiated the GLO Automated Records Project because it recognized the need to protect and preserve these records, and make them more accessible. The Project provides

the capability to scan, index, store, update, and retrieve images and attribute data for the images of the GLO documents. To protect them from further deterioration, the original documents are retired from daily public use after entry into the GLO Automated Records System.

Retrieval of the data base and document images from optical disk is now available for the States of Florida, Arkansas, Wisconsin, Louisiana, Minnesota, and Michigan, for patents issued for cash entries and homesteads before July 1, 1908. Document images can be retrieved by querying the data base in six areas: Legal land description, patent authority, patentee name, land office, certificate number, and county. As they are completed, the rest of the states and the field notes and township plats will come "on-line."

Paper copies of the document images are available in several sizes. Also available are reports with information specific to the document (land description, patent authority, patentee name, land office, certificate number, and county).

Until February 1, 1993, there will be no charge for using the GLO Automated Records System, although there will be the standard charge for paper copies of documents and reports. After February 1, 1993, rates will be charged for querying the System. The rates will follow established BLM cost recovery guidelines.

The GLO Automated Records System will be available for remote use (via modem) 24 hours daily and supported during the hours of 8 a.m. and 5 p.m., Monday through Friday (excluding holidays), in the Eastern States Public Service Section as of February 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** The Public Service Section at 703–440–1564.

Dated: November 4, 1992.

**Denise P. Meridith,**

*State Director.*

[FR Doc. 92–28101 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–GJ–M

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[ID–011–03–4191–OHDM]

## Notice of Meeting: Boise District Advisory Council

**AGENCY:** Boise District, Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Boise District Advisory Council will meet to discuss the Owyhee Resource Management Plan, recreation management in the Boise Front and other issues.

**DATES:** The Council will meet Tuesday, December 15, beginning at 8:30 a.m., in the District Office conference room.

**ADDRESSES:** The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Barry Rose, BLM Boise District (208) 384–3393.

Dated: November 10, 1992.

**Rodger E. Schmitt,**

*Associate District Manager.*

[FR Doc. 92–28110 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–GG–M

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[CO–920–93–4110–03; COC34986 and COC54033]

## Colorado; Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas leases COC34986, and COC54033, Rio Blanco County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1992, the date of termination.

No valid leases have been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the leases and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the leases as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188(d) and (e), the Bureau of Land Management is proposing to reinstate the leases effective July 1, 1992, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: November 5, 1992.

**William J. Norton II,**

*Acting Chief, Fluid Minerals Adjudication Section.*

[FR Doc. 92–28021 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–JB–M

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[CO–920–93–4110–03; COC52093]

## Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC52093, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from July 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective July 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: November 9, 1992.

**Janet M. Budzilek,**

*Chief, Fluid Minerals Adjudication Section.*

[FR Doc. 92–28022 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–JB–M

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[CA–010–3110–10–B002; CACA 20920]

## Notice of Issuance of Land Exchange Conveyance Document; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this exchange was to acquire a portion of the non-Federal land within the Carrizo Plains Natural Area Project. This exchange will provide a more consolidated land pattern for increased management efficiencies. It will also provide significant benefits to the public for endangered plant/animal species protection, general recreation, and access. The public interest was well served through completion of this exchange.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, BLM California State Office, 916–978–4820.

The United States issued an exchange conveyance document to The Nature Conservancy on November 9, 1992, pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), for the following described and:

Mount Diablo Meridian

T. 28 S., R. 11 E.,
Sec. 18, lot 6.

The area described contains 17 acres in San Luis Obispo County.

The value of the Federal land was appraised at $6,375. When appropriate, the non-Federal land involved in this exchange will be acquired in accordance with the procedures set forth in the Cooperative Land Exchange Agreement between The Nature Conservancy and the Bureau of Land Management, dated August 16, 1990.

Dated: November 12, 1992.

**Nancy J. Alex,**

*Chief, Lands Section.*

[FR Doc. 92-28151 Filed 11-18-92; 8:45 am]

BILLING CODE 4310-40-M

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**[Docket Number: G3-036]**

## Limited Access Notice for Motor Vehicles on Certain Designated Roads

**AGENCY:** Bureau of Land Management, U.S. Department of Interior.

**ACTION:** Limited access restriction on certain roads.

**SUMMARY:** Notice is hereby given that certain roads which are signed and/or gated in townships 29S–10W, 28S–10W, 27S–10W, 29S–09W, 28S–09W, and 27S–09W in the Coos Bay District, within Coos County have Limited Access for motorized vehicles in accordance with the current Roosevelt elk research project and other appropriate Bureau of Land Management (BLM) planning documents. Limited access is for 12 months per year and will continue for about a two year period beginning on or about 1 October 1992, when roads are signed and/or gated, and ending 31 August 1994. Any limited access may be removed by mutual agreement between cooperating private landowners and the BLM. Extensions of any restricted access would be addressed under a separate plan and an additional Federal Register notice which would be completed prior to the extension. Acceptable reasons for access include the following: Fire (prescribed or suppression), emergency, rescue, forestry management on lands administered by the party (including but not limited to thinning, fertilization, stand exams, reforestation and harvesting activities on private lands and as authorized by the area manager on BLM administered lands), salvage sales on BLM administered lands (authorized by the area manager or his agent on a case-case basis) and wildlife/fisheries monitoring and research. Recreational use of motor vehicles by all parties within the limited access area is prohibited. This does not affect non-motorized forms of travel. The reason for this order is to implement a research project which may affect future mitigation designed primarily for Roosevelt elk habitat, with certain other benefits outlined in the research proposal.

Copies of the environmental assessment for this proposal and maps of the roads affected are available from the Coos Bay District office, North Bend, Oregon 97459. The Limited Access designation will be reviewed annually by BLM, Oregon Department of Fish and Wildlife, Oregon State University and the Oregon State Police, with opportunities for public comment. Particular roads may be added or dropped from the system, provided they are in the existing project areas and public comment opportunities are provided.

This is a cooperative road management program with the Oregon Department of Fish and Wildlife and Oregon State University. All persons authorized to enforce state game laws may enforce this access restriction. Oregon State Police and County Sheriffs are hereby authorized to enforce state and federal laws and regulations on federal properties affected in this notice.

This limited access order is in accordance with the provisions of Public Law 93–452, the Sikes Act (88 Stat. 1369), (16 U.S.C. 670 et. seq) and Public Law 94–579, the Federal Land Policy and Management Act of 1986 (90 stat. 2743), (43 U.S.C. 1701), 43 CFR, Subpart 8364 and BLM Manual Handbook, State Office—Oregon H–2812–1—Logging Road Right-of-way. Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7 or as ordered through the Oregon judicial system.

The following is a list of gate locations identified in 1992 by this order, by resource area, road number and approximate location:

| Road No. | Location |
|---|---|
| **Tioga Resource Area** | |
| Priority 1 Area: | |
| 27-10-02.0 | T. 27 S., R. 10 W., sec. 11 NW¼NW¼. |
| 27-10-04.0 | T. 27 S., R. 10 W., sec. 09 NW¼NE¼. |
| 27-10-06.1 | T. 27 S., R. 10 W., sec. 05 SW¼SW¼. |
| 27-10-14.1 | T. 27 S., R. 10 W., sec. 14 SW¼SW¼. |
| Priority 2 Area: | |
| 27-09-17.0 | T. 27 S., R. 09 W., sec. 17 SW¼SW¼. |
| 27-09-13.0 | T. 27 S., R. 10 W., sec. 13 SW¼SW¼. |
| Priority 3 Area: | |
| 27-09-33.0 | T. 27 S., R. 09 W., sec. 34 NE¼NW¼. |
| 27-09-32.1 | T. 27 S., R. 09 W., sec. 32 SE¼SE¼. |
| 28-09-08.0 | T. 27 S., R. 09 W., sec. 05 NE¼SE¼. |
| 28-09-09.1 | T. 28 S., R. 09 W., sec. 09 NW¼SW¼. |
| **Myrtlewood Resource Area** | |
| Priority 1 Area: | |
| 29-10-09.0 | T. 29 S., R. 10 W., sec. 09 SW¼NE¼. |
| 29-10-09.1 | T. 29 S., R. 10 W., sec. 09 SW¼SE¼. |
| 29-10-29.0 | T. 29 S., R. 10 W., sec. 20 SW¼NW¼. |
| 29-10-15.2 | T. 29 S., R. 10 W., sec. 15 SW¼NW¼. |
| Priority 2 Area: | |
| 28-11-29.0 | T. 28 S., R. 11 W., sec. 29 SE¼NW¼. |
| 28-10-33.1 | T. 28 S., R. 10 W., sec. 33 SE¼NE¼. |
| 28-10-34.1 | T. 28 S., R. 10 W., sec. 34 NW¼NE¼. |
| 28-10-34.2 | T. 28 S., R. 10 W., sec. 33 SW¼SE¼. |
| 28-11-28.0 | T. 28 S., R. 11 W., sec. 33 SW¼SW¼ (pvt.). |
| Priority 3 Area: | |
| 29-10-03.1 | T. 29 S., R. 10 W., sec. 03 SE¼NE¼. |
| Priority 4 Area: | |
| 29-09-18.1 | T. 29 S., R. 09 W., sec. 07 SE¼SE¼. |
| 28-09-35.0 | T. 29 S., R. 09 W., sec. 09 SE¼NE¼. |

Two additional roads are signed as limited access, but are not gated.

**MYRTLEWOOD RESOURCE AREA**

Priority 2 Area:
28–10–27.1
Priority 3 Area:
29–10–02.2

The following is a list of BLM spur roads which will be affected by the locking of the gates listed above.

| Myrtlewood Resource Area | Tioga Resource Area |
|---|---|
| 29-10-09.2 | 27-10-05.0 |
| 29-10-16.2 | 27-10-05.3 |
| 29-10-16.1 | 27-10-08.0 |
| 29-10-16.0 | 27-10-09.0 |
| 29-10-21.0 | 27-10-10.1 |
| 29-10-15.3 | 27-10-24.0 |
| 29-10-09.3 | 27-10-24.1 |
| 29-10-05.0 | 27-10-23.1 |
| 28-10-34.3 | 27-10-23.3 |
| 28-10-33.0 | 27-10-23.0 |
| 28-11-28.0 | 27-10-22.1 |
| 28-11-29.3 | 27-10-26.1 |
| 28-11-29.2 | 27-10-26.3 |
| 28-09-09.0 | 27-10-26.2 |

| Myrtlewood Resource Area | Tioga Resource Area |
|---|---|
| 28–09–09.2 | 27–10–26.0 |
| 28–09–09.1 | 27–10–35.1 |
| 29–09–07.0 | 27–10–23.3 |
| | 27–10–23.4 |
| | 27–10–20.1 |
| | 27–10–20.0 |
| | 27–10–19.0 |
| | 27–10–19.1 |
| | 27–10–30.0 |
| | 27–10–17.0 |
| | 27–10–31.0 |
| | 27–10–31.1 |
| | 27–10–24.1 |
| | 27–10–26.1 |
| | 27–09–33.2 |

**ADDRESSES:** Detailed information concerning this notice, including the environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 1300 Airport Lane, North Bend. OR 97459.

**DATES:** For a period of 30 days from the publication of this notice in the Federal Register, interested parties may submit comments to the Coos Bay District Manager at the above address. Objections will be evaluated by the Oregon State Director of the Bureau of Land Management who may sustain, vacate or modify this action. In the absence of any objection, this action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Steve Langenstein or Bret Christensen, Coos Bay District Office (503) 756–0100.

Dated: November 10, 1992.

**Melvin Chase,**

*District Manager.*

[FR Doc. 92–28111 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–33–M

## Fish and Wildlife Service

### Notice of Availability of a Draft Revised Recovery Plan for Etheostoma Nuchale (Watercress Darter) for Review and Comment

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

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the watercress darter. The watercress darter is an endangered species known to occur naturally in habitat associated with three springs in Jefferson County, Alabama. The watercress darter also occurs in Tapawingo Springs, Jefferson County, Alabama, where it was successfully transplanted in January 1988. The Service solicits review and comment from the public on this draft revised plan.

**DATES:** Comments on the draft revised recovery plan must be received on or before January 19, 1993, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, suite 110, Bethesda, Maryland 20814, or calling 301/492–6403 or 1/800/582–3421. Written comments and materials regarding the plan should be addressed to the Field Supervisor at U.S. Fish and Wildlife Service, Endangered Species Office, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the latter address.

**FOR FURTHER INFORMATION CONTACT:** Robert Bowker at the above address (601/965–4900).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for reclassify or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft revised recovery plan is *Etheostoma nuchale* (Watercress Darter). Listing the watercress darter was considered necessary because of its very limited distribution and degradation of its aquatic habitat. Major objectives of this recovery include establishing the rare fish at additional sites within the Jefferson County area of Alabama, restoring its habitat quality at all occupied sites, and providing long-term protection for the fish and its habitat.

#### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 16, 1992.

**Robert Bowker,**

*Complex Field Supervisor.*

[FR Doc. 92–28109 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–55–M

## Geological Survey

### Federal Geographic Data Committee (FGDC); Public Review and Testing of Draft Spatial Metadata Content Standard

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice; Request for comments.

**SUMMARY:** The FGDC is sponsoring a public review and test of a draft content standard for spatial metadata. Metadata are data about the content, quality, and condition of data. This data documentation is used for both indexing and data transfer purposes.

Success of the standard will depend on consideration given to the needs and views of industry, the public, and State and local governments. The purpose of this notice is to solicit such views. The FGDC invites the spatial data community to review, use, and evaluate the draft standard. Comments are encouraged about the content, completeness, and usability of the standard, and identification of elements that should be mandatory for spatial data indexing and exchange.

The FGDC anticipates that the final draft will be submitted to the National Institute of Standards and Technology for adoption as a Federal Information Processing Standard.

**DATES:** Comments must be received on or before April 15, 1993.

**ADDRESSES:** Written comments concerning the proposed standard should be sent to: Metadata Review, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; or via Internet to "metadata@usgs.gov". The draft standard may be requested from the same mailing or Internet addresses, or via facsimile on (703) 648–5755. Internet users should identify themselves at the bottom of their message.

**FOR FURTHER INFORMATION CONTACT:** Michael Domaratz, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone (703) 648–4533; facsimile (703) 648–5755; Internet "metadata@usgs.gov".

**SUPPLEMENTARY INFORMATION:** In June 1992, an Information Exchange Forum on Spatial Metadata was sponsored by the FGDC. Over 150 people participated in discussions about current requirements for and approaches to spatial metadata. (A meeting report is available from the addresses listed above.) As a result of the interest expressed at the meeting, an ad hoc working group was convened to establish preliminary definitions for metadata elements. The group reviewed definitions and examples from a variety of agencies, including State and Federal spatial data clearinghouses, and compiled the draft standard.

Dated: October 30, 1992.

**Allen H. Watkins,**

*Chief, National Mapping Division.*

[FR Doc. 92–28075 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–31–M

## National Park Service

### Natchez National Historical Park Advisory Commission, Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Advisory Commission meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Natchez National Historical Park Advisory Commission will be held from 2 p.m. to 3 p.m., at the following location and date.

**DATES:** November 12, 1992.

**LOCATION:** Administrative Headquarters, Natchez National Historical Park, 504 South Canal Street, Natchez, Mississippi 39120.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stuart Johnson, Superintendent, Natchez National Historical Park, Post Office Box 1208, Natchez, Mississippi 39121, (601) 442–7047.

**SUPPLEMENTARY INFORMATION:** The purpose of the Natchez National Historical Park Advisory Commission is to advise the Secretary of the Interior on the development and management of the Natchez Historical Park.

The members of the Advisory Commission are as follows:

Mr. William Batteast
Mr. John Callon
Ms. Joan Gandy
Ms. Alferdteen Harrison
Mr. Ronald Miller
Mr. Kenneth P'Pool

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: October 21, 1992.

**Frank Catroppa,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 92–28081 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–70–M

### Wrangell-St. Elias National Park Subsistence Resource Commission; Meetings

**AGENCY:** National Park Service, Interior.

**ACTION:** Subsistence Resource Commission meeting.

**SUMMARY:** The Superintendent of Wrangell-St. Elias National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Superintendent and Chairperson's Welcome.
(2) Introduction of Commission members and guests.
(3) Review SRC function and purpose.
(4) Approval of minutes of previous meeting.
(5) SRC membership status:
  a. Election of Chairperson.
  b. Members' terms of appointment.
(6) Review Secretary's correspondence to SRC:
  a. Hunting Plan Recommendations #1 and 2 (Secretary's letter of July 14, 1992).
  b. SRC representation (Secretary's letter of February 21, 1992).
(7) Review Federal Subsistence Management Program:
  a. Subsistence Resource Advisory Council Program status report.
  b. Federal Board actions.
  c. Review and comment on 1993–94 Subsistence Management Regulations.
(8) Superintendent's report:
  a. Subsistence wildlife population status reports.
  b. Subsistence research (CRNA/NPS Cooperative Agreement).
  c. NPS subsistence eligibility (resident zone/13.44 permits).
(9) Public and other agency comments.
(10) Hunting Plan Recommendations work session:
  a. Review status of Draft Hunting Plan Recommendations for Yakutat regarding GMU–5 black bear and GMU–6A mountain goats.
  b. Develop and approve new hunting plan recommendations.
(11) Adjournment.

**DATES:** The meeting will begin at 9 a.m. on Monday, November 30, 1992, and conclude around 5 p.m. The meeting will reconvene at 9 a.m. on Tuesday, December 1, 1992, and conclude around 5 p.m.

**LOCATION:** The meeting will be held at the Caribou Cafe, Glennallen, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Karen Wade, Superintendent, P.O. Box 29, Glennallen, Alaska 99588. Phone (907) 822–5234.

**SUPPLEMENTARY INFORMATION:** The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

**Paul F. Haertel,**

*Acting Regional Director.*

[FR Doc. 92–28080 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–70–M

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 7, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments

concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 4, 1992.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**IOWA**

**Jones County**

*Farm No. 1, Iowa Men's Reformatory (Municipal, County and State Corrections Properties MPS),* Co. Trunk Hwy. E28 W of Buffalo Cr., Anamosa vicinity, 92001664

*Iowa Men's Reformatory Cemetery (Municipal, County and State Corrections Properties MPS),* Co. Trunk Hwy. E28 W of Buffalo Cr., Anamosa vicinity, 92001665

*Iowa Men's Reformatory Historic District (Municipal, County and State Corrections Properties MPS),* N. High St., Anamosa, 92001667

*State Quarry, Iowa Men's Reformatory (Municipal, County and State Corrections Properties MPS),* Unnamed rd. along E side of Buffalo Cr. NW of Anamosa, Anamosa vicinity, 92001666

**Kossuth County**

*Lu Verne City Jail (Municipal, County and State Corrections Properties MPS),* 307 Third St., Lu Verne, 92001662

**Lee County**

*Iowa State Penitentiary Cellhouses Historic District (Municipal, County and State Corrections Properties MPS),* Jct. of Avenue G and US 61, Fort Madison, 92001663

**Montgomery County**

*Montgomery County Jail (Municipal, County and State Corrections Properties MPS),* 100 W. Coolbaugh St., Red Oak, 92001661

**MASSACHUSETTS**

**Middlesex County**

*Haven, Wilbur Fiske, House,* 339 Pleasant St., Malden, 92001659

**TENNESSEE**

**Davidson County**

*Archeological Site No. 40DV35,* Address Restricted, Nashville vicinity, 92001655

**Madison County**

*Denmark Mound Group,* Address Restricted, Denmark vicinity, 92001656

**White County**

*Sparta Nashville, Chattanooga and St. Louis Railroad Depot,* Jct. of Depot and Clark Sts., Sparta, 92001658

**VERMONT**

**Chittenden County**

*Murray—Isham Farm (Agricultural Resources of Vermont MPS),* 741 Oak Hill Rd. (Town Hwy. 1), Williston, 92001668

**WEST VIRGINIA**

**Mineral County**

*Burlington Historic District,* WV 11 S from jct. with US 50/220, Burlington, 92001660

[FR Doc. 92–28082 Filed 11–18–92; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–559 (Final)]**

### New Steel Rails From the United Kingdom

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject investigation.

**EFFECTIVE DATE:** November 10, 1992.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202–205–3190), 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:** On October 14, 1992, the Commission instituted the subject investigation and established a schedule for its conduct (53 FR 53778, November 12, 1992). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from December 22, 1992, to February 10, 1993 (53 FR 53692, November 12, 1992). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 5, 1993; the prehearing conference will be held at the U.S. International Trade Commission Building on February 9, 1993; the prehearing staff report will be placed in the nonpublic record on February 2, 1993; the deadline for filing prehearing briefs is February 9, 1993; the hearing will be held at the U.S. International Trade Commission Building on February 16, 1993; and the deadline for filing posthearing briefs is February 24, 1993.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: November 13, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–28089 Filed 11–18–92; 8:45 am]

BILLING CODE 7020–02–M

**[Investigations Nos. 701–TA–314 through 317 and 731–TA–553 through 555 (Final)]**

### Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany, and the United Kingdom

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of final countervailing duty and antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–314 through 317 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and final antidumping investigations Nos. 731–TA–553 through 555 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether 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 Brazil, France, Germany, and the United Kingdom of certain hot-rolled lead and bismuth carbon steel products, provided for in subheadings 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00 and 7228.30.80 of the Harmonized Tariff Schedule of the United States (HTS).[1] The schedules for

[1] For purposes of these investigations, the subject hot-rolled lead and bismuth carbon steel products are hot-rolled products of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels, except steels classified as such by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, selenium, or tellurium. Also excluded are semifinished steels and flat-rolled carbon steel products.

the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations (57 FR 48020, October 21, 1992). Subsequent to that action, Commerce advised the Commission it was extending the date for its final determinations in the investigations from December 7, 1992, to January 11, 1993.

For further information concerning the conduct of these investigations, hearing procedures, 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 C (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:** Jim McClure (202–205–3191), 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:**

**Background**

The subject countervailing duty investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Brazil, France, Germany, and the United Kingdom of certain hot-rolled lead and bismuth carbon steel products. The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain hot-rolled lead and bismuth carbon steel products from France, Germany, and the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). All of the investigations were requested in a petition filed on April 13, 1992, by Inland Steel Industries, Inc., including Inland Steel Bar Co., Chicago, IL; and the Bar, Rod and Wire Division, Bethlehem Steel Corp., Johnstown, PA.

**Participation in the Investigation and Public Service List**

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations 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 these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) 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.

*Staff report.*—The prehearing staff report in these investigations will be placed in the nonpublic record on January 4, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on January 21, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 7, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 11, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

*Written submissions.*—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 13, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 29, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party of the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 29, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also 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 the investigations must be served on all other parties to the investigations (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:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: November 13, 1992.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 92–98040 Filed 11–18–92; 8:45 am]

BILLING CODE 7020–02–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, set out in 28 CFR 50.7, notice is hereby given that on November 5, 1992, a proposed consent decree in partial settlement of *United States* v. *Montrose Chemical Corporation of California, et al.*, Civil Action No. CV 90–3122–AAH (JRx), was lodged with the United States District Court for the Central District of California. In the Complaint in that action, the United States seeks damages for injury to natural resources from several defendants alleged to have released hazardous substances into the marine environment off the coast of Los Angeles, and also seeks recovery of

response costs incurred and to be incurred with respect to the Montrose Chemical Corporation of California National Priorities List Site, relating to contamination by DDT and other hazardous substances at the former plant site of the Montrose Chemical Corporation of California, 20201 South Normandie Avenue, Los Angeles County, California. The proposed settlement resolves the liability of one named defendant, County Sanitation District No. 2 of Los Angeles County, and of a large number of third-party defendant governmental agencies. Under the terms of the settlement, the settling governmental agencies will pay a settlement amount of $42.3 million in five payments over a period of four years for natural resource damages, and will pay a settlement amount of $3.5 million on one payment for response costs at the Montrose Chemical corporation NPL Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States v. Montrose Chemical Corporation of California*, D.J. Ref. No. 90–11–3–511.

The Consent Decree may be examined at the Office of the United States Attorney, Central District of California, 300 North Los Angeles Street, Los Angeles, CA 90012; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, Tel. (202) 347–2072. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library.

In requesting a copy, please tender a check in the amount of $59.75 (25 cents per page reproduction charge) payable to the Consent Decree Library.

John C. Cruden,

*Chief, Environment and Natural Resources Division.*

[FR Doc. 92–28023 Filed 11–18–92; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* versus *County of Stearns*, No. 3–89–616 (D. Minn.), was lodged with the United States District Court for the District of Minnesota on October 30, 1992.

The proposed consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1344, as a result of discharges of fill material onto portions of property located adjacent to Stearns County Ditch No. 29, Stearns County, Minnesota, which are alleged to constitute "waters of the United States." The alleged violations occurred in connection with the reconstruction of an agricultural drainage ditch undertaken by Defendant Stearns County, Minnesota. The consent decree requires Defendant Ted L. Chamberlain, the project engineer for the County of Stearns, to pay a civil penalty of four thousand dollars ($4,000), and requires Defendant Harlan Satterlund, the equipment operator for the County of Stearns, to pay a civil penalty of one thousand dollars ($1,000). Both individual defendants are sole proprietors and demonstrated substantial inability to pay a larger civil penalty. In addition, the consent decree requires that prior to undertaking any additional ditch reconstruction work, Defendant County of Stearns must provide compensatory mitigation at a designated area adjacent to Stearns County Ditch No. 37, or obtain and restore five-hundred (500) acres of previously drained wetlands at a location to be designated in the future. Defendant County of Stearns must also apply for and receive an individual Clean Water Act section 404 permit prior to undertaking certain additional ditch reconstruction work specified in the consent decree.

The Department of Justice will receive until thirty (30) days from the date of this notice written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Craig D. Galli, Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, 10th and Pennsylvania Ave., NW., Washington, DC 20530; and should refer to *United States* versus *County of Stearns*, DJ Reference No. 90–5–1–1–3435.

The consent decree may be examined at the Clerk's Office, United States District Court, District of Minnesota, Office of the Clerk, 316 North Robert Street, room 708, St. Paul, Minnesota, during regular business hours; or, upon written request to Craig D. Galli, Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, 10th and Pennsylvania Ave., NW., Washington, DC 20530.

Vicki A. O'Meara,

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 92–28024 Filed 11–18–92; 8:45 am]

BILLING CODE 4410–01–M

## Antitrust Division

## Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, on September 28, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Korea Telecom simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Korea Telecom, Seoul, Korea. Bellcore and Korea Telecom entered into an agreement effective as of August 26, 1992, to engage in cooperative research of improved computational algorithms related to network demand estimation to better understand the applications of such algorithms for exchange and exchange access services.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 92–28025 Filed 11–18–92; 8:45 am]

BILLING CODE 4410–01–M

## Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, on October 8, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Philips Communications & Processing Service International B.V., as represented by Philips Home Service International, a division thereof, ("Philips") simultaneously with the

Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Philips, Eindhoven, The Netherlands. Bellcore and Philips entered into an agreement effective as of September 15, 1992, to engage in cooperative research with respect to the provision of exchange and exchange access services that are to interface with screen-based telephone instruments, including but not limited to display-assisted telephone service ordering, activation and modification; telephone service profile management; and incoming call management, including developing and assembling of experimental prototype equipment to form an experimental prototype system, for use in refining network/instrument interface(s) and in verifying experimental results.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 92-28026 Filed 11-18-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on October 5, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Aries Technology, Inc., Lowell, MA; Cimflex Teknowledge Corporation, Palo Alto, CA; Cimplex Corporation, Campbell, CA; Ford Motor Company, Dearborn, MI; General Motors Corporation, Detroit, MI; ICAD, Inc., Cambridge, MA; National Center for Manufacturing Sciences, Inc., Ann Arbor, MI; Spatial Technology, Inc., Boulder, CO; Texas Instruments, Incorporated, Dallas, TX; and United Technologies Corporation, Hartford, CT. The parties entered into an agreement, effective on September 15, 1992, to undertake research development activities focusing on generic enabling technologies in the general area of computer integrated manufacturing.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 92-28027 Filed 11-18-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984—Ultra Low Emission Engine Program

Notice is hereby given that, on October 16, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Renault Automobiles, Ruell Malmaison Cedex, France, has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 9, 1991, 56 FR 64276.

The last substantive change notification was filed with the Department on June 30, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the Act on July 24, 1992, 57 FR 33013. The last correction notification was filed with the Department on August 13, 1992. A notice was published in Federal Register pursuant to section 6(b) of the Act on September 10, 1992, 57 FR 41549.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 92-28028 Filed 11-18-92; 8:45 am]

BILLING CODE 4410-01-M

## Notice Pursuant to the National Cooperative Research Act of 1984—The Development of Advanced Technologies and Systems for Controlling Dimensional Variation in Automobile Body Manufacturing

Notice is hereby given that, on October 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), 2 mm Program, Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and its general areas of planned activity are ASC, Incorporated, Southgate, MI; CDI Corporation-Michigan, d/b/a Modern Engineering, Warren, MI; C.A.D. Systems, Inc. (CSI, d/b/a Classic Design, Inc.), Troy, MI; Chrysler Corporation, Detroit, MI; Detroit Center Tool, Inc., Detroit, MI; General Motors Corporation, Warren, MI; I.S.I. Manufacturing, Inc., Fraser, MI; Perceptron, Inc., Farmington Hills, MI; Pioneer Engineering & Manufacturing Co., Warren, MI; Progressive Tool & Industries Co., Southfield, MI; and Richard & Trute Tool and Die Corp., Warren, MI. The objectives of this program are to advance automobile body manufacturing techniques and process control methodologies to achieve world-class body-in-white dimensional quality, to improve the scientific understanding of the sheet metal assembly processes, and to establish a technical infrastructure for the future sheet metal process control and assembly systems.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 92-28029 Filed 11-18-92; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

## Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 23, 1992, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Branchburg, New Jersey 08876, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk

manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Phencyclidine (7471) | II |
| Methadone (9250) | II |

The firm plans to manufacture 50 grams or less of the above substances to be utilized exclusively for non-human consumption for drug of abuse detection kits that are included as exempt chemical preparations.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing therein in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: November 12, 1992.

**Gene R. Haislip,**

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

[FR Doc. 92-28036 Filed 11-18-92; 8:45 am]

BILLING CODE 4410-09-M

## Immigration and Naturalization Service

**[INS No. 1389-92]**

## Immigration and Naturalization Service User Fee Committee; Meeting

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

**ACTION:** Notice of meeting.

*Committee holding meeting:* Immigration and Naturalization Service User Fee Advisory Committee.

*Date and time:* December 2, 1992, at 3 p.m.

*Place:* The Mills House Hotel, 115 Meeting Street, Charleston, South Carolina 29401, telephone number: (803) 577-2400.

*Status:* Open. Eighth meeting of this Advisory Committee.

*Purpose:* Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspectional services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal government.

*Agenda*

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

*Public participation:* The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting by the contact person will be considered for discussion at the meeting.

*Contact person:* Elaine Schaming, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, room 7223, 425 I Street, NW., Washington, DC 20536, telephone number (202) 514-9587 or fax number 202-514-8345.

Dated: November 13, 1992.

**Gene McNary,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 92-28085 Filed 11-16-92 10:22 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF LABOR

### Office of the Secretary

## Glass Ceiling Commission; Open Site Hearing

**SUMMARY:** Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102-166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92-462, 5 U.S.C. app. II) a Notice of Establishment of the Glass Ceiling Commission was published in the Federal Register on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Tuesday, December 8, 1992. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of women and minorities to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into the practices, policies and manner in which management and decision-making positions in business are filled; (b) conducting comparative research of businesses and industries in which women and minorities are promoted to management and decisionmaking positions, and businesses and industries in which women and minorities are not promoted to such positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of women and minorities to management and decisionmaking positions.

**TIME AND PLACE:** The meeting will be held on Tuesday, December 8, 1992 from 9 a.m. to 5 p.m. in the City Council Chambers, City of Kansas City, Kansas Lobby, City Hall, 701 North Seventh Street, Kansas City, Kansas.

**AGENDA:** The agenda for the meeting is as follows:

(a) Opening Statement by Secretary of Labor Lynn Martin;

(b) Introduction of Commission Members;

(c) Regional Workforce Demographic Overview;

(d) Discussion of barriers confronting women and minorities in the workplace; and

(e) Discussion of successful innovative programs in the workplace.

**PUBLIC PARTICIPATION:** The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Handicapped individuals should contact the Commission if special accommodations are needed. Individuals or organizations wishing to submit written statements should send thirty (30) copies to Mrs. Tish Leonard, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-2018, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Tish Leonard, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution

Avenue, NW., room S–2018, Washington, DC 20210, (202) 219–8271.

Signed at Washington, D.C. this 16 day of November, 1992.

Lynn Martin,

*Secretary of Labor.*

[FR Doc. 92–28116 Filed 11–18–92; 8:45 am]

BILLING CODE 4510–23–M

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**[Secretary's Order 8–92]**

## Transfer of Authority and Assignment of Certain Responsibilities to the Assistant Secretary for Employment and Training

October 1, 1992.

1. *Purpose.* To transfer certain responsibilities of the Deputy Secretary of Labor and the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs to the Assistant Secretary for Employment and Training.

2. *Background.* In its budget submission to the Congress for fiscal year 1993, the Department of Labor proposed the elimination of the Bureau of Labor-Management Relations and Cooperative Programs (BLMRCP). Certain functions performed by BLMRCP have been mandated to the Department by statute. These functions, therefore, must be reassigned within the Department. This Secretary's Order makes the reassignment of those statutory functions to the Assistant Secretary for Employment and Training, effective October 1, 1992.

3. *Directives Affected.* The authorities delegated herein to the Assistant Secretary of Employment and Training are in addition to those delegated in Secretary's Orders 4–75, 7–77, 6–78, 2–79, 8–79, 2–85, 5–86, 4–90, and 5–90, which remain in effect.

Sections 3.a. and 6 of Secretary's Order 7–84 are superseded with regard to the delegation of authority and assignment of responsibility to the Under Secretary, and those statutory functions of BLMRCP are hereby delegated to the Assistant Secretary for Employment and Training.

Sections 3.b. and 5 of Secretary's Order 3–84 are superseded with regard to the delegation of authority and assignment of responsibility to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs, and those statutory responsibilities are hereby delegated to the Assistant Secretary for Employment and Training by section 4.a. of this Order.

Section 4.a. of Secretary's Order 4–89 is amended to delete references to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs, and substitute therefore references to the Assistant Secretary for Employment and Training.

Secretary's Order 6–78 is amended to delete section 4.c. and paragraph 4.b., and to renumber subparagraphs (1), (2), and (3) of former paragraph 4.b. as 4.a. (3), (4), and (5). Section 4.d. shall be renumbered 4.b. Delete references to the Assistant Secretary for Labor-Management Relations in sections 4.a., 5, and 7. In sections 4.a. and 5, substitute references to the Assistant Secretary for Employment and Training for the deleted references to the Assistant Secretary for Labor-Management Relations. Delete the second clause of the second sentence in section 5, which refers to advising the Assistant Secretary for Employment and Training.

Secretary's Order 1–79 is amended to delete paragraph 4.b., and to renumber subparagraphs (1), (2), (3), and (4) of former paragraph 4.b. as 4.a. (9), (10), (11), and (12). Delete references to the Assistant Secretary for Labor-Management Relations in section 4.c. Finally, section 4.c. shall be renumbered 4.b., and section 4.d. shall be renumbered as 4.c.

4. *Delegation of Authority and Assignment of Responsibilities.*

a. *The Assistant Secretary for Employment and Training* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the functions to be performed by the Secretary of Labor, which were previously assigned to the Deputy Secretary of Labor and the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs, under:

(1) The employee protection provisions of the Federal Transit Act.

(2) Section 405 (a), (b), (c), and (e) of the Rail Passenger Service Act of 1970.

(3) Title I of the Redwood National Park Expansion Act of 1978, as specified in section 4.a. of Secretary's Order 4–89, as amended by this Order.

(4) Title II of the Redwood National Park Expansion Act of 1978, as specified in Secretary's Order 6–78, as amended by this Order.

(5) Section 43(d) of the Airline Deregulation Act of 1978 as specified in Secretary's Order 1–79, as amended by this Order.

b. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department of Labor relating to the administration of the statutes listed in section 4.a. above. The bringing of legal proceedings under the statutes listed in section 4.a. of this Order, the representation of the Secretary of Labor and/or other officials of the Department of Labor, and the determination of whether such proceedings or representation are appropriate in a given case are delegated exclusively to the Solicitor of Labor.

5. *Reservation of Authority.* The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in section 4.a. above is reserved to the Secretary.

6. *Redelegation of Authority.* The authority delegated and responsibilities herein assigned may be further redelegated.

7. *Effective Date.* This Order is effective October 1, 1992.

Lynn Martin,

*Secretary of Labor.*

[FR Doc. 92–28118 Filed 11–18–92; 8:45 am]

BILLING CODE 4510–23–M

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**[Secretary's Order 10–92]**

## Establishment of Team 21 and the Delegation of Authority and Assignment of Responsibilities

November 5, 1992.

1. *Purpose.* To establish Team 21, and to delegate authority and assign responsibilities in the Department of Labor for the implementation and administration of Team 21.

2. *Background.* In recent years, there have been many changes that have affected our Nation's workforces and workplaces. Workers and employers should have the ability to quickly meet any challenges presented by such constantly evolving conditions. This Order establishes Team 21, which will assist the Department in expanding its role in creating workforces and workplaces which meet the needs of employers and workers who are faced with these changing economic realities and other challenges as we enter the 21st century.

3. *Establishment.* There is hereby established in the Department of Labor Team 21, which is headed by a Director who shall report directly to the Secretary of Labor.

4. *Delegation of Authority and Assignment of Responsibilities.*

a. *The Director of Team 21,* subject to the direction of the Secretary of Labor, is delegated authority and assigned responsibility for carrying out policies, programs, and activities such as, but not limited to, the following functions:

(1) Advising and assisting the Secretary and Departmental agencies in the identification of emerging workforce

and workplace issues and the development of policies and programs, based on both American and international experience, that address the challenges faced in the changing work environment.

(2) Establishing cross-functional temporary task forces, that will focus on a challenge and then be dissolved once the mission is accomplished, which will marshal Federal, state, and community-based resources, and draw upon both American and international experience, to provide meaningful assistance to businesses, labor unions, and workers in securing practical, timely information about high performing work organizations.

(3) Defining and promoting high performance workplaces by heightening awareness and strengthening strategic planning in the human resources arena.

(4) Facilitating the application of high performance workplace principles within the Department of Labor, which would include the Department as a public sector employer as well as the Department as a regulator of private sector organizations.

(5) Providing services and products to state and local community-based provider networks that are directly involved in assisting employers, unions, and the American worker, which will facilitate the Department in leveraging Federal funds to reach and affect American businesses and workers on a large scale and support the important work of community-based efforts.

(6) Promoting increases in both the quality and quantity of skills training, standards, certification, and partnerships among government, employers, educators, unions, and employees, by drawing upon both American and international experience, to achieve these goals.

(7) Identifying approaches for enhancing managerial understanding in handling human resources development.

(8) Enhancing the leadership role of the Department as a facilitator of workplace change and as a service provider to American industry, public employers, unions, and workers.

(9) Producing strategies for furthering the development of 21st century workplaces, drawing upon both American and international experience.

(10) Utilizing the experience of the Work-based Learning Commission as presently, or hereinafter reconfigured, to develop and promote the products and concepts of Team 21.

(11) Examining patterns, trends, and legal implications of employer-employee relations in the new American workplace, and assisting in the formulation of policy positions for the Department.

(12) Encouraging the involvement of labor and management in cooperative solutions to workforce and workplace issues.

b. *The Assistant Secretary for Administration and Management* is assigned responsibility for assuring an orderly and equitable transfer and realignment of resources associated with the former non-statutory functions and programs of the Bureau of Labor-Management Relations and Cooperative Programs to Team 21, including assurance of consultation and negotiation, as appropriate, with representatives of the affected employees.

c. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to Team 21 and to all officers of the Department of Labor relating to the implementation and administration of this Order.

5. *Redelegation of Authority.* The authority delegated and responsibility herein assigned may be further redelegated.

6. *Directives Affected.* None.

7. *Effective Date.* This Order is effective immediately.

**Lynn Martin,**

*Secretary of Labor.*

[FR Doc. 92-28117 Filed 11-18-92; 8:45 am]

BILLING CODE 4510-23-M

## Employment and Training Administration

**[TA-W-27,514 Sidney, OH; TA-W-27,514A Cleveland, OH]**

### Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance; Baumfolder Corp.

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 1992, applicable to all workers of the subject firm. The notice will soon be published in the Federal Register.

At the request of the company, the Department reviewed the certification for workers of Baumfolder Corporation. New information received from the company shows that Baumfolder had several employees laid off from its Cleveland, Ohio location who were doing support work for Sidney.

The intent of the Department's certification is to include all workers of Baumfolder who were affected by increased imports of graphic arts equipment, binders, paper folders and paper cutters.

The amended notice applicable to TA-W-27,514 is hereby issued as follows:

"All workers of Baumfolder Corporation, Sidney, Ohio and Cleveland, Ohio who became totally or partially separated from employment on or after July 9, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 10th day of November 1992.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 92-28119 Filed 11-18-92; 8:45 am]

BILLING CODE 4510-30-M

## Pension and Welfare Benefits Administration

**[Application No. D-8950, et al.]**

### Proposed Exemptions; Buckeye Pipe Line Company Retirement and Savings Plan, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three

copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Buckeye Pipe Line Company Retirement and Savings Plan (the Plan) Located in Emmaus, Pennsylvania [Application No. D–8950]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed sale by the Plan to Buckeye Pipe Line Company (the Employer), the sponsor of the Plan, of (a) guaranteed investment contract no. GA–CG01332A3A (the GIC), issued by Executive Life Insurance Company of California (Executive Life), or (b) the Plan's right to receive all proceeds paid by Executive Life, its conservator, any state guaranty fund or any other third parties making any payment with respect to the GIC (the Assignment); (2) the proposed extension of credit by the Employer to the Plan as advances (the Advances) with respect to the GIC; and (3) the Plan's potential repayment of the Advances; provided that the following conditions are satisfied:

(A) The Plan receives a purchase price for the GIC or the Assignment which is not less than the fair market value of the GIC as of the date of the purchase;

(B) The Advances are made solely to fund the payment of benefits by the Plan;

(C) All Advances made prior to any purchase of the GIC or the Assignment will be credited toward the purchase price;

(D) Repayment of the Advances is limited to the amounts received by the Plan from all sources, including the purchase price for the Rights or the Assignment, with respect to the GIC (the GIC Proceeds);

(E) Repayment of the Advances is waived with respect to the amount by which the Advances exceed GIC Proceeds;

(F) No repayment shall be made to the Employer unless and until the Plan has received GIC Proceeds in a total amount equal to the maturity value of the GIC, as described below; and

(G) Any GIC Proceeds in excess of the purchase price of the GIC or the Assignment, plus five percent, are paid to or retained by the Plan.

**EFFECTIVE DATE:** This exemption, if granted, will be effective as of December 30, 1991.

**Summary of Facts and Representations**

1. The Plan is a defined contribution plan with approximately 592 participants as of December 30, 1990. As of February 28, 1991, the Plan had total assets of $54,546,278.63. The Employer, which is an indirect subsidiary of Penn Central Corporation (Penn Central), is primarily involved in the operation of petroleum pipelines in the north central and northeastern United States. The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of the Accounts among five investment funds (the Funds) offered by the Retirement Plans Finance Committee of Penn Central (the Committee). The Committee is comprised of five officers of Penn Central. Discretion over the investment of the Funds rests with the Committee. The trustee of the Plan is Mellon Bank, N.A. (the Trustee).

2. The Funds include an income fund (the I Fund) which invests in guaranteed investment contracts issued by insurance companies. Among the contracts in which the Committee has invested assets of the I Fund is the GIC, issued by Executive Life on June 30, 1989. The GIC terms provide a guaranteed rate of interest of 8.98 percent over three years (the Contract Rate), with a maturity date of June 30, 1992. The GIC authorizes withdrawals prior to maturity (GIC Withdrawals) in order to fund benefit payments and to enable Account transfers out of the I Fund. The Employer represents that as of February 28, 1991, the GIC had a book value of $8,647,714, representing total principal deposits plus accrued interest, less previous withdrawals, and constituting approximately 23 percent of the assets in the I Fund and 17 percent of the assets of the Plan.

The Employer represents that after the Committee's purchase of the GIC, Executive Life's financial condition deteriorated, resulting in a rapid drop in Executive Life's ratings among issuers of guaranteed investment contracts. On April 11, 1991, Executive Life was placed under conservatorship by the California Department of Insurance, and the Employer represents that since that date Executive Life has been prohibited from making payments on its guaranteed investment contracts, including the GIC.[1]

Until April 1, 1991, all guaranteed investment contracts held by the I Fund had been commingled for the purpose of determining a blended rate of interest credited to Accounts invested in the I Fund. Effective April 1, 1991, the GIC was transferred to a separate subfund (the F Fund) from which benefit payments and transfers are prohibited. Due to concerns that Executive Life may be unable to fulfill its obligations to make payments due under the GIC, the Employer wishes to ensure that Plan participants invested in the GIC receive

[1] The Department notes that the Committee's decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

at least a minimum return on principal investments in the GIC. Toward that objective, the Employer proposes to purchase from the Plan either the GIC

By direction of the Secretary itself or the Assignment, and to make the Advances to enable the Plan to make distributions of benefits. The Employer is requesting an exemption for such transactions under the terms and conditions described herein.

3. All terms and conditions of the proposed transactions will be set forth in a written agreement (the Agreement) between the Employer and the Trustee. In the Agreement, the Employer and the Trustee agree to the appointment of an independent fiduciary (the Fiduciary) to monitor the Employer's compliance with the Agreement and to make certain necessary determinations, described below, on behalf of the Plan with respect to the purchase price under the Agreement. The Fiduciary will be Buck Pension Fund Services, Inc., an employee benefit consulting firm which represents that it has substantial fiduciary experience under the Act and that it is independent of the Employer.

4. The Agreement grants to the Employer an option (the Purchase Option) to purchase from the Plan, at the Employer's sole discretion and at any time subsequent to the execution of the Agreement, either (a) the GIC, including but not limited to the Plan's rights to any and all GIC Proceeds paid by Executive Life, its conservator, any state guaranty fund, or any other third party making any payment with respect to the GIC (collectively, the GIC Payors), or (b) the Assignment, which is limited to as an assignment of the Plan's rights to any and all GIC Proceeds paid by the GIC Payors. In either event, the Employer acquires the right to receive all GIC Proceeds paid by the GIC Payors after the consummation of the purchase transaction (the Closing). The Employer may exercise the Purchase Option at any time, and the Employer represents that the choice of transactions and the flexibility of timing is important for two reasons: (1) It will allow the parties to respond to significant developments in the conservatorship of Executive Life, and (2) it will enable the transaction to conform with the Employer's cash and credit capabilities.

5. Under the Agreement, the purchase price to be paid by the Employer for either the GIC or the Assignment will be an amount (the Purchase Price) equal to the total of the Plan's principal deposits in the GIC, less payments previously made to the Plan by Executive Life pursuant to the GIC terms, plus interest thereon at an effective rate of 5 percent per annum compounded daily to the date the purchase is consummated. As a condition of the Closing, the Fiduciary must determine that the Purchase Price is not less than the fair market value of the GIC as of the date of the Closing. The Agreement requires the Employer to refund to the Plan the amount of any GIC Proceeds received after Closing by the Employer in excess of the Purchase Price.

6. The Agreement also obligates the Employer to make the Advances, in amounts necessary to enable the Plan to make distribution payments of benefits attributable to participants' interests in the GIC. Each participants' interest in the GIC will be the amount of each participant's principal deposits in the GIC plus interest at the annual rate of five percent from the date of deposit through the date of the distribution, which will be funded by an Advance. Each Advance, which must be requested by the Trustee, will be in a single payment and will identify the Plan participant with respect to whom the Advance is to be made. Each Advance will be evidenced by a promissory note which provides for interest, to be paid to the Employer, at an effective rate of five percent per annum. Advances made prior to the Closing are to be credited toward the Purchase Price, and such Advances shall not be repaid to the Employer until the Plan has received from all sources with respect to the GIC an amount equal to the GIC's maturity value. The maturity value of the GIC is the total of the Plan's principal deposits under the GIC plus interest at the Contract Rate through June 30, 1992, less previous withdrawals. The Plan will have no obligation to repay any Advance other than from the GIC Proceeds.[2]

7. The Employer represents that on December 30, 1991, Advances were made in the total amount of $583,095.78, in order that seventeen participants who terminated employment during 1991 could receive their full interest in the F Fund before the end of 1991, and thereby avoid adverse tax consequences. Accordingly, the Employer requests that the exemption, if granted, be effective as of December 30, 1991.

8. In summary, the Employer represents that the transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The transactions will provide protection for the Plan's principal investment in the GIC while providing a minimum return on such principal; (2) The interests of the Plan in the transactions will be represented by the Fiduciary, which will oversee the Employer's performance of obligations under the Agreement; (3) The Plan will receive a purchase price for the GIC or the Assignment which is no less than the GIC's fair market value; (4) The Advances enable the Plan to resume the payment of distributions to terminating participants, which had ceased due to the conservatorship of Executive Life; (5) The Advances will be credited toward the Purchase Price and otherwise will be repaid, if at all, only from GIC Proceeds; (6) Repayment of the Advances will be waived with respect to the amount by which the Advances exceed the amount the Plan receives in the Purchase Price and from the GIC Payors; (7) The Advances and interest thereon shall not be repaid to the Employer unless and until the Plan has received GIC Proceeds in a total amount equal to the maturity value of the GIC; and (8) Any GIC Proceeds received by the Employer or the Plan in excess of the purchase price of the GIC or the Assignment, plus five percent will be paid to or retained by the Plan.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Tooze, Shenker, Holloway & Duden Profit Sharing Plan (the Plan) Located in Portland, Oregon [Application No. D-9077]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan of money to Arden E. Shenker (Shenker), a party in interest with respect to the Plan, from his individual

[2] The relevant aspects of the transaction may be summarized as follows:

(a) Plan participants will receive distributions of their interests in the GIC based upon their contribution to the GIC plus interest at five percent of the date of distribution.

(b) The Employer will be entitled to receive interest on its Advances to the Plan at the rate of five percent.

(c) No repayment of the Advances by the Employer or interest thereon may be made by the Plan until the Plan has recovered the full maturity value of the GIC as of June 30, 1992, including interest at the Contract Rate of 8.98 percent.

(d) In the event a purchase of the GIC or the Assignment is consummated by the Employer, any proceeds received, as part of the resolution of Executive Life's obligations, in excess of the purchase price of the GIC or the Assignment, plus five percent, will be paid to or retained by the Plan.

account in the Plan, provided that the following conditions are met:

1. The terms of the loan are at least as favorable as the Plan could obtain in an arms's-length transaction with an unrelated party;

2. The loan does not exceed 25 percent of the assets of the individual account throughout the term of the loan;

3. The loan is secured through a promissory note and a perfected security agreement;

4. The fair market value of the collateral securing the loan is established by an independent real estate appraiser; and

5. The collateral is maintained throughout the loan term at no less than 150 percent of the balance on the loan.

**Summary of Facts and Representations**

1. Tooze, Shenker, Holloway & Duden (the Employer), a partnership, is a law firm operating in the Portland, Oregon area. The plan is a profit sharing plan which had approximately 30 participants and total assets of $3,305,578 as of June 30, 1992. The Plan has a participant loan program which provides that participants may borrow money from their individual accounts in the Plan.

2. Shenker is an over ten percent equity holder of the Employer and represents that he is an owner-employee with respect to the Employer, as that term is defined under Code section 401(c)(3). Shenker is also a participant in the Plan and would like to borrow a certain sum of money from his individual account. However, because Shenker is an owner-employee with respect to the Employer, in accordance with the provisions of section 408(d) of the Act, the provisions of section 408(b)(1) of the Act which permit loans to plan participants under certain conditions would not be available in this case.

3. Shenker had a balance of $307,893 in his individual account as of June 30, 1992, and requests a loan of $30,000 from such account. The loan will represent under 10 percent of the assets in the individual account. The applicant anticipates that the loan will account for less than 10 percent of the assets of the account throughout the term of the loan. If it is foreseen that any event could cause the loan balance to exceed 25 percent of the assets of the account, Shenker will be required to repay a portion of the loan before such excess occurs.

4. The loan will be for a period of five years, with not less than equal quarterly payments of principal and interest. The interest rate on the loan will be 1.5 percent above the prime rate as posted daily by Security Pacific Bank of Portland (the Bank). The interest rate will be a floating rate which is reset quarterly.

The Plan has obtained a letter from the Bank dated June 15, 1992, concerning the requested loan. The applicant represents that the Bank is independent of Shenker and the Employer. The Bank states that it has reviewed the terms of the proposed loan transaction, including the rate of interest, and that it would have approved the proposed loan on the same terms.

5. The loan will be secured through a promissory note and a security agreement which will be duly perfected under Oregon state law. The Plan will have a first lien on a certain parcel of real property (the Property) located in Champaign, Illinois. The Property, which is occupied by Shenker's son and his family, is owned by Shenker and carries no encumbrance.[3] The Plan obtained an appraisal on the Property on July 9, 1992, from Dale Crane (Crane), a real estate broker located in Champaign. The applicant represents that Crane is independent of Shenker and the Employer. According to Crane, the Property is a first floor residential condominium unit that includes three bedrooms and an attached garage. Using the comparable sales approach to value, Crane estimated the fair market value of the Property to be $55,500.

6. The applicant represents that the collateral will be maintained throughout the term of the loan at no less than 150 percent of the balance of the loan. If necessary, the Plan will require Shenker to repay a portion of the loan or post additional collateral so as to maintain the 150 percent security for the loan. If payments on the loan should become delinquent for more than 60 days, the Plan will take appropriate action on behalf of the account, including foreclosing on the collateral if necessary.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) A commercial bank independent of the Employer has stated that it would have approved the same loan on the same terms; (2) the loan will be secured through a promissory note and a perfected security agreement; (3) the fair market value of the collateral has been established by an unrelated real estate appraiser; and (4) the collateral for the loan will at all times be no less than 150 percent of the balance of the loan.

*Notice to Interested Persons:* Because Shenker is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Clow Stamping Company 401(k) Plan (the Plan)
Located in Merrifield, Minnesota
[Application No. D–9095]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) an interest-free loan to the Plan (the Loan) by Clow Stamping Company, Inc. (the Employer), the sponsor of the Plan, with respect to the Plan's proportionate interest in guaranteed investment contract number CG0121403A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Loan (the Repayment); provided that the following conditions are satisfied:

(a) No interest and/or expenses are paid by the Plan;

(b) The Loan is made only in lieu of payments due from Executive Life under the terms of the GIC;

(c) The Repayment is restricted to cash proceeds paid to the Plan (the GIC Proceeds) by Executive Life and/or any other responsible third party with respect to the GIC, and no other Plan assets are used to make the Repayments; and

(d) The Repayments will be waived to the extent the Loan exceeds the GIC Proceeds.

[3] Because Shenker's son may be a party in interest with respect to the Plan under section 3(14) of the Act, foreclosure on such collateral might result in a leasing of property between a plan and a party in interest or use of plan assets for the benefit of a party in interest prohibited under section 406 of the Act (and the corresponding provisions of the Code). No relief is proposed herein should such leasing of property or use of plan assets occur in the event that the Plan would foreclose on the Property on behalf of Shenker's individual account.

**Summary of Facts and Representations**

1. The Plan is a defined contribution plan which provides for individually-directed participant accounts (the Accounts). As of February 28, 1992 the Plan had approximately 155 participants and total assets of approximately $1,204,259. The trustee of the Plan is Everett Clow (the Trustee), who is also a shareholder, officer and director of the Employer. The Employer is a private Minnesota corporation engaged in the business of metal stamping, with its principal place of business in Merrifield, Minnesota.

2. Participant and Employer contributions to the Plan are maintained in the Accounts and are invested according to each participant's directions into any of five investment funds (the Investment Funds) managed by Putnam Company (Putnam), which the Employer selected as the investment manager of the Plan in May 1987, after an amendment of the Plan to include 401(k) provisions. Subject to certain restrictions, participants may elect quarterly to transfer all or part of their Account balances from one Investment Fund to another.

Until March 1, 1991, the Investment Funds included in a fund which invested in guaranteed investment contracts issued by insurance companies (the GIC Fund). The Accounts participating in the GIC Fund shared a blended rate of interest resulting from pro rata allocation of all contracts held by the GIC Fund among the participating Accounts. Effective March 1, 1991, Putnam created a new guaranteed investment fund (the New Fund) for all Plan investments in guaranteed investment contracts after that date, although the GIC Fund continues to hold the Contracts which it already held as of February 28, 1991.

The GIC Fund operated by investing all Account monies received within a stated window period into the contracts of one insurance company selected by Putnam. For the period from January 16, 1987 to July 15, 1987 (the Window Period), the GIC Fund deposited all new monies in the GIC. Through its GIC Fund, the Plan participates in the GIC with twenty other employee benefits plans. All of the plans participating in the GIC share pro rata interests in it, on the basis of the amount of each plan's deposits under the GIC. Similarly, all Plan Accounts invested in the GIC Fund share pro rata in the Plan's interests in the GIC, on the basis of the amount of each Account's total investment in the GIC Fund.

The GIC terms provide for principal deposits during the Window Period, and interest thereon at the rate (the Contract Rate) of 8.32 percent. The GIC provides that the plan may make withdrawals of principal deposits, plus interest thereon at the Contract Rate, to enable Account distributions, participant loans, and Account transfers from the GIC Fund (collectively, the Fund Withdrawals), in accordance with the terms of the Plan. Fund Withdrawals from the GIC Fund are allocated pro rata among the Contracts on the basis of each Contract's accumulated book value at the time of the Fund Withdrawal. The GIC matured on January 31, 1992 (the Maturity Date), and a final maturity payment (the Maturity Payment) in the amount of total principal deposits plus accrued interest at the Contract Rate, less previous withdrawals, was due on that date. As of the Maturity Date, the accumulated book value of the Plan's total investment in the GIC was $80,264, representing the GIC Fund's total deposits under the GIC, plus accrued interest at the Contract Rate, less previous withdrawals. The Employer represents that the Plan's interest in the GIC constitutes approximately 64.8 percent of the Plan's GIC Fund assets and approximately 6.7 percent of all Plan assets.

4. On April 11, 1991 Executive Life was placed into conservatorship by the California Insurance Commissioner (the Commissioner), and a moratorium was ordered on payments on Executive Life contracts, including the GIC.[4] The Trustee represents that since the commencement of the moratorium, the Plan has received no payments under the GIC for Withdrawal Events, and that the Maturity Payment due January 31, 1992 has not been paid. In a January 29, 1992 announcement, the Commissioner described terms of a proposed rehabilitation plan for Executive Life (the Rehab Plan), including that the Rehab Plan would occur over three to five years, and possibly longer. Further, the Employer represents that it is unlikely that holders of Executive Life contracts will recover the full amounts due under the contracts currently outstanding. The Employer desires to alleviate affected participants' concerns about their Account investments in the GIC, to prevent any losses of Account investments in the GIC, and to provide the Plan with the necessary cash, which otherwise would have been provided by the Maturity Payment, for the resumption of Withdrawal Events with respect to Account balances invested in the GIC. Accordingly, the Employer proposes to make the Loan to the Plan in the amount due the Plan for its proportionate share of the GIC. The Employer is requesting an exemption for the Loan, and for its potential Repayment by the Plan, under the terms and conditions described herein.

5. The Loan will be made pursuant to a written agreement between the Employer and the Plan (the Agreement) embodying all terms of the extension of credit and its repayment. The Agreement provides for the Employer to make the Loan in one lump-sum payment in the total amount of the Plan's pro rata share of the accumulated book value of the GIC as of its maturity on January 31, 1992, consisting of total deposits plus accrued interest at the Contract Rate through the Maturity Date. The Loan will not bear interest, and the Agreement prohibits the Employer from charging any fees, commissions or other charges for the Loan.

Repayment of the Loan under the Agreement is limited to payments made to the Plan pursuant to the GIC by Executive Life, by any conservator, trustee or other person performing similar functions with respect to Executive Life, by any state guaranty fund or other person or entity, other than the Employer, acting as a surety or insurer with respect to Executive Life, or by any third party liable to the Plan or its participants for losses related to the Executive Life GIC (collectively, the GIC Payors). No other Plan assets will be available for repayment of the Loan. If payments from the GIC Payors are not sufficient to repay fully the Loan, the Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives amounts with respect to the GIC from the GIC Payors in excess of the total amount of the Loan, such additional amounts will be retained by the Plan and allocated among the accounts of participants in the GIC Fund.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Loan will enable the Plan to resume the funding of Withdrawal Events with respect to Accounts invested in the GIC; (2) The Plan will pay no interest or incur any expenses with respect to the Loan; (3) Repayment of the Loan will be restricted to payments by the GIC Payors and no other Plan assets will be

[4] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

involved in the transactions; and (4) Repayment of the Loan will be waived to the extent the Plan recoups less from the GIC Payors than the total amount of the Loan.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of November 1992.

Ivan Strasfeld,

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 92–28005 Filed 11–18–92; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Humanities Panel; Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. Date: December 3–4, 1992.
   Time: 8:30 a.m. to 5 p.m.
   Room: 430.
   Program: This meeting will review applications for projects in Old World Archaeology in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
2. Date: December 9–10, 1992.
   Time: 8:30 a.m. to 5 p.m.
   Room: 430.
   Program: This meeting will review applications for projects in New World Archaeology in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after April 1, 1993.
3. Date: December 7, 1992.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review Study Grants for College and University Teachers applications in History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1993.
4. Date: December 8, 1992.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review Study Grants for College and University Teachers applications in Classics, Philosophy, and Religion, submitted by the Division of Fellowships and Seminars, for projects beginning after January 1993.
5. Date: December 9, 1992.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review Study Grants for College and University Teachers applications in Arts and Media, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after January 1993.
6. Date: December 10, 1992.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 315.
   Program: This meeting will review Study Grants for College and University Teachers applications in British and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1993.
7. Date: December 10, 1992.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review Study Grants for College and University Teachers applications in Comparative Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after March 1993.
8. Date: December 11, 1992.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.

Program: This meeting will review Study Grants for College and University Teachers applications in Society and Politics, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1993.

David C. Fisher,

*Advisory Committee Management Officer.*

[FR Doc. 92-28043 Filed 11-18-92; 8:45 am]

BILLING CODE 7536-01-M

## NATIONAL SCIENCE FOUNDATION

### Committee of Visitors of the Advisory Committee for Biological and Critical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* December 9, 1992; 9 a.m. to 5 p.m.

*Place:* National Science Foundation, 1800 G Street, NW., Room 1133, Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dov Jaron, Division Director, BCS, National Science Foundation, 1800 G St. NW., room 1132, Washington, DC 20550. Telephone: (202) 357-9445.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

*Agenda:* To provide oversight review of the Environmental & Ocean Systems Programs and the Earthquake Hazard Mitigation & the Natural and Manmade Hazard Mitigation Programs.

*Reason for Closing:* The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92-28143 Filed 11-18-92; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Committee for Biological and Critical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the national Science Foundation announces the following meeting.

*Date and Time:* December 10, 1992—8:30 a.m.–5 p.m., December 11, 1992—8:30 a.m.–12 noon.

*Place:* 1110 Vermont Avenue, NW, room 500-B.

*Type of Meeting:* Open.

*Contact Person:* Dov Jaron, National Science Foundation, 1800 G St. NW., room 1132, Washington, DC 20550. Telephone: (202) 357-9545.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in biological and critical systems.

*Agenda:* Discuss Committee of Visitor's report on BCS programs, review program activities, issues, and initiatives, and discuss infrastructure goals of the Division.

Dated: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92-28144 Filed 11-18-92; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Design & Manufacturing Systems 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:* December 15, 1992—8:30 am. to 5:30 pm.

*Place:* National Science Foundation, 1110 Vermont Ave. rm 500-D, Washington, DC 20005

*Type of Meeting:* Closed.

*Contact Person:* Dr. Thom J. Hodgson, Acting Program Director, Design & Integration Engineering, Rm 1128, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7508.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Design & Integration Engineering Unsolicited 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: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92-28147 Filed 11-18-92; 8:45 am]

BILLING CODE 7555-01-M

## NATIONAL SCIENCE FOUNDATION

### Federal Network Council Advisory Committee; 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:* December 17, 1992; 9 a.m. to 4 p.m.

*Place:* Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

*Type of Meeting:* Open.

*Contact Person:* Ms. Lynn Behnke, Executive Assistant, Federal Network Council, 4001 N. Fairfax Drive, suite 200, Arlington, VA 22203-1614. Telephone: (703) 522-6410. Internet: behnke@darpa.mil.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* The purpose of this meeting is to provide the Federal Network Council (FNC) with technical, tactical, and strategic advice, concerning policies and issues raised in the implementation and deployment of the National Research and Education Network (NREN).

*Agenda:* Implementation of the NREN Security Policy, K-12 education, protection of copyright, NREN Acceptable Use Policy, FNC Policy for Cost Recovery/Accounting. Those planning to attend should contact Ms. Lynn Behnke by November 30, 1992.

Dated: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92-28141 Filed 11-18-92; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in International Programs; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* December 14-15, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 500-A, 1110 Vermont Ave., NW., Washington, DC.

*Type of meeting:* Closed.

*Contact Person:* Janice Cassidy, Program Manager, Division of International Programs, Rm. 501-V, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 653-5862

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals submitted to the Japan Society for the Promotion of Science (JSPS) and Science and Technology Agency of Japan (STA)

Postdoctoral Fellowship programs 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: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92–28146 Filed 11–18–92; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Materials Research (DMR).

*Date and Time:* December 14, 1992, 7 pm–9 pm; December 15, 1992, 8 am–5 pm.

*Place:* Applied Superconductivity Center, University of Wisconsin—Madison, Madison, Wisconsin.

*Type of Meeting:* Closed.

*Contact Person:* Dr. John C. Hurt, Program Director, Materials Research Groups, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

*Purpose of Meeting:* To provide advice and recommendations concerning support for the Materials Research Group on Superconductivity, University of Wisconsin—Madison.

*Agenda:* Evaluation of renewal proposal and preparation of site visit report.

*Reason for Closing:* The proposal being reviewed includes information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92–28148 Filed 11–18–92; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Date and Time:* December 15, 1992, 9 am to 5 pm.

*Place:* Rm 523, National Science Foundation.

*Type of Meeting:* Closed.

*Contact Person:* Scott Borg, Program Manager for Polar Earth Sciences, rm 620, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7894.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research for Polar Earth Sciencies 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: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92–28145 Filed 11–18–92; 8:45 am]

BILLING CODE 7555–01–M

## Notice of Workshop

The National Science Foundation (NSF) will hold a two-day workshop on Quality in Engineering Education on December 7, 1992, 8:30 a.m. to 5 p.m. and December 8, 1992, 8:30 a.m. to noon at the Holiday Inn, Downtown, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Various papers will be presented on the following topic areas:

(1) The definition of quality in engineering education.

(2) The main issues in engineering education.

(3) The need to improve quality in engineering education.

Approximately 35 participants from academia, industry, professional practice and the Federal agencies will attend this two-day meeting that will address the need for a national program for Quality in Engineering Education.

Although the workshop will not operate as an advisory committee, the public is invited to attend. Participants will include individuals throughout the industrial and academic communities such as university deans, faculty, industry leaders and researchers. A report of the workshop will be published.

For additional information, contact Dr. F. Hank Grant, Program Director, 1800 G Street, NW., Washington, DC, (202) 357–5167.

Dated: November 16, 1992.

Dr. F. Hank Grant,

*Program Director, Division of Design & Manufacturing Systems, Directorate for Engineering.*

[FR Doc. 92–28139 Filed 11–18–92; 8:45 am]

BILLING CODE 7555–01–M

## Advisory Committee for Mechanical and Structural Systems; Meeting

The National Science Foundation announces the following meeting:

*Dates and Times:* December 14, 1992, 8:45 a.m. to 5 p.m., December 15, 1992, 8 a.m. to 12 noon.

*Place:* National Science Foundation, room 540, Washington, DC.

*Type of Meeting:* Open.

*Contact Person:* Ms. Hope Duckett, National Science Foundation, room 1108, Washington, DC 20550. Telephone (202) 357–9542.

*Summary Minutes:* May be obtained from Contact Person.

*Purpose of Meeting:* To advise and Division in the areas of Mechanical and Structural Systems.

*Agenda:*

*Monday, December 14, 1992*

9:30–10:15 a.m.: Approval of COV Reports
10:15–10:30 a.m.: Break
10:30–12 noon: Overview of Division, Activity and Issues
12–1:30 p.m.: Lunch
1:30–4:15 p.m.: Review of Mechanical and Structural Systems Programs
4:15–5 p.m.: Organization of Program Panels

*Tuesday, December 15, 1992*

8–9:30 a.m.: Program Panel Meeting
9:30–11:15 a.m.: Review of Panel Draft Reports
11:15–12: Plans for next meeting; Final Discussion of Committee Recommendations
12: Adjourn

Dated: November 16, 1992.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 92–28142 Filed 11–18–92; 8:45 am]

BILLING CODE 7555–01–M

## Ocean Sciences Review Panel; 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:* December 8, 1992; 8:30 a.m. to 5 p.m.

*Place:* Room 536, National Science Foundation, 1800 G St., NW., Washington, DC.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Richard W. West, Program Manager, Division of Ocean

Sciences, room 609, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7837.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals submitted to the Shipboard Scientific Support Equipment 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. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 16, 1992.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 92–28140 Filed 11–18–92; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–220]**

### Niagara Mohawk Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, to Niagara Mohawk Power Corp. (the licensee) for Nine Mile Point Nuclear Station Unit No. 1, located at the licensee's site in Oswego County, NY.

Environmental Assessment

*Identification of Proposed Action*

By letter dated November 3, 1992, which superseded the licensee's application dated October 14, 1992, the licensee requested a schedular exemption pursuant to 10 CFR 50.12(a) from the requirements of 10 CFR part 50, appendix J, section III.D.3. Specifically, the licensee requested temporary relief from the requirement to perform local leak rate tests (LLRTs) at intervals of no greater than 2 years for 39 Type C tests. A one-time only delay, up to a maximum of 7 weeks, was requested for the performance of these leakage tests. The licensee's request was necessitated by a proposed delay in the start of the next refueling outage (RFO–12) of Nine Mile Point Nuclear Station Unit No. 1 from January 2, 1993 to February 19, 1993.

*The Need for the Proposed Action*

The schedular exemption is required to permit the licensee to operate the plant until February 19, 1993, the proposed start date for RFO–12. The refueling outage is currently scheduled to begin on January 2, 1993, with an end date of about February 25, 1993. However, based on projections from the New York Power Pool (NYPP), the current schedule may impact the ability of the NYPP to provide reliable power during the winter peak load period. Accounting for planned maintenance, required reserve, and normal unplanned outages, the NYPP is projecting net margin deficiencies during the period from January 3, 1993, through February 20, 1993. Consequently, the licensee has determined that the most prudent and effective course of action would be to delay the start of RFO–12 approximately 7 weeks until February 19, 1993.

The licensee has stated that during the forced outage that began on May 1, 1992, and ended on August 8, 1992, it recognized that the start of RFO–12, originally scheduled to begin on September 11, 1992, would be impacted due to insufficient fuel burnup. The current outage start date of January 2, 1993, was established at that time, and the licensee performed the Types B and C leak tests during the forced outage required to support the revised start date. The licensee became aware of the NYPP projections of net margin deficiencies for the period January 3, 1993, through February 20, 1993, subsequent to the startup from the forced outage.

*Environmental Impacts of the Proposed Action*

The proposed schedular exemption would allow the licensee to continue to operate the plant from January 2, 1993, until February 19, 1993, when the 39 Type C tests would be performed during RFO–12 in accordance with the requirements of 10 CFR part 50, appendix J. The remaining Type B penetrations and Type C tested valves are within the 24-month frequency or are scheduled for testing prior to RFO–12. The penetrations included in the licensee's schedular exemption request represent approximately 45 percent of the Type C penetrations at Nine Mile Point Unit 1, but only 6.2 percent of the total "as-left" leakage at the beginning of the current operating cycle. The total "as-left" leakage for all Types B and C penetrations was 0.24 La and the total "as-left" leakage from the penetrations covered by the proposed exemption was 0.015 La. The combined leakage from the penetrations addressed in the exemption went from an "as-left" value to 0.016 La to an "as-found" value of 0.05 La during the 2-year interval prior to the current operating cycle. During the 2-year interval prior to that, the combined leakage from these penetrations went from an "as-left" value of 0.0224 La to an "as-found" value of 0.095 La. Based on the most recent "as-left" leakage of 0.015 La, the historical performance of these penetrations, and a maximum increase of 7 percent in the surveillance interval, the licensee has determined that the maximum combined leakage from these penetrations would not be expected to exceed 0.1 La. This provides reasonable assurance that the requested surveillance interval extension will not result in the Types B and C leakage rate total exceeding the 0.6 La limit of 10 CFR part 50, appendix J. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed schedular exemption.

With regard to potential nonradiological impacts, the proposed schedular exemption only involves LLRTs on containment isolation valves. The exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed schedular exemption.

*Alternatives to the Proposed Action*

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed schedular exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's exemption request. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station Unit No. 1 and would result in an unwarranted shutdown of the plant.

*Alternative Use of Resources*

The actions associated with the granting of the proposed schedular exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 1," dated January 1974.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's submittal that supports the proposed schedular exemption discussed above. The NRC staff did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact

statement for the proposed schedular exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for the schedular exemption dated November 3, 1992, which superseded the licensee's application dated October 14, 1992. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Penfield Library, State University of New York, Oswego, NY 13126.

Dated at Rockville, MD, this 10th day of November 1992.

For the Nuclear Regulatory Commission.

**Robert A. Capra,**

*Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–28091 Filed 11–18–92; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–423]

## Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Co., et al. (the licensee) for the Millstone Nuclear Power Station, Unit No. 3, located at the licensee's site in New London County, CT.

### Environmental Assessment

*Identification of the Proposed Action*

The proposed amendment would revise the Technical Specifications (TS) to increase the surveillance test interval, allowed outage time, and channel bypass times for certain instrumentation in the reactor trip system (RTS) and Engineered Safety Features Actuation System (ESFAS). Also, it removes the requirement to perform the RTS analog channel operational test on a staggered basis.

*The Need for the Proposed Action*

The license amendment is needed to reduce the number of ESFAS actuations and reactor trips and allow the licensee to better manage resources to maintain the plant.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to the TS. The impact of the above change has been evaluated in the licensee's proposal for amendment dated March 3, 1992, as supplemented July 13, 1992, which has been evaluated by the staff using NRC-approved methodology. The TS change will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In addition, the TS change describe is a refinement, rather than a substantial change in the operation of the facility. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

*Alternatives to the Proposed Action*

It has been concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment would have either essentially the same or greater environmental impact.

*Alternative Use of Resources*

This action does not involve the use of any resources different from or beyond the scope of resources used during normal operation, which were assessed in the Final Environmental Statement relating to plant operation.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

*Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for license amendment dated March 3, 1992, as supplemented July 13, 1992, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, CT 0360.

Dated at Rockville, MD, this 10th day of November 1992.

For the Nuclear Regulatory Commission.

**Albert DeAgazio,**

*Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 92–28092 Filed 11–18–92; 8:45 am]

BILLING CODE 7590–01–M

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## SECURITIES AND EXCHANGE COMMISSION

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

November 13, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for Unlisted trading privileges in the following securities:

Epitope, Inc.
Common Stock, No Par Value (File No. 7–9591)
Old Republic International, Inc.
Common Stock, $1.00 Par Value (File No. 7–9592)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair

and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92-28128 Filed 11-19-92; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Incorporated

November 13, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Acordia, Inc.
Common Stock, $1.00 Par Value (File No. 7-9522)
Armco, Inc.
$3.625 Cum. Conv. Pfd. Stk., Class A Without Par Value (File No. 7-9523)
BankAmerica Corp.
Depositary Shares, (rep. 1/20 share of 7⅛% Cum. Pfd. Stock, Ser. M) (File No. 7-9524)
BIC Corp.
Common Stock, $1.00 Par Value (File No. 7-9525)
Brilliance China Automatic Holding, Ltd.
Common Stock, $.01 Par Value (File No. 7-9526)
Chemical Banking Corp.
Depositary Shares, (rep. ¼ share of 7.92% Cum. Pfd. Stock, $1.00 Par Value (File No. 7-9527)
Cincinnati Gas & Electric Co.
Cum. Pfd. Stock, 7⅜% Ser. $100.00 Par Value (File No. 7-9528)
Citicorp
$1.217 Depositary Shares (rep. 1/12 share of Conv. Pfd. Stock, Ser. 15) (Pfd. Eq. Red. Comm. Stk. "PERCs") (File No. 7-9529)
Continental Can Co.
Common Stock, $0.25 Par Value (File No. 7-9530)
Emerging Markets Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-9531)
Enterprise Oil Plc
American Depositary Shares, Ser. B, (rep. 1 Cum. Dollar Pref. Share, Ser. B) (File No. 7-9532)
First Israel Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-9533)
Great Western Financial Corp.
Depositary Shares, (rep. 1/10 share of 9.50% Cum. Pfd. Stock, $1.00 Par Value (File No. 7-9534)
Household International, Inc.
Depositary Shares, (rep. 1/40 share of 8¼% Cum. Pfd. Stock, Ser. 1992-A) (File No. 7-9535)
Hyperion 1997 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-9536)
Hyperion 2002 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-9537)
James River Corp. of Virginia
Depositary Shares, (rep. 1/20 share of Ser. O 8¼% Cum. Pfd. Stock, $10.00 Par Value (File No. 7-9538)
Magna International, Inc.
Class A Sub. Vot. Shares, No Par Value (File No. 7-9539)
Managed Municipals Portfolio II, Inc.
Common Stock, $.001 Par Value (File No. 7-9540)
Minerals Technologies, Inc.
Common Stock, $0.10 Par Value (File No. 7-9541)
Moorco International, Inc.
Common Stock, $.01 Par Value (File No. 7-9542)
National Semiconductor Corp.
Depositary Shares, (rep. 1/10 share $32.50 Conv. Pfd. Stock) (File No. 7-9543)
Nuveen Premium Income Municipal Fund 3, Inc.
Common Stock, $.01 Par Value (File No. 7-9544)
Nuveen Select Maturities Municipal Fund 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7-9545)
Pall Corp.
Common Stock, $.25 Par Value (File No. 7-9546)
Philadelphia Electric Co.
Depositary Shares, (rep. ¼ share of $7.96 Cum. Pfd. Stock Without Par Value) (File No. 7-9547)
Savannah Foods & Industries, Inc.
Common Stock, $.25 Par Value (File No. 7-9548)
First Interstate Bancorp
Class A Common Stock, $.01 Par Value (File No. 7-9549)
Fort Dearborn Income Securities, Inc.
Capital Stock, $.01 Par Value (File No. 7-9550)
France Growth Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-9551)
Franklin Principal Maturity Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-9552)
Freeport McMoran, Inc.
$1.875 Conv. Exch. Pfd. $1.00 Par Value (File No. 7-9553)
Freeport McMoran Oil & Gas Royalty Trust
Common Stock, No Par Value (File No. 7-9554)
Furr's/Bishop's Cafeterias, L.P.
$9.00 Conv. Pfd., Ser. A $.01 Par Value (File No. 7-9555)
Galoob (Lewis) Toys, Inc.
Dep. Conv. Exch. Pfd. Shs. (File No. 7-9556)
GATX Corp.
$3.875 Cum. Conv. Pfd $1.00 Par Value (File No. 7-9557)
General Cinema Corp.
Ser. A Pfd. $1.00 Par Value (File No. 7-9558)
General Instrument Corp.
Common Stock, $1.00 Par Value (File No. 7-9559)
General Motors Corp.
Ser. E—I Pfd. $.01 Par Value (File No. 7-9560)
Georgia Power Co.
$7.72 Pfd. No Par Value (File No. 7-9561)
Georgia Power Co.
$7.80 Pfd. No Par Value (File No. 7-9562)
Georgia Power Co.
$2.52 Class A Pfd. No Par Value (File No. 7-9563)
Georgia Power Co.
Adj. Rte., Class A Pfd. No Par Value (File No. 7-9564)
Georgia Power Co.
Adj. Rte. Class A Pfd., 1st 1985 Ser. No Par Value (File No. 7-9565)
Georgia Power Co.
Adj. Pfd. Class A 2nd 1985 Ser. No Par Value (File No. 7-9566)
Georgia Power Co.
$2.30 Class A Pfd. No Par Value (File No. 7-9567)
Georgia Power Co.
$2.47 Class A Pfd. No Par Value (File No. 7-9568)
UNUM Corp.
Common Stock, $.10 Par Value (File No. 7-9569)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 7, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92-28131 Filed 11-18-92; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 13, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder

for unlisted trading privileges in the following securities:

MuniYield California Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9593)
MuniYield Florida Insured Fund
Common Stock, $.10 Par Value (File No. 7–9594)
MuniYield Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9595)
MuniYield Michigan Insured Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–9596)
MuniYield Pennsylvania Fund
Common Stock, $.10 Par Value (File No. 7–9597)
Briggs & Stratton Corp.
Common Stock, $.01 Par Value (File No. 7–9598)
Carter Hawley Hale Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–9599)
Carter Hawley Hale Stores, Inc.
Warrants to Purchase Common Stock, No Par Value (File No. 7–9600)
Christiana Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7–9601)
Rexene Corp.
Common Stock, $.01 Par Value (File No. 7–9602)
Samuel Goldwyn Company
Common Stock, $.01 Par Value (File No. 7–9603)
Thermo Fibertek, Inc.
Common Stock, $.01 Par Value (File No. 7–9604)
Thermo Fibertek, Inc.
Rights to Subscribe to Common Stock (File No. 7–9605)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 92–28132 Filed 11–18–92; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–31442; International Series Release No. 488; File No. SR–NASD–92–43]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval To Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for Six Months

November 12, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1992, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") hereby files, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, for Commission authorization to extend the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES") for six months. The Pilot Program currently consists of an interchange of closing price and volume data on up to 35 Nasdaq securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not * * * Pilot Program may assist in the establishment of opening prices the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD–SES Pilot Program for a two-year term [1] that was extended most recently through November 12, 1992.[2] Commission approval of the instant filing would permit continuation of this Pilot Program through May 12, 1993. During this interval, no more than 35 Nasdaq issues will be included in this Pilot Program. That figure corresponds to the number originally authorized at the inception of the Pilot Program in 1988. As noted in the last filing on this matter (File No. SR–NASD–92–18), the SES information being transmitted to the NASD reflects the SES's use of an order-driven trading system (known as the "CLOB").

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The NASD–SES Pilot Program commenced operation with the Commission's approval of File No. SR–NASD–87–40 on March 14, 1988. The principal features of this Program were fully described in section 1 of that Form 19b–4, which description is hereby incorporated by reference.[3]

The current authorization of the NASD–SES Pilot Program will expire on November 12, 1992. The NASD, on its own as well as the SES's behalf, hereby requests that the Commission approve a further extension of the Pilot Program for six months, expiring on May 12, 1993.

During the proposed extension, each market will transmit to the other static price/volume information compiled at the end of each trading day on approximately 35 Nasdaq securities. The NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price and the closing quote of every Nasdaq market maker in each of the Pilot securities (collectively referred to as "NASD information"). In recognition of the SES's use of the order-driven CLOB system, the SES will transmit the

[1] *See* Securities Exchange Release No. 25457 (March 14, 1988), 53 FR 9156 (March 21, 1988).

[2] *See* Securities Exchange Act Release No. 30695 (May 13, 1992), 57 FR 21316 (May 19, 1992), approving File No. SR–NASD–92–18.

[3] *See also* Securities Exchange Act Release No. 25065 (October 28, 1987), 52 FR 42167 (November 3, 1987).

following data elements for each Pilot security: closing price (*i.e.*, the price of the final transaction in the CLOB on that business day), the highest and lowest prices at which transactions were effected, and the aggregate volume (collectively referred to as "SES information").[4] Because all trading of Nasdaq securities on the SES occurs in the CLOB, the price information sent to the NASD will reflect the prices of actual trades consummated by the automated matching of buy and sell orders resident in the CLOB system.

The CLOB is a fully automated trading system that was instituted by the SES in 1989. Prior to that time, the SES employed a quote-driven, market maker system similar to the Nasdaq System. Orders to buy and sell securities are entered into the CLOB through some 1,800 trading terminals on the premises of 26 SES members firms. The CLOB provides an electronic limit order file with open orders ranked by price and time in each security. When the terms of two orders match, the CLOB generates an automated execution accompanied by confirmations back to the originating brokers.

As noted in File No. SR–NASD–92–18, the SES intends to incorporate the Nasdaq pilot stocks into "CLOB International." The latter is a separate section of the SES market system for the trading of foreign issues that are not listed on the SES. These securities trade through the CLOB in the same manner as SES-listed securities. CLOB International currently includes the stocks of Malaysian, Hong Kong, and Philippine issuers. The SES regards inclusion of the Nasdaq pilot stocks in CLOB International as a logical step in the progression of the Pilot Program. Further, the SES believes that this step could stimulate greater trading interest in Nasdaq securities among Singapore investors. Accordingly, both the NASD and the SES desire to continue the Pilot Program.

The incorporation of Nasdaq securities into CLOB International will not alter the basic operation of the Pilot Program, namely, the interchange of static, end-of-day information on the Pilot securities. SES information will continue to be offered only to subscribers of Nasaq Level 2/3 services.[5] Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's CLOB system. The original linkage agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. That agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the limited nature and limited scope of the Pilot Program.

Finally, the NASD acknowledges that any further enhancement to the Pilot Program, including the introduction of automated order routing and execution facilities, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement is planned for implementation during the requested extension.

The NASD believes that sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1) of the Act provide the statutory basis for this proposed rule change. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." Finally, section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The extended Pilot Program will permit the continued exchange of static market data on a limited group of Nasdaq securities between the NASD and the SES on a non-exclusive basis. The costs of supporting the Pilot Program are nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operation of the present Pilot Program poses any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The NASD did not solicit or receive comments on this rule proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests that the Commission find, pursuant to section 19(b)(2) of the Act, good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing and, in any event, by November 12, 1992. The NASD believes that accelerated approval is appropriate for the following reasons: (1) The experimental character of the Pilot Program and the need to maintain continuity in its operation; (2) the commitment not to make any significant operational changes during the requested extension absent Commission approval; (3) the limited nature of the Pilot Program, both in terms of the number of Pilot securities and the amount of market information being exchanged; and (4) the limited utility of end-of-day, static information to the NASD and SES member firms capable of accessing, respectively, SES and NASD information. Moreover, during the period of the proposed extension, the sponsoring markets remain committed to exchange regulatory information whenever the need arises. Finally, if accelerated approval is not granted, the sponsor will be obliged to terminate this experimental program before its potential benefits can be realized in relation to the globalization of securities markets.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

[4] If no trades are effected in a Pilot security on a given day, the SES will transmit no data on that issue even if bids or offers had been entered into the CLOB for possible execution.

[5] To retrieve this information, a Nasdaq subscriber must enter a discrete query through a Nasdaq Workstation device.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to maintain continuity in the Pilot Program and to allow the sponsors to continue to assess the impact of the trading of these securities in the international section of the SES's order-driven market system. Further, the Pilot Program is of a limited nature and no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to the file number in the caption above and should be submitted by December 10, 1992.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is approved for a period of six months, allowing the NASD–SES Pilot Program to continue through May 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–28047 Filed 11–18–92; 8:45 am]

BILLING CODE 8010–01–M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated**

November 13, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Minerals Technologies, Inc.
Common Stock, $.10 Par Value (File No. 7–9570)
ALC Communications
Common Stock, $.01 Par Value (File No. 7–9571)
Brilliance China Automotive Holding, Ltd.
Common Stock, $.01 Par Value (File No. 7–9572)
Clayton Homes, Inc.
Common Stock, $.10 Par Value (File No. 7–9573)
Thermo Fibertek, Inc.
Rights (File No. 7–9574)
Tri-Continental Corp.
Rights (File No. 7–9575)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 7, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 92–28130 Filed 11–18–92; 8:45 am]

BILLING CODE 8010–01–M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated**

November 13, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Magma Copper Company
Common Stock, $.01 Par Value (File No. 7–9576)
Life Re Crop.
Common Stock, $0.001 Par Value (File No. 7–9577)
Emerging Markets Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–9578)
Alliance World Dollar Government Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9579)
MuniYield Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9580)
MuniYield Michigan Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9581)
MuniYield New Jersey Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9582)
MuniYield Pennsylvania Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9583)
MuniYield California Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9584)
MuniYield Florida Insured Fund II, Inc.
Common Stock, $.10 Par Value (File No. 7–9585)
Mississippi Power Company
Depositary Pfd. Stock, 7.25 Cum. Pfs. Stock, $1 Par Value (File No. 7–9586)
Atlanta Gas Light Company
Depositary Pfd. Shares 7.70 PC Series $100 Par Value (File No. 7–9587)
Resurgens Communications Group, Inc.
Common Stock, $0.01 Par Value (File No. 7–9588)
Shawmut National Corporation
Depositary Shares, Cum. Pfd. Stock (File No. 7–9589)
Wackenhut Corporation
Series B Common Stock, When Issued $.10 Par Value (File No. 7–9590)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 7, 1992, written data, views and arguments concerning the above-referenced

application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 92-28129 Filed 11-18-92; 8:45 am]
BILLING CODE 8010-01-M

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**[Release No. IC-19097; International Series Release No. 490/812-7619]**

## The France Growth Fund, Inc.; Notice of Application

November 13, 1992.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

**APPLICANT:** The France Growth Fund, Inc.

**RELEVANT 1940 ACT SECTIONS:** Exemption requested pursuant to section 10(f) from the provisions of that section and rule 10f-3 under the 1940 Act.

**SUMMARY OF APPLICATION:** Applicant seeks a conditional order under section 10(f) to permit it to purchase securities in underwritten public offerings in the Republic of France in which an affiliate of its investment adviser participates as a principal underwriter.

**FILING DATES:** The application was filed on November 2, 1990, and amended and restated applications were filed on December 31, 1991, and May 19, 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 December 8, 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 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. The France Growth Fund, Inc., 1285 Avenue of the Americas, New York, NY 10020.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

**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 Representation

1. Applicant, a Maryland corporation, is a registered diversified closed-end management company whose investment objective is long-term capital appreciation through investment primarily in French equity securities. In normal circumstances, at least 65% of Applicant's total assets is invested in French equity securities listed on one or more of the seven securities exchanges in France (the "French Stock Exchanges"). Applicant may also invest in French debt securities, among other things.

2. Indosuez International Investment Services ("IIIS"), a registered investment adviser under the Investment Advisers Act of 1940, serves as Applicant's investment adviser. IIIS is a wholly-owned French subsidiary of Gartmore Indosuez Asset Management, which is in turn a wholly-owned French subsidiary of Banque Indosuez, a French financial institution. Pursuant to an investment advisory and management agreement between Applicant and IIIS, IIIS makes investment decisions on behalf of Applicant as to the structure of Applicant's investment portfolio and the acquisition and disposition of securities by Applicant.

3. In addition to engaging in commercial banking activities, Banque Indosuez, as permitted under French banking law, conducts a broad range of investment banking, investment advisory and securities-related activities in France, including participation as a syndicate member, lead manager, or co-lead manager, in underwritten offerings of equity and debt securities. It has participated as a "principal underwriter" within the meaning of section 2(a)(29)(A) of the 1940 Act in a significant portion of such underwritten offerings in the French capital markets.

4. Each of the French Stock Exchanges is comprised of three markets—the *Cote Officielle* or "Official Market," the *Second Marche* or "Second Market," and the *Marche Hors-Cote* or over-the-counter market. The French securities in which Applicant will invest pursuant to the requested order will be limited to those listed or approved for listing on the Official Market or Second market of One of the French Stock Exchanges.

5. The French Stock Exchanges are all governed by the same stock exchange authorities and are subject to the same rules and regulations. Three regulatory agencies supervise the operations of the French Stock Exchanges: (i) the *Conseil des Bourses de Valeurs,* or Stock Exchange Council, which has general regulatory and supervisory authority over the French Stock Exchanges; (ii) the *Societe des Bourses Francaises,* or French Securities Exchange Company ("SBF"), which implements the rules, regulations and policies established by the Stock Exchange Council; and (iii) the *Commission des Operations de Bourse,* or Commission on Securities Exchange Operations ("COB"), an autonomous administrative body that performs market regulator functions.

6. Initial public offerings and subsequent public offerings of equity securities and equity-linked debt securities in France are generally underwritten by banks and certain other financial institutions authorized to underwrite securities and regulated by the Bank of France. Underwriting practices are identical for initial and subsequent public offerings. Generally, stock offerings are underwritten pursuant to a practice known as the *garantie de bonne fin* (literally, "guarantee of successful result") and equity-linked debt securities are underwritten by a method known as the *"prise ferme"* (literally, "firm taking").

7. All public offerings in France involving the issuance of shares that result in a capital increase are underwritten pursuant to an agreement between the issuer and an underwriting syndicate providing for a *garantie de bonne fin.* The agreement allots to each underwriter a specified number of the shares being offered, and each underwriter severally commits to subscribe to, or procure subscribers for, its *pro rata* portion (based on such respective underwriting allotments) of the number of offered shares that are not subscribed to by existing shareholders or the public pursuant to subscription rights or otherwise during a

stated subscription period. The *garantie de bonne fin* constitutes a binding contractual obligation by the underwriters to purchase all shares in the offering that are not otherwise sold to the public. The price payable by the underwriters pursuant to their standby commitment under the *garantie de bonne fin* is the same as the subscription price at which the shares are offered to the public.

8. French public offerings of equity-linked debt securities, such as convertible bonds or debentures with warrants, are underwritten pursuant to the *prise ferme* method. Pursuant to the agreement between the underwriters and the issuer, each underwriter severally commits to purchase from the issuer a specified number of the newly issued securities before they are listed for trading on an exchange. In practice, the *prise ferme* method operates similarly to the *garantie de bonne fin* Secuties that have not been placed with the public or with existing securityholders are purchased by the underwriters *pro rata* on the basis of their respective commitments, and then are resold on the markets by the underwriters for their own accounts.

9. Initial public offerings in France are made in conjunction with an initial listing of the issuer's shares on the French Stock Exchanges. In subsequent public offerings, French law requires that shareholders be offered preferential subscription rights that entitle them to subscribe for shares *pro rata* according to their existing shareholdings. However, preferential subscription rights often are waived by shareholders in order to accelerate the offering of new shares. In that event, the issuer's board of directors and shareholders may decide to provide for priority subscription rights which, unlike preferential rights, are not transferable and which entitle existing shareholders to subscribe for shares in priority to other investors within a specified period of time. In both initial and subsequent public offerings, all shares of the same class included in the offering are offered to all potential investors at a single offering price and, except for the preferential or priority subscription rights granted to existing shareholders, on the same other terms and conditions.

10. Public offerings of debt securities issued by government or corporate entities require the approval of the French Treasury Department. The primary debt market operates under the supervision of the *"Comite des Emissions"* (the "Committee on Issuances"), an entity composed of representatives of major banks and the Treasury Department. The Committee on Issuances establishes a waiting list for new bond issues and has general oversight responsibility for the orderly operation of the primary debt market. Debt offerings of the type that Applicant wishes to acquire are underwritten using the *prise ferme* method or the substantive equivalent thereof.

11. French law requires any company making a public offering of securities, prior to such offering, to "publish a public information document describing the structure, financial condition and development of the activities of such company." Ordinance No. 67–833 of September 28, 1967, as modified, Art. 6. Varying levels of detail are required for the information contained in such a prospectus, depending on whether the issuer is seeking to list its securities on the Official or Second Market and on the extent of information about the issuer that is already available to the investing public. In general, COB regulations require that the prospectus must contain information necessary to inform investors as to the assets, financial condition, results of operations, and prospects of the issuer, as well as the terms of the securities being offered.

12. Recently, the COB also has developed separate disclosure standards for debt and equity issues. Called *schemas*, these standards were adopted to bring the disclosure requirements of the COB into compliance with those of other European Community countries. While the *schemas* have a number of overlapping requirements, they also differ in certain respects. *Schema A*, which applies to equity offerings, generally requires more disclosure in the prospectus. *Schema A* and *Schema B* also differ in the requirements for audited financial statements, *Schema A* requiring issuers of equity securities to include three years of audited financial statements and *Schema B* requiring issuers of debt securities to include two years of audited financial statements.

13. In addition to SBF and Stock Exchange Council oversight, an issuer seeking to list its securities on the Official Market must obtain the advance written approval for its prospectus from the COB. A Second Market prospectus does not require such COB approval, but must be filed with the COB at least three months prior to the expected admission date. The COB may veto the admission of a security for listing in order to protect the investing public. The regulatory authorities' review of the listing file and prospectus typically involves a comment procedure pursuant to which the authorities seek to ensure that appropriate disclosure is being made by the issuer. The prospectus in final form must be delivered or addressed to all offerees. It must also be available for public inspection at the issuer's principal office and other specified locations. Failure to prepare the prospectus or to make it available as required subjects the directors, officers, management and underwriters of the issuer to substantial fines.

14. Admission to the Official Market also generally requires the public distribution of at least 25% of the issuer's capital stock, or, in the case of debt securities, 20,000 units with a minimum required aggregate principal amount of FF 100 million (about U.S. $19.4 million based on current exchange rates). In computing the 25% threshold, shareholders controlling 5% or more of the issuer's capital are not taken into account, thereby supporting the wide distribution of shares among the public. Admission to the Second Market generally requires the public distribution of at least 10% of the issuer's capital stock. As in the case of the Official Market, shareholders controlling 5% or more of the issuer's capital are not taken into account in determining the 10% threshold.

15. Applicant wishes to be able to purchase securities in underwritten public offerings of French securities in France in which Banque Indosuez or an affiliated person thereof participates as a "principal underwriter" as such term is defined in section 2(a)(29) of the 1940 Act.

**Applicant's Legal Analysis**

1. Section 10(f) of the 1940 Act prohibits a registered investment company from purchasing securities from an underwriting syndicate if, as here relevant, a person of which the investment company's investment adviser is an affiliated person participates as a principal underwriter in such syndicate. Because IIIS is an indirect wholly-owned subsidiary of Banque Indosuez, IIIS is an "affiliated person" of Banque Indosuez, as that term is defined in section 2(a)(3) of the 1940 Act. As a result, Applicant is precluded by section 10(f) from purchasing securities in underwritten public offerings in France in which Banque Indosuez or one of its affiliates participates as a principal underwriter.

2. Section 10(f) provides that the SEC may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of section 10(f) if and to the extent that such exemption is consistent with the

protection of investors. Applicant submits that the granting of the requested exemptive order is not only consistent with the protection of investors, but also is otherwise consistent with the purposes fairly intended by the policies and provisions of the 1940 Act.

3. Rule 10f–3 provides that purchases of securities by a registered investment company otherwise prohibited by section 10(f) are exempt from such section if certain specified conditions are met. Applicant represents that, with the exception of the requirement containment in paragraph (a)(1) of rule 10f–3 that the securities be part of an issue registered under the Securities Act of 1933, it will be able to satisfy each of the other conditions of the rule.

4. Applicant states that paragraph (a)(1) of rule 10f–3 was designed to ensure that the investment company will purchase the subject securities at the public offering price (which ordinarily might not exist absent registration), that the securities were issued more or less in the ordinary course of business, and that adequate disclosure is made with respect to the securities to be purchased. Moreover, paragraph (a) of rule 10f–3 also requires that the subject securities be purchased in a firm commitment underwriting, on the first day of the public offering, and for no more than the public offering price, indicating that registration is closely related to these requirements.

5. Applicant believes that purchasing the securities at issue pursuant to a public offering conducted in accordance with French law, together with the requirement that audited financial statements for at least the previous two years (or three years as indicated above) be available to all prospective purchasers, provide an adequate substitute for the registration requirements of rule 10f–3(a)(1). In this regard, Applicant submits that the disclosure required by the French securities laws and regulations in connection with the listing of securities on the Official and Second Market of the French Stock Exchanges ensures adequate publicly available information with respect to the securities to be issued. In addition, by requiring financial statements in the manner prescribed by French law, Applicant will be able to provide the Board of Directors of Applicant with basic information enabling the Directors to evaluate the issuer and the security to be purchased. Taken together with the requirement that securities subject to section 10(f) be purchased in public offering conducted in accordance with French law, investors can be assured that the securities are issued in the "ordinary course of business" and in compliance with regulatory requirements similar to those imposed by the United States securities laws.

6. The procedures pursuant to which public offerings are conducted in France, as described previously, also ensure that all shares of the same class included in an offering are offered to all potential investors at a single price and, except for preferential or priority subscription rights granted to existing shareholders, on the same other terms and conditions. Moreover, the minimum percentage distribution requirements for listing on the Official Market and the Second Market, as well as the prospectus delivery requirements of the French securities laws, ensure that a wide group of offerees will have the opportunity to take part in the offering. In light of these requirements, as well as the protection afforded by subparagraphs (b) through (i) of rule 10f–3, Applicant believes that such purchases will not raise any of the concerns addressed by section 10(f) and that Applicant's stockholders will be adequately protected.

7. With respect to the firm commitment underwriting requirement contained in paragraph (a)(3) of rule 10f–3, Applicant submits that, as described above, public offerings of stock in France are generally underwritten pursuant to a firm commitment to purchase or procure purchasers for any portion of the offered shares that remains unsold to the public after a stated subscription period. This standby underwriting method differs somewhat from the typical firm commitment underwriting practice in the United States pursuant to which underwriters purchase all shares offered by the issuer and then resell them for their own account. Applicant believes, however, that French underwriting practices pursuant to the *garantie de bon fin*, as well as the *prise ferme*, method described above, effectively satisfy the requirements of paragraph (a)(3) of rule 10f–3 and are the practical equivalent of the "any/all" firm commitment method used in the United States.

## Applicant's Conditions

Applicant agrees that any order granting the requested exemptive relief may be made subject to the following conditions:

1. All securities purchased in France under circumstances subject to section 10(f) will be purchased in public offerings conducted in accordance with the laws of France and of the rules and regulations of the French Stock Exchanges.

2. All subject foreign issuers of securities in which Applicant invests pursuant to the requested order will have available to prospective purchasers, including Applicant, financial statements, audited in accordance with French accounting standards, for at least the two fiscal years prior to purchase (and three years where required by French law and the rules and regulations of the French Stock Exchange).

3. All purchases made by Applicant pursuant to the requested order will comply with all provisions of rule 10f–3 except the requirements set forth in rule 10f–3(a)(1).

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 92–28127 Filed 11–18–92; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

**DATES:** Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629.

*OMB Reviewer:* Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget,

New Executive Office Building, Washington, DC 20503.
*Title:* Application for Funds, Exhibits and Documentation; Application for Guaranty, Exhibits and Documentation.
*SBA Form No.:* SBA Form 25, 26, 27, 28, 33, 34, 444C, 444D, 1022, 1022A, 1065.
*Frequency:* On occasion.
*Description of Respondents:* Small Business Investment Companies and Minority Small Business Investment Companies. Individual Small Businesses.
*Annual Responses:* 260.
*Burden:* 1040.

Calvin Jenkins
*Director, Office of Administrative Services.*
[FR Doc. 92-28123 Filed 11-18-92; 8:45 am]
BILLING CODE 8025-01-M

## Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of reporting requirements submitted for review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**
*Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, DC 20416. Telephone: (202) 205-6629.
*OMB Reviewer:* Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.
*Title:* Impact of Contract Bundling on Small Business Concerns.
*SBA Form No.:* N/A.
*Frequency:* One Time Study.
*Description of Respondents:* Federal Government Representatives, National Business and Trade Councils, Individual Small Businesses.
*Annual Responses:* 224.
*Burden:* 896.

Calvin Jenkins,
*Director, Office of Administrative Services.*
[FR Doc. 92-28124 Filed 11-18-92; 8:45 am]
BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Notice 92-25]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

**DATES:** November 13, 1992.

**ADDRESSES:** Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

**FOR FURTHER INFORMATION CONTACT:** Copies of the DOT information collection requests submitted to OMB may be obtained from John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

#### Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on November 13, 1992:

*DOT No.:* 3685.
*OMB No.:* New.
*Administration:* Federal Highway Administration.
*Title:* Commercial Motor Vehicle (CMV) Driver Survey.
*Need for Information:* To identify effective methods for the FHWA to disseminate information to the motor carrier industry.
*Proposed Use of Information:* To improve FHWA current practices and procedures used to disseminate regulatory information to the motor carrier industry.
*Frequency:* One-time only.
*Burden Estimate:* 1,125 hours.
*Respondents:* Motor Carriers.
*Form(s):* None.
*Average Burden Hours Per Response:* 15 minutes.

*DOT No.:* 3686.
*OMB No.:* 2125-0512.
*Administration:* Federal Highway Administration.
*Title:* Operations Plan—Traffic Surveillance and Control Systems.
*Need for Information:* For State and local highway agencies to prepare an operations plan for proposed Federal-aid traffic surveillance and control projects.
*Proposed Use of Information:* To ensure FHWA that an operations plan required from the State and local agencies serves the purpose intended and that adequate resources will be available to operate the system.
*Frequency:* Non-recurring.
*Burden Estimate:* 4,000 hours.
*Respondents:* State and local agencies.
*Form(s):* None.
*Average Burden Hours Per Response:* 160 hours.

*DOT No.:* 3687.
*OMB No.:* New.
*Administration:* U.S. Coast Guard.
*Title:* Ballast Water Management for Vessels Entering the Great Lakes.
*Need for Information:* This information collection is needed to ensure that vessels entering the Great Lakes through the Saint Lawrence Seaway comply with the requirements

regarding the management of ballast water.
*Proposed Use of Information:* This requirement will be used by the Coast Guard to determine the effectiveness of the ballast water management in reducing or eliminating future introductions of nonindigenous aquatic nuisance species.
*Frequency:* On occasion.
*Burden Estimate:* 100 hours.
*Respondents:* Owners/operators of vessels entering the Great Lakes.
*Form(s):* None.
*Average Burden Hours Per Response:* 50 minutes.

*DOT No.:* 3688.
*OMB No.:* 2115–0139.
*Administration:* U.S. Coast Guard.
*Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.
*Need for Information:* This information collection is needed by the U.S. Coast Guard to ensure that manufacturers and suppliers identify and label their hazardous ships' stores with certain minimum information before these stores are permitted aboard a ship. Also, this information collection will allow manufacturers the opportunity to request waivers for products in special hazardous classes to be used aboard the ship.
*Proposed Use of Information:* This information collection will be used to ensure that personnel aboard ships are made aware of the proper usage and stowage instructions of hazardous ships' stores to protect them from bodily injury.
*Frequency:* On occasion.
*Burden Estimate:* 6 hours.
*Respondents:* Suppliers and manufacturers of hazardous products used on ships.
*Form(s):* None.
*Average Burden Hours Per Response:* 3 hours.

*DOT No:* 3689.
*OMB No:* 2115–0543.
*Administration:* U.S. Coast Guard.
*Title:* Regulations, Certificates of Adequacy for Oil, Noxious Liquid Substance (NLS) and Garbage Reception Facilities.
*Need for Information:* This information collection is needed to ensure that the Act to Prevent Pollution from Ships which implements the discharge prohibitions of MARPOL 73/78 and Annex I (Oil), Annex II (NLS), and Annex V (Garbage) are met.
*Proposed Use of Information:* Coast Guard will use this information collection to: (1) Determine if reception facilities at ports or terminals are adequate; (2) waive individual criteria for certain ports or terminals due to particular circumstances; (3) publish a list of ports and terminals holding valid Certificates of Adequacy in the Federal Register; and (4) evaluate appeals from individuals who are affected by Coast Guard's action.
*Frequency:* On occasion.
*Burden Estimate:* 353 hours.
*Respondents:* Owners/operators of ports and terminals used by oceangoing ships handling oil, noxious liquid substances and garbage.
*Form(s):* CG–5401, CG–5401A, CG–5401B, CG–5401C.
*Average Burden Hours Per Response:* 2 hours.

*DOT No:* 3690.
*OMB No:* 2106–0031.
*Administration:* Office of the Secretary.
*Title:* Exemptions for Air Taxi Operators.
*Need for Information:* Regulatory compliance.
*Proposed Use of Information:* (1) Determine air carriers' qualifications to operate; (2) Protect competitive interests of U.S. air taxis; and (3) Safety assurance for the traveling public.
*Frequency:* On occasion.
*Burden Estimate:* 940 hours.
*Respondents:* Air taxi operators and commuter air carriers.
*Form(s):* OST Form 4507.
*Average Burden Hours Per Response:* 30 minutes.

*DOT No:* 3691.
*OMB No:* 2133–0506.
*Administration:* Maritime Administration.
*Title:* Merchant Marine Medals and Awards.
*Need for Information:* Required to obtain or retain a benefit.
*Proposed Use of Information:* To assure applicant qualifies for benefit under the statute.
*Frequency:* On occasion.
*Burden Estimate:* 4,500 hours.
*Respondents:* Merchant seamen.
*Form(s):* None.
*Average Burden Hours Per Response:* 1 hour.

*DOT No:* 3692.
*OMB No:* 2125–0548.
*Administration:* Federal Highway Administration.
*Title:* Driver Fatigue and Alertness Study.
*Need for Information:* To collect and analyze data on commercial driver fatigue.
*Propsoed Use of Information:* To improve the safety of trucking operations in response to Congressional request for FHWA to evaluate the impact of driver fatigue on commercial vehicle accidents.
*Frequency:* One-time administrative.
*Burden Estimate:* 7,135 hours.
*Respondents:* Businesses.
*Form(s):* None.
*Average Burden Hours Per Response:* 2 hours.

*DOT No:* 3693.
*OMB No:* 2120–0001.
*Administration:* Federal Aviation Administration.
*Title:* Notice of Proposed (or Actual) Construction or Alteration.
*Need for Information:* The promotion of safety in air transportation necessitates the need to know the location and height of any obstruction in the airspace.
*Proposed Use of Information:* The information is used to protect aviation safety by, among other things, keeping charts updated, and to provide the basis for issuance of notice to airmen of possible hazardous situations.
*Frequency:* On occasion
*Burden Estimate:* 15,661 hours.
*Respondents:* Individuals.
*Form(s):* FAA Forms 7460–1, 7460–2, 7460–11.
*Average Burden Hours Per Response:* FAA Form 7460–1 averages 1 hour and 1 minute; FAA Form 7460–2 averages 13 minutes.

*DOT No:* 3694.
*OMB No:* 2120–0539.
*Administration:* Federal Aviation Administration.
*Title:* Implementation of the Equal Access to Justice Act.
*Need for Information:* The information is needed to determine an applicant's eligibility for an award of attorney's fees and other expenses under the Equal Access to Justice Act (EAJA).
*Proposed Use of Information:* The information will be used to determine whether the applicant is eligible to receive an award under the EAJA.
*Frequency:* On occasion.
*Burden Estimate:* 120 hours.
*Respondents:* Individuals or entities who are parties to administrative proceedings before government agencies and who prevail over the government.
*Form(s):* None.
*Average Burden Hours Per Response:* 5 hours.

*DOT No:* 3695.
*OMB No:* 2120–0003.
*Administration:* Federal Aviation Administration.
*Title:* Malfunction or Defect Report.
*Need for Information:* Collection of this information permits the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness

is reflected in the number of equipment failures or the lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.
*Proposed Use of Information:* The information is collected and collated by the FAA and used to determine in service performance of aeronautical products.
*Frequency:* On occasion.
*Burden Estimate:* 6,147 hours.
*Respondents:* Repair stations certificated under Part 145 and air taxi operators certificated under Part 135.
*Form(s):* FAA Form 8010–4.
*Average Burden Hours Per Response:* 18 minutes.

*DOT No:* 3696.
*OMB No:* 2115–0120.
*Administration:* U.S. Coast Guard.
*Title:* Transfer Procedures Waste Management Plans.
*Need for Information:* This information is needed to ensure that the provisions of the Port and Tanker Safety Act are complied with concerning oil, hazardous materials and waste transfer procedures from vessels, and onshore and offshore facilities.
*Proposed Use of Information:* This information will be used to ensure that equipment, methods and procedures are in place to prevent discharge of oil and hazardous materials from vessels, and onshore and offshore facilities.
*Frequency:* On occasion.
*Burden Estimate:* 165,136 hours.
*Respondents:* Owners/operators of vessels and facilities.
*Form(s):* None.
*Average Burden Hours Per Response:* 3 minutes.

*DOT No:* 3697.
*OMB No:* 2115–0527.
*Administration:* U.S. Coast Guard.
*Title:* Appeal Process for Requirements Under Ports and Waterways Safety Control of Vessel Operations and Cargo Transfers.
*Need for Information:* This information collection is needed to give individuals affected by safety zone regulations an opportunity to appeal for relief of certain safety zone requirements.
*Proposed Use of Information:* Coast Guard will use this information to determine if affected individuals should be granted relief from this requirement without jeopardizing the safety of vessels, harbors, ports and waterfront facilities.
*Frequency:* On occasion.
*Burden Estimate:* 150 hours.
*Respondents:* Businesses.
*Form(s):* None.
*Average Burden Hours Per Response:* 1 hour and 30 minutes.

*DOT No:* 3698.
*OMB No:* 2115–0551.
*Administration:* U.S. Coast Guard.
*Title:* Vessel Reporting Requirement.
*Need for Information:* This information collection is needed by the Coast Guard to expedite timely assistance to vessels in distress, especially those vessels that cannot communicate their distresses to the owner or others in a position to help them.
*Proposed Use of Information:* This information collection will be used by the Coast Guard to determine if vessels reported on are in distress, and if so, what appropriate action should be taken.
*Frequency:* On occasion.
*Burden Estimate:* 543 hours.
*Respondents:* Owners, charterers, operators of U.S. vessels.
*Form(s):* None.
*Average Burden Hours Per Response:* 25 minutes.

*DOT No.:* 3699.
*OMB No.:* 2138–0017.
*Administration:* Research and Special Programs Administration.
*Title:* Passenger Origin and Destination Survey Report.
*Need for Information:* DOT needs a database which shows the true origin and destination of air travelers.
*Proposed Use of Information:* The origin and destination database is used in administering DOT's international air transportation program, analyzing fitness cases, and administering airport programs.
*Frequency:* Quarterly.
*Burden Estimate:* 26,208 hours.
*Respondents:* Large certificated route air carriers.
*Form(s):* RSPA Form 2787.
*Average Burden Hours Per Response:* 234 hours.

*DOT No.:* 3700.
*OMB No.:* 2106–0042.
*Administration:* Research and Special Programs Administration.
*Title:* Airline Service Quality Reporting.
*Need for Information:* To obtain consumer information and air traffic delay data.
*Proposed Use of Information:* Data will be used for consumer reports and building air traffic models.
*Frequency:* Monthly.
*Burden Estimate:* 1,780 hours.
*Respondents:* Large air carriers.
*Form(s):* None.
*Average Burden Hours Per Response:* 7 hours and 24 minutes.

*DOT No.:* 3701.
*OMB No.:* 2127–0500.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR Part 574, Tire Identification and Recordkeeping.
*Need for Information:* Manufacturers can directly notify the first purchasers of new tires in case of tire recall.
*Proposed Use of Information:* This regulation requires tire manufacturers to collect and record the names and addresses of the first purchasers of new tires, so that manufacturers can directly notify those persons if the tires are recalled.
*Frequency:* On occasion.
*Burden Estimate:* 747,500 hours.
*Respondents:* Businesses and small businesses.
*Form(s):* None.
*Average Burden Hours Per Response:* 45 seconds.

Issued in Washington, DC on November 13, 1992.

**Cynthia C. Rand,**

*Director of Information Resource Management.*

[FR Doc. 92–28050 Filed 11–18–92; 8:45 am]

BILLING CODE 4910–62–M

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## National Highway Traffic Safety Administration

### National Driver Register Advisory Committee; Notice of Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. app. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on December 11, 1992, in Washington, DC. The meeting will be held at the Department of Transportation Headquarters, 400 7th Street, SW., 9 a.m. to 4:30 p.m., in room 2201. Topics to be discussed include the merits of reducing the National Highway Traffic Safety Administration's involvement in the National Driver Register and the status of the Problem Driver Pointer System (PDPS) grants to the states.

The meeting is open to the interested public, but may be limited in attendance to space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the National Driver Register, room 6124, 400

7th Street, SW., Washington, DC 20590, telephone (202) 366–4800.

Robert C. McGee,

*Chief, National Driver Register.*

[FR Doc. 92–28016 Filed 11–18–92; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: November 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–1043
*Form Number:* IRS Notice 88–30 and IRS Notice 88–132
*Type of Review:* Extension
*Title:* Diesel and Aviation Fuel Taxes Imposed at the Wholesale Level (Notice 88–30); Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89 (Notice 88–132)
*Description:* Producers of diesel and aviation fuel, including wholesale distributors and marine retailers, have to register and may be required to post a bond. They must also maintain records and report tax liability. Buyers of tax-free fuel must certify to their seller and maintain records.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
*Estimated Number of Respondents/ Recordkeepers:* 1,625,000
*Estimated Burden Hours Per Respondent/Recordkeepers:*
Notice 88–30—1 hour, 30 minutes
Notice 88–132—2 hours
*Frequency of Response:* Quarterly
*Estimated Total Reporting Burden:* 445,800 hours
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 92–28113 Filed 11–18–92; 8:45 am]

BILLING CODE 4830–01–M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: November 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Comptroller of the Currency**

*OMB Number:* 1557–0081
*Form Number:* FFIEC 031, 032, 033, and 034
*Type of Review:* Revision
*Title:* (MA)-Reports of Condition and Income (Interagency Call Report)
*Description:* National banks file reports pursuant to 12 U.S.C. 161 and other statutes. Data are used to evaluate and monitor the financial condition and earnings performance of individual banks as well as the entire banking industry.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 3,700
*Estimated Burden Hours Per Respondent:* 35 hours, 12 minutes
*Frequency of Response:* Quarterly
*Estimated Total Reporting Burden:* 520,960 hours
*Clearance Officer:* John Ference, (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
*OMB Reviewer:* Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports, Management Officer.*

[FR Doc. 92–28114 Filed 11–18–92; 8:45 am]

BILLING CODE 4810–33–M

## Customs Service

### Privacy Act of 1974, New System of Records

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of proposed system of records.

**SUMMARY:** This notice sets forth a system of records, the Pacific Basin Reporting Network. The purpose of the system of records is to implement a law enforcement data base containing records with identifying and other relevant information on vessels, aircraft, and individuals traveling in or through the Pacific Basin area, and where appropriate to disclose this information to other domestic and foreign agencies which have an interest in this information.

**DATES:** Comments must be received on or before December 21, 1992.

**ADDRESSES:** Comments must be submitted to the Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 3401, Washington, DC 20229. Comments received will be available for inspection at the same address in the Office of Enforcement, U.S. Customs Service, between the hours of 9 a.m. and 4:30 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Marc Gwaltney, Office of Enforcement, (310) 980–3130; John Shirley, Special Agent in Charge, (808) 541–2774.

**SUPPLEMENTARY INFORMATION:** The Pacific Basin Reporting Network is established to collect and store information concerning the activities of vessels, aircraft and individuals traveling in or through the Pacific Basin area and where appropriate and compatible with the purpose for which these records are collected, to disclose this information to other domestic and foreign agencies which have an interest in this information. The Pacific Basin area includes the countries of Northeast Asia, Southeast Asia, the Pacific Islands, both independent and non-independent, Australia, New Zealand, United States, Canada and Mexico.

The Customs Service has a wide variety of investigatory responsibilities including investigation of smuggling, narcotics trafficking, illegal importations, violations of neutrality acts and many others. Among the activities in which Customs is involved is the clearance of individuals, aircraft, vessels and their crews and passengers into the Customs territory of the United States. In particular, Customs will maintain these records to further the Government's investigative, intelligence,

interdiction, enforcement and prosecution efforts through collation, analysis and dissemination of the data to Pacific Basin Reporting Network participants. Since the system of records includes subject files which are necessarily retrieved by personal identifier, the Privacy Act of 1974, as amended 5 U.S.C. 552a, requires the Customs Service to give general notice and seek public comments.

In a separate publication, Customs is also giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2), and (k)(2) of the same section.

Dated: October 16, 1992.

**Deborah M. Witchey,**

*Deputy Assistant Secretary (Administration).*

**Treasury/Customs .171**

**SYSTEM NAME:**

Pacific Basin Reporting Network.

**SYSTEM LOCATION:**

Office of the Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, Room 6127, Honolulu, Hawaii 50104.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records are maintained on masters, operators, pilots, crew members and passengers of vessels and aircraft traveling in or through the Pacific Basin. The Pacific Basin area includes the countries of Northeast Asia, Southeast Asia, the Pacific Islands (both independent and non-independent), Australia, New Zealand, United States, Canada and Mexico.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system of records includes information pertaining to individuals, aircraft and vessel reporting; vessel/aircraft name and registration numbers; descriptions of vessels and aircraft; departure and arrival information; and destination locations. Information about individuals includes name, date of birth, place of birth, physical description, nationality, passport number, address and occupation.

**AUTHORITY FOR MAINTENANCE OF THIS SYSTEM:**

19 U.S.C. 1433, 1459, and 1628; 49 U.S.C. App. 1590.

**PURPOSES:**

The purposes of the Pacific Basin Reporting Network is to implement a law enforcement data base containing records with identifying and other relevant information on vessels, aircraft and individuals traveling in or through the Pacific Basin area, and where appropriate to disclose this information to other domestic and foreign agencies which have an interest in this information.

**ROUTINE USES OF RECORDS MAINTAINED IN THIS SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in the records may be used: (a) To disclose pertinent information to appropriate federal agencies and to state, local/territorial or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation or order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (b) to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, where relevant or potentially relevant to the proceedings, or in connection with criminal law proceedings; (c) to provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; and (d) to provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on tape, magnetic disc and hard copy.

**RETRIEVABILITY:**

By name (individual, master or pilot); unique identifiers (date of birth, passport number, and aircraft/vessel registration number); date, place of destination; port of registry; or vessel description.

**SAFEGUARDS:**

All officials accessing the system of records have had a full field background check as required and access data on a need-to-know basis only. Procedural and physical safeguards are utilized such as accountability, receipt records and specialized communications security. The data system has an internal mechanism designed to restrict access to authorized officials. Hard-copy records are held in steel cabinets and are maintained according to the requirements of the U.S. Customs Reports Manual and Customs Security Manual. Access is limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; they are locked during non-working hours and the building is patrolled by uniformed security guards.

**RETENTION AND DISPOSAL:**

The records are periodically updated to reflect changes and maintained as long as needed, then shredded and destroyed.

**SYSTEM MANAGER AND ADDRESS:**

Office of the Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, room 6127, Honolulu, Hawaii 50104.

**NOTIFICATION PROCEDURES:**

Pursuant to 5 U.S.C. 552a(j)(2), and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

**RECORD ACCESS PROCEDURES:**

See "Notification Procedures" above.

**CONTESTING RECORD PROCEDURES:**

See "Notification Procedures" above.

**RECORD SOURCE CATEGORIES:**

See "Categories of Individuals covered by the System" above. The system contains material for which sources need not be reported.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and I, (e)(5) and (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C 552a(j)(2) and (k)(2).

[FR Doc. 92-28044 Filed 11-17-92; 8:45 am]

BILLING CODE 4820-02-M

## Office of Thrift Supervision

**[AC-66: OTS No. 1581]**

### American Federal Savings and Loan Association of Sullivan, Sullivan, MO; Approval of Conversion Application

Notice is hereby given that on November 4, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of American Federal Savings and Loan Association

of Sullivan, Sullivan, MO, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, TX 75039.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28051 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

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**[AC-76: OTS No. 5953]**

### American Equity Bank, SSB, Stevens Point, WI; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of American Equity Bank, SSB, Stevens Point, Wisconsin, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28061 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

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**[AC-73: OTS No. 6323]**

### The Brentwood Savings Association, Cincinnati, Ohio; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of the Brentwood Savings Association, Cincinnati, Ohio to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 600, Chicago, Illinois 60601-4360.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28058 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

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**[AC-71: OTS No. 2963]**

### Citizens Federal Savings Bank, Rockwood, TN; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Citizens Federal Savings Bank, Rockwood, Tennessee for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28056 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

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**[AC-69: OTS No. 1418]**

### Clinton Federal Savings and Loan Association; Clinton, IA; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Clinton Federal Savings and Loan Association, Clinton, Iowa, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, TX 75039.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28054 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

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**[AC-80: OTS No. 2050]**

### First Federal Savings and Loan Association of San Bernardino, San Bernardino, CA; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of San Bernardino, San Bernardino, California for permission to covert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28065 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

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**[AC-79: OTS No. 7429]**

### Harlan Federal Savings and Loan Association, Harlan, KY; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Harlan Federal Savings and Loan Association, Harlan, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92–28064 Filed 11–18–92; 8:45 am]

BILLING CODE 6720–01–M

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**[AC–75: OTS No. 6586]**

### Home Federal Bank, Federal Savings Bank, Middlesboro, KY; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Home Federal Bank, Federal Savings Bank, Middlesboro, Kentucky, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92–28060 Filed 11–18–92; 8:45 am]

BILLING CODE 6720–01–M

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**[AC–74: OTS No. 4317]**

### Laurel Federal Savings and Loan Association, Laurel, MS; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Laurel Federal Savings and Loan Association, Laurel, Mississippi, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75261–9027.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92–28059 Filed 11–18–92; 8:45 am]

BILLING CODE 6720–01–M

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**[AC–70: OTS No. 4387]**

### Lincoln Savings Bank, S.A., Milwaukee, WI; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Deputy Director for Washington Operations, Office of the Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Lincoln Savings Bank, S.A., Milwaukee, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92–28055 Filed 11–18–92; 8:45 am]

BILLING CODE 6720–01–M

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**[AC–78: OTS No. 3804]**

### Mutual Federal Savings Bank of Miamisburg, Miamisburg, OH; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Mutual Federal Savings of Miamisburg, Miamisburg, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92–28063 Filed 11–18–92; 8:45 am]

BILLING CODE 6720–01–M

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**[AC–72: OTS No. 4098]**

### Manhattan Federal Savings and Loan Association, Manhattan, KS; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Manhattan Federal Savings and Loan Associations, Manhattan, Kansas, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 West John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92–28057 Filed 11–18–92; 8:45 am]

BILLING CODE 6720–01–M

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**[AC–77: OTS No. 0228]**

### Point Pleasant Federal Savings and Loan Association, Point Pleasant, WV; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of the Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Point Pleasant Federal Savings and Loan Association, Point Pleasant, West Virginia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92–28062 Filed 11–18–92; 8:45 am]

BILLING CODE 6720–01–M

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**[AC–67: OTS No. 2723]**

### Security Federal Savings and Loan Association, Nashville, TN; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Deputy Director for Washington Operations, Office of the Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Security Federal Savings and Loan Association,

Nashville, TN for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, IL 60601.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28052 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-68; OTS No. 0639]

## Security Federal Savings and Loan Association of Chicago, Chicago, IL; Approval of Conversion Application

Notice is hereby given that on November 12, 1992, the Assistant Director for Supervisory Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Security Federal Savings and Loan Association of Chicago, Chicago, IL, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, IL 60601-4360.

Dated: November 13, 1992.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 92-28053 Filed 11-18-92; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by December 21, 1992.

Dated: January 12, 1992.

**Editorial Note:** This document was received at the Office of the Federal Register on November 16, 1992.

By direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**New Collection**

1. Evaluation of VA Mobile Clinics Project.

2. The purpose of this study is to evaluate the efficacy, cost-effectiveness and improvement in access of providing health care to rural veterans via mobile health care units. The information will be used in determining whether the mobile clinics project should be continued as is, modified, expanded, or terminated.

3. Individuals or households.

4. 7,180 hours.

5. The Estimated Average Burden Hours Per Respondent:

Veterans Health Care History—25 minutes

Veterans Health Care History Follow-up—3 minutes

Patient Satisfaction Survey—6 minutes

Survey of Veterans Non-Users—10 minutes

6. On occasion.

7. 27,000 respondents.

[FR Doc. 92-28138 Filed 11-18-92; 8:45 am]

BILLING CODE 8320-01-M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent, (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Records Management Service (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by December 21, 1992.

Dated: November 12, 1992.

By Direction of the Secretary.

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Reinstatement**

1. Application for Dependency and Indemnity Compensation or Death Pension (Including Accrued Benefits and Death Compensation Where Applicable) from the Department of Veterans Affairs, VA Form 21-4182.

2. The form is used to gather the necessary information to determine entitlement to dependency and indemnity compensation or death pension.

3. Individuals or households.

4. 3,500 hours.

5. 15 minutes.

6. On occasion.

7. 14,000 respondents.

[FR Doc. 92-28137 Filed 11-18-92; 8:45 am]

BILLING CODE 8320-01-M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by December 21, 1992.

Dated: November 12, 1992.

By direction of the Secretary:

**Frank E. Lalley,**

*Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.*

**Extension**

1. Application for Counseling, VA Form 28-8832

2. The form serves as an application for veterans and other eligible persons to apply for VA Vocational and Educational Counseling.

3. Individuals or households.

4. 417 hours.

5. 5 minutes.

6. On occasion.

7. 5,000 respondents.

[FR Doc. 92-28136 Filed 11-18-92; 8:45 am]

BILLING CODE 8320-01-M

## Poverty Threshold

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans' Affairs (VA) is hereby giving notice of the weighted average poverty threshold in 1991 for one person (unrelated individual) as established by the Bureau of the Census.

**DATES:** The 1991 poverty threshold is for consideration effective September 14, 1992, the date on which we notified our regional offices of such amount.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** VA published a final regulation amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, pages 31579-80. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. VA noted that the weighted average poverty threshold in 1988 for one person (unrelated individual) as established by the Bureau of the Census was $6,024 and stated we would publish subsequent poverty threshold figures as notices in the **Federal Register.**

The Bureau of the Census recently published the weighted average poverty thresholds for 1991. The threshold for one person (unrelated individual) is $6,932

Dated: November 2, 1992.

**Anthony J. Principi,**

*Acting Secretary of Veterans Affairs.*

[FR Doc. 92-28134 Filed 11-18-92; 8:45 am]

BILLING CODE 8320-01-M

## Performance Review Board Members

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on January 9, 1992 (57 FR 952).

**EFFECTIVE DATE:** October 6, 1992.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Kummer, Office of Personnel and Labor Relations (053), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535-8723.

**VA Performance Review Board (PRB)**

Ronald E. Ray, Assistant Secretary for Human Resources and Administration (Chairperson)
Vincent L. Barile, Director, Management and Support, National Cemetery System
C. Wayne Hawkins, Deputy Chief Medical Director (CMD) for Administration and Operations
Sylvia Chavez Long, Assistant Secretary for Congressional Affairs
S. Anthony McCann, Assistant Secretary for Finance and Information Resources Management
William T. Merriman, Deputy Inspector General
Bill B. Pearson, Deputy Chief Benefits Director
Richard Pell, Jr., Acting Chief of Staff, Office of the Secretary

**Veterans Benefits Administration PRB**

Harold F. Gracey, Jr., Chief of Staff (Chairperson)
Raymond H. Avent, Director, Eastern Area
Grady W. Horton, Director, Education Service
Thomas M. Lastowka, Director, Regional Office and Insurance Center, Philadelphia, PA
Stephen L. Lemons, Director, Central Area
R. Keith Pedigo, Director, Loan Guaranty Service
Richard Pell, Jr., Acting Chief of Staff, Office of Secretary

**Veterans Health Administration PRB**

John T. Farrar, M.D., Deputy CMD (Chairperson)
C. Wayne Hawkins, Deputy CMD for Administration and Operations (Co-Chairperson)
Galen Barbour, M.D., Associate CMD for Quality Management
Donald E. Burnette, Regional Director, Eastern Region
Clark R. Doughty, Regional Director, Western Region
John R. Fears, Associate CMD for Resource Management
Vernice D. Ferguson, R.N., Assistant CMD for Nursing Programs
Sanford M. Garfunkel, Associate CMD for Operations

Joseph G. Gray, Associate CMD for External Relations
Lewis Mantel, M.D., Medical Inspector
Charles A. Milbrandt, Deputy Associate CMD for Operations
Richard P. Miller, Regional Director, Southern Region
Richard Pell, Jr., Acting Chief of Staff, Office of Secretary
Robert H. Roswell, M.D., Associate Deputy CMD for Clinical Programs
Dennis B. Smith, M.D., Associate CMD for Research and Development
Dennis H. Smith, Executive Assistant to the CMD
Charles V. Yarbrough, Associate CMD for Administration
Albert Zamberlan, Regional Director, Central Region

**Office of Inspector General PRB**

Milton M. MacDonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)
David A. Brinkman, Assistant Inspector General for Analysis and Follow-up, Department of Defense
Sebastian R. Lorigo, Deputy Inspector General for Investigations, Department of Housing and Urban Development

Dated: November 9, 1992.

**Anthony J. Principi,**

*Acting Secretary of Veterans Affairs.*

[FR Doc. 92-28135 Filed 11-18-92; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 57, No. 224

Thursday, November 19, 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).

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Wednesday, November 18, 1992.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

*Wednesday, November 18*

2:30 p.m.—Briefing by Executive Branch (Closed—Ex. 1)

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 504–1661.

Dated: November 16, 1992.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 92–28211 Filed Dept Supply–92; 8:45 am]

**BILLING CODE**

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, December 1, 1992, in Washington, D.C. The meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, November 30, 1992, but it will consist of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

*December 1—8:30 a.m. (Open)*

1. Minutes of Previous Meeting, November 2–3, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon)
3. Fiscal Year 1992 Financial Statements. (M. Richard Porras, Acting Vice President, Finance and Planning)
4. Final FY 1994 Budget Request to Congress. (Mr. Porras)
5. Chief Postal Inspector's Semiannual Report. (Kenneth J. Hunter, Chief Postal Inspector)
6. Capital Investment. (Stephen E. Miller, Vice President, Operations Support)
   a. DBCS Stacker Modules.
7. Tentative Agenda for the January 4–5, 1993, meeting in Washington, D.C

**David F. Harris,**

*Secretary.*

[FR Doc. 92–28281 Filed Dept Supply–92; 8:45 am]

**BILLING CODE 7710–12–M**

Federal Register

Thursday
November 19, 1992

Part II

# Environmental Protection Agency

## Final NPDES General Permit for the Western Gulf of Mexico Outer Continental Shelf; Notice

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4521-1; GMG290000]

## Final NPDES General Permit for the Western Gulf of Mexico Outer Continental Shelf

**AGENCY:** United States Environmental Protection Agency.

**ACTION:** Issuance of a final NPDES permit.

**SUMMARY:** Region 6 of the United States Environmental Protection Agency (EPA) today issues a final NPDES General Permit for oil and gas facilities engaged in production, field exploration, drilling, well completion and well treatment operation in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico. This general permit authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas, and any facility placed in and discharging to this area during the term of the permit. This final permit only applies to facilities in Federal waters seaward of Louisiana and Texas. The reissued permit addresses a decision of the Ninth Circuit Court of Appeals by establishing limits on cadmium and mercury and removing references to Alternative Toxicity Requests. It also incorporates a new limitation on garbage discharges consistent with the regulations of the United States Coast Guard, clarifies some of the permit's effluent limitations and reporting requirements, allows the static sheen test to be used as an alternate to the visual sheen test for free oil, adds monitoring for radiation, prohibits the discharge of drilling fluids to which diesel oil has been added as a pill, includes a reopener clause for effluent guidelines limitations, and adds produced water aquatic toxicity limits and bioaccumulation monitoring requirements.

**ADDRESSES:** Notifications required by this permit should be sent to the Director, Water Management Division (6W), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone: (214) 655-7180.

**SUPPLEMENTARY INFORMATION:** EPA issues this general permit pursuant to its authority under Section 402 of the Clean Water Act, 33 U.S.C. 1342. This new permit authorizes discharges from exploration, development, and production facilities currently located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas of Louisiana and Texas, and any facility placed in and discharging to this area during the term of the permit. The outer boundary of the territorial seas is the seaward line marking three miles from the baseline of each state. The territory covered by the Western OCS general permit is based on the Clean Water Act, not mineral ownership. Hence, operators under some mineral leases granted by the State of Texas (which claims mineral ownership to three marine leagues from shore) must still seek coverage under this permit.

Public notice of the draft permit was published in the Federal Register on April 16, 1991 (56 FR 15349) and in the Houston Post and New Orleans Time Picayune on April 20, 1991. The comment period closed on May 20, 1991. Comments were reviewed by the Region and considered in formulating the final permit.

The following parties responded with written comments: American Petroleum Institute, Offshore Operators Committee, Conoco, Chevron USA, Exxon Company USA, Kerr-McGee, Mobil Exploration and Producing U.S., Pennzoil, Shell Offshore, Texaco, Transco Exploration and Production, Environmental Enterprises, Louisiana Department of Environmental Quality, Coastal Affairs Committee of the Lone Star Chapter of Sierra Club, and Brenda Donaloio.

EPA Region 6 has considered all comments received. In some instances, minor wording changes in the final permit may differ from the proposed permit in order to clarify some points as a result of comments. There have been substantive changes from the proposed permit in this final permit. The required frequency of bioaccumulation monitoring has been increased, the minimum flow at which monitoring is required for bioaccumulation and radioactivity has been reduced, critical dilutions used for toxicity limits have been recalculated, the static sheen test has been changed slightly and the test protocol has been added to the permit, facilities do not have to monitor deck drainage for free oil when they are not manned, natural seawater has been allowed to be used for produced water toxicity testing, wastewater from equipment washings was added to the list of sources covered as deck drainage, and uncontaminated freshwater was added as a miscellaneous discharge.

In the following summary, EPA has departed from the literal words of the comments for clarity and to accommodate a consolidation of responses to multiple comments on the same or related issues. Every attempt was made to consider and respond to all comments received.

### Upcoming Promulgation of the Offshore Guidelines

EPA is issuing this general permit today incorporating applicable technology-based limitations, Best Available Technology Economically Achievable ("BAT") for toxic and conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. As in this case, where EPA has not yet promulgated applicable technology-based effluent limitations guidelines for the industry, section 402(a)(1)(B) of the Act provides that the permit must incorporate such conditions as are necessary to carry out provisions of the Act. In other words, the permit writer must use his Best Professional Judgment (BPJ).

EPA anticipates promulgating final effluent limitations guidelines for the offshore subcategory of the oil and gas extraction point source category ("Offshore Guidelines") in the near future. It is possible that some of the limitations in the final Offshore Guidelines will differ from the limitations imposed in this general permit because the analysis used to support the limitations in the Offshore Guidelines are not yet complete. Accordingly, the final permit includes a reopener provision to allow its revision once the Offshore Guidelines are promulgated (See 40 CFR 122.62(a)(3)).

EPA considered waiting to reissue this permit until after promulgation of the Offshore Guidelines. EPA rejected this option because the existing permit covers persons who properly applied for renewal, but a number of oil and gas operators did not apply for a renewal prior to expiration of the existing general permit and thus are not covered by the existing permit.

EPA anticipates promulgating final effluent guidelines on January 15, 1993. EPA plans to reopen this permit as soon as possible after guidelines are promulgated to incorporate effluent limitations included in the guidelines.

### Response to Public Comments

(1) *Comment:* Many industry commenters stated that the static sheen test should not be required by the permit and if it is required the test should only apply to muds and cuttings. The static

sheen test is more stringent than the visual sheen test and may result in false positives which would require operators to dispose of effluent in an alternate, more expensive manner without sound justification.

*Response:* The requirement to conduct a static sheen test at times when the visual sheen test cannot be used for compliance testing is simply a clarification of the existing permit requirements. For drilling fluid discharges, the previous permit stated that an alternate, approved test method must be used at times when the visual sheen test could not be conducted, or discharge was prohibited at those times. The previous permit required monitoring once per day when discharging, for all other discharges limited to no free oil. It did not offer an alternate test method, which could be used when monitoring with the visual sheen test was not possible. The final permit gives permittees the option to discharge at any time and states the alternate test method which may be used when it is not possible to conduct the visual sheen test. Static sheen test methodology has been included in the final permit to further clarify the alternate requirements. The method for conducting the static sheen test has been changed slightly to minimize false positives and for consistency with other permits being issued by the Region.

(2) *Comment:* The Louisiana Department of Environmental Quality suggests that the static sheen test should be used in addition to the visual sheen test during good weather prior to any batch or bulk discharges of drilling fluids, deck drainage, or produced sand. Sierra Club also commented that it would prefer EPA require use of the static sheen test in lieu of the visual sheen test.

*Response:* The visual sheen test has been proven an adequate compliance tool at times when a sheen can be observed on the surface of the receiving water.

(3) *Comment:* Industry commenters ask that the method for detecting oil and grease in produced water be changed from EPA method 413.1 to Standard Method 5520F. The Standard Method measures only petroleum hydrocarbons and does not measure the soluble non-hydrocarbon organic materials that are not removed from produced water by "oil and grease" removal technology.

*Response:* The oil & grease limits in the expired permit (GMG280000) are technology based limits which were developed using EPA method 413.1 when EPA promulgated BPT limits for oil and grease in 1979. If monitoring were allowed with a method which measures fewer constituents, the limit would be less stringent. EPA successfully withstood a challenge to this requirement in *Chevron USA Inc.* v. *USEPA*, 908 F.2d 468 (9th Cir 1990). To amend the oil and grease limits would result in backsliding, which is prohibited by CWA section 402(o).

(4) *Comment:* The Offshore Operators Committee (OOC), API, and Chevron ask that the Agency provide a variance from the refrigeration/cooling requirements for produced water samples collected for oil and grease analysis. Commenters supplied data which they suggested show there is no significant difference between oil and grease concentration measurements in refrigerated or unrefrigerated samples.

*Response:* The protocol specified in 40 CFR part 136, Table 1B, for sample storage and preservation for the oil & grease test requires that samples be chilled to 4 ° C. Data submitted by the commenters are not sufficient to determine that test results are equivalent for refrigerated and non-refrigerated samples, for all permittees covered under this general permit. Therefore, EPA has not adopted the suggested change in the test method.

(5) *Comment:* With respect to the toxicity, biomonitoring, and radioactivity monitoring requirements, Conoco Inc. questions EPA's authority to issue such massive data collection requirements. Conoco suggests that if any EPA office has the authority for such a massive data collection effort it would only be the national EPA office.

*Response:* Statutory authority to require the data collection proposed in the permit is found in sections 301, 308 and 402 of the Clean Water Act. Regulatory authority to require such data collection in NPDES permits is found at 40 CFR 122.43, 122.44, and 122.48.

(6) *Comment:* EPA should not require analysis for heavy metals by using total metal analysis. EP Toxicity analysis or TCLP analysis should be used. These methods should provide EPA with a better understanding of the potential for heavy metals to enter the environment during drilling fluid discharges than total metal analysis of barite and, thus, would be more realistic in nature.

*Response:* The limitations on metals which the commenter is referring to is intended to require that permittees use "clean" barite in drilling fluids. The dissolved fraction is used to derive water quality based limits which protect aquatic life. This is a technology based limit; the dissolved fraction of the metals is not relevant.

(7) *Comment:* Conoco Inc. and the OOC commented that the limits on heavy metals in the stock barite should be deferred pending further joint studies in regard to the environmental need for such limits. Conoco contends that EPA has not fully developed the argument that heavy metals in barite (or drilling fluids in general) are toxic. If the metals are not soluble and consequently not bioavailable in the medium into which they are discharged, they are simply not toxic and should not be considered toxic. No acute bioassay has assessed that the barite causes any toxic effect and no studies have shown that animals exposed to barite bioaccumulate any significant amount of heavy metals.

*Response:* The Region has limited cadmium and mercury in barite used in drilling fluids to be consistent with a decision of the U.S. Court of Appeals for the Ninth Circuit. See *NRDC* v. *EPA*, 863 F.2d 1420 (9th Cir. 1988). The limits are technology based. EPA has determined that use of clean barite is technologically and economically achievable based on comments by OOC made on proposed effluent guidelines. Moreover, these limits have been used in Region 10's permits for five years. Water quality related attributes such as soluble fraction, toxicity, and bioaccumulation are not at issue. The limits will prevent the discharge of contaminated barite in which mercury and cadmium levels have been reported as high as 28 ppm and 32 ppm, respectively and will also serve to control the discharge of other priority metals including arsenic, copper, lead, and zinc, which tend to be present in considerably higher concentrations in barite containing the higher levels of mercury and cadmium.

(8) *Comment:* The Sierra Club, Lone Star Chapter comments that EPA should provide guidance on what is considered a "representative sample of all stock barite used." What is the variability of such metal constituents and what sampling methods and protocol will ensure that such variability is discovered, tested, and found to be appropriate to the limitations set? The commenter suggests that EPA should set up a spot checking program to ensure that the supplier and user are telling the truth.

*Response:* A representative sample is a sample made up of enough individual specimens to reliably determine the quality of material used. The number of specimens needed depends on the variability of the material being sampled and should be determined using normal statistical methods. Since the variability of metals concentrations in barite varies from deposit to deposit, the exact sampling regime used to obtain a

representative sample and determine permit compliance must be determined by each individual supplier or permittee using barite in drilling fluids.

The NPDES permit program has traditionally relied on dischargers providing compliance information to EPA that has been certified as accurate. The Region believes that the implementation of this BMP is covered by such certification and that the penalty for falsification of records provides an appropriate deterrent. As with other permit limits, permittees (and/or their suppliers) will be periodically inspected to ensure compliance.

(9) *Comment:* Conoco Inc. recommends that the current permit be renewed with the existing conditions in view of the fact that the Agency is expected to promulgate guidelines in mid 1992. Joint studies could be undertaken in the meantime to collect bioaccumulation/toxicity data.

*Response:* Reissuance of this permit for a period of one year, as suggested by Conoco, would not be practical. A general permit of this nature is very resource intensive to reissue, and the reissuance process can take longer than one year to complete. The Region must reissue the permit at this time in order to achieve compliance with the decision of the Ninth Circuit and to allow facilities not covered by the expired permit (GMG280000) to be covered under an NPDES permit. There is a reopener clause in the permit which will allow the Region to reopen the permit to incorporate technology based requirements from effluent guidelines.

(10) *Comment:* Industry commenters suggest that the proposed 24-hour composite sampling requirements (a minimum of 12 flow-weighted portions collected at equal time intervals over 24 hours) will be extremely difficult to meet, especially at unmanned facilities, and are unnecessary due to the relative uniformity of produced water discharges over a 24-hour period. The commenters suggested that the composite sample should be replaced by a grab sample because the logistics of the composite sample will be difficult and expensive. Obtaining a sample may require the use of an automatic, refrigerated sampler, costing about $7,000 per unit, $20,000 installed. If a composite sample is required, the OOC and Shell Offshore Inc. suggest that the requirement should be a minimum of two samples collected at equal intervals and combined proportional to flow.

*Response:* The Region agrees that it is an unnecessary burden to collect a 24-hour composite sample for biomonitoring. The proposed permit would require samples collected for produced water toxicity testing to be representative of the discharge when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations. The final permit still requires operators to collect a sample when those activities are taking place but allows a grab sample to be taken when the produced water discharge is expected to be most toxic. Collection of a grab sample at those times achieves the goal of the biomonitoring requirement by measuring produced water toxicity at a reasonable worst case scenario and minimizes the burden of sampling.

(11) *Comment:* Chevron U.S.A. Inc. requests that the Agency specify the basis for determining the volume of produced water discharges in order for operators to determine toxicity, radioactivity, and bioaccumulation test frequencies. The volume reported on the last discharge monitoring report (DMR) of the expiring permit is suggested.

*Response:* The flow of produced water must be estimated and recorded each month under this permit and is reported annually to EPA Region 6 on the DMR. Since the volume of produced water discharged may slowly change over time, the volume used to determine the monitoring requirements will be the volume estimate most recently recorded. Accordingly, the permit has been revised to reflect this clarification in the produced water flow monitoring requirements.

(12) *Comment:* A comment received from a citizen of Galveston Island suggests that the produced water flow reporting requirement should be changed to an estimate based on standard acceptable engineering practice and it should be required on a daily basis. The average daily flow and the monthly maximum flow should be reported because of the permit requirements that are keyed to the volume of discharge. If not estimated based on engineering practice, wide discrepancies in other required parameters may result, rendering the validity of those monitoring results useless.

*Response:* Part II.C.6 of the permit requires operators covered under this permit to use appropriate flow measurement devices. The requirement further specifies that such devices have a maximum deviation of 10% from the true discharge rates. Since the produced water flow rates are not expected to show major diurnal fluctuations and flow dependent permit requirements are based on broad ranges of produced water flows, the required flow measurement devices and monthly monitoring are deemed adequate to ensure that the intent of flow rate dependent requirements are met.

(13) *Comment:* Conoco Inc. comments that an absolute ban on discharge of food wastes within 12 nautical miles from shore is not justified for this permit by environmental considerations.

*Response:* When issuing permits in Federal waters, the Agency cannot permit discharges in violation of any applicable Coast Guard or state regulation (See CWA section 402(g)). The Coast Guard has issued interim final regulations on the disposal of domestic wastes as a result of Annex V of the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). These regulations prohibit the discharge of food wastes, comminuted or ground, from offshore platforms and associated vessels, including all fixed or floating platforms engaged in exploration or exploitation and associated offshore processing of seabed mineral resources, and all vessels alongside or within 500 meters of such platforms. Region 6 has included conditions in this final permit to ensure compliance with the MARPOL regulations.

(14) *Comment:* Conoco Inc. states that the ban on discharges of cuttings from oil-based drilling fluids has not been justified for offshore. This limitation does not take into consideration any technology treatment of cuttings to remove fluids. EPA should add that in the event technology progresses, and a technology is developed to remove oil from the cuttings, EPA will consider the discharge of cuttings associated with oil based muds when the cuttings are cleaned to an acceptable level.

*Response:* CWA's anti-backsliding provisions may prohibit using any technology resulting in a discharge as the basis for effluent limitations on cuttings from oil-based drilling fluids. EPA will consider that issue if and when a reliable treatment technology is available.

Such technology is not available today. EPA Region 6 issued several demonstration permits under which Conoco Inc. ran full scale tests of cuttings treatment technology. See, e.g., 52 FR 10262 (March 31, 1987). The thermal treatment technology Conoco tested failed to provide reliable treatment, lacked sufficient capacity to treat the amount of cuttings generated, caused safety problems (flash fires), and was more expensive than barging and onshore disposal. Conoco Inc. moreover reported the treatment unit it tested was

too large to install on 90% of offshore platforms and too expensive to install on the remaining 10%.

(15) *Comment:* Conoco commented that the application of all drilling fluids limitations to cuttings is too harsh and should be reviewed by EPA. Except for oil-based muds and cuttings, the environmental impact of the small amount of fluids adhering to cuttings when discharged (4–15%) should not be treated in the same manner as the full fluid discharge.

*Response:* EPA's limitations for discharge of cuttings is technology based and thus the environmental impact of this waste is not relevant. Further, EPA believes that discharge limitations applicable to muds should uniformly apply to all muds that are discharged, including those adhering to cuttings. This requirement has been in effect for five years and has not been changed. To reduce this limitation would be backsliding and is expressly prohibited by Clean Water Act section 402(o).

(16) *Comment:* One commenter raises a question about the 24-hour reporting requirement for upset conditions dealing specifically with toxicity. Because toxicity test results may not be received for up to ten days, and operators may discharge muds and cuttings prior to obtaining boiassay results at their own risk, it becomes impossible to verbally notify EPA of a violation within 24 hours of the discharge as stated in the fact sheet. The discussion from the permit at part II, section D.7 should be used which states that the operator must notify EPA of a violation "within 24 hours from the time the permittee becomes aware of the circumstances."

*Response:* The commenter is correct. The language of the permit is the enforceable requirement.

(17) *Comment:* One commenter expressed concern that if the end-of-well drilling fluid sample must be taken within 48 hours of final bulk mud discharge, time is not allowed for the sample to be analyzed, making the limit essentially a zero bulk mud discharge due to the serious statutory penalties.

*Response* A sample taken shortly before discharge is needed so that toxicity testing accurately characterizes the drilling fluid which is discharged. It is the goal of this requirement that all additives to the drilling fluid system are added before the end of well sample is collected. Permittees have been operating for five years under this requirement and have been able to discharge drilling fluids with few compliance problems. Most fluids used in the area covered by this permit easily pass the toxicity requirements, except when oil based fluids or a diesel pill are used. Since the operator is generally able to predict whether the fluid used will meet the limits or not, he is able to decide whether to hold the drilling fluid or to discharge it.

(18) *Comment:* Conoco commented that the requirement to initiate produced water toxicity testing within 36 hours of sample collection would be hard to meet due to the logistics of sampling offshore.

*Response:* Initiation of testing soon after samples are collected is important so that the test measures the toxicity of the discharged effluent as accurately as possible. Although this will result in some logistical problems coordinating sample collection with transportation and lab availability, sampling is required at relatively infrequent intervals. The infrequent sampling requirements give permittees flexibility to overcome the logistical problems which are encountered working offshore.

(19) *Comment:* Commenters suggested that the definition of end of well sample be changed to read "the drilling fluid sample taken after all additives have been added and no more than 48 hours prior to a bulk discharge of greater than 100 barrels in one hour". This definition also avoids extra sampling when small portions of the total mud system are discharged for solid control or other reasons. An alternative definition is the "drilling fluid sample taken after drilling and prior to rig move."

*Response:* The Region agrees that the definition should be further clarified. Discharge rate, however is, not relevant to determining whether a sample is the end of well sample and inclusion of a minimum discharge rate in the definition may actually allow the operator to discharge without collecting an end of well sample. The definition was changed to require that the sample be taken after the final log run is completed and prior to bulk discharge. This change in definition will ensure that end of well samples are taken after all additives are in the drilling fluid system.

(20) *Comment:* Conoco Inc. commented that EPA may have misconstrued the Regulatory Flexibility Act in regard to the impact review. There will be many small suppliers and service contractors which are seriously impacted any time the capital/operating costs for oil and gas extraction category, offshore subcategory, are increased by new regulations.

*Response:* The Regulatory Flexibility Act does not apply to secondary industries, such as small suppliers and service contractors, only to the industry directly regulated.

(21) *Comment:* A commenter suggests that EPA failed to consider any "takings" impacts under the proposed permit as required under Executive Order 12630.

*Response:* EPA is in the process of developing guidance to implement Executive Order 12630 and EPA has acted in compliance with the draft guidance implementing the Order. If the permit limitations in this general permit are economically unacceptable to the discharger, the discharger has the option of applying for an individual permit. Although EPA does not believe impact analysis is necessary here, issuance of this general permit is clearly not a "taking." Among other things, this action does not deprive anyone of the economically viable use of his/her property. To the contrary, it facilitates such use by offshore operators not now authorized to discharge.

(22) *Comment:* All leases granted by DOI prior to the promulgation of the effluent limitations guidelines should not be new sources. Any leases granted after the guidelines are in place that represent continued development of a field are not new sources, but only continued development.

*Response:* A "New Source" is defined in 40 CFR part 122 as: Any "building, structure, facility or installation from which there is or may be a "discharge of pollutants," the construction of which commenced: (a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or (b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal. Such standards have not yet been promulgated but will be promulgated in the final effluent limitations guidelines for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. The issue of what facilities will be "new sources" will be addressed in that rule.

(23) *Comment:* Conoco Inc. states that although most operators have notified the Region of their intent to be covered under the proposed permit, a much less redundant reporting requirement would be to automatically cover those discharges/leases included under the existing permit.

*Response:* NPDES regulations set the term of permits at 5 years. 40 CFR 122.21(d) and 122.41(b) specify that a permittee has a duty to reapply for continued permit coverage. Additionally, the expiring Gulf of Mexico Permit was issued jointly

between EPA Regions IV and VI, making the new permit somewhat different from an administrative standpoint.

(24) *Comment:* A comment received from Conoco Inc. suggests that the absolute ban on the discharge of diesel when used as a "pill" is unnecessary because EPA has already placed a ban on the discharge of oil-based muds and cuttings, the discharge of any free oil, and has set a toxicity limitation.

*Response:* EPA does not believe that the prohibition of discharge as a pill is unnecessary. EPA successfully defended this limit as BAT in *API* v. *USEPA*, 858 F.2d 261 (5th Cir. 1988). In the case, the Court found that EPA had demonstrated that mineral oil replacement was technologically and economically achievable. As stated in the fact sheet of the proposed permit, the Region determined from the data generated under the Diesel Pill Monitoring Program (DPMP) that a substantial amount of diesel oil remained in the drilling fluid system, even after removal of the pill and a buffer on either side. This amount of oil is present at levels that would create adverse environmental effects. The frequency of failure of a mud containing diesel oil with respect to the free oil and toxicity tests, both of which are often conducted after a discharge has already occurred, warrants the prohibition of the discharge of muds and cuttings under the conditions of diesel pill use. Further, the DPMP data show that mineral oil pills provide the operator with a less toxic alternative.

(25) *Comment:* EPA's ban on the use of mineral oil other than as a lubricity additive is excessive and restrictive according to Conoco Inc. Mineral oil is used as a carrier fluid in many additives. If EPA bans its use except as a lubricity additive or pill, costs for replacement additives will become unnecessarily excessive.

*Response:* It is not EPA's intent to prohibit discharges of mineral oil when added to the drilling fluid system in de minimis quantities as carrier fluids. The intent is to prohibit the discharge of oil based drilling fluids or inverse emulsion drilling fluids. The permit has been changed to allow the use of mineral oil as a carrier fluid.

(26) *Comment:* Conoco Inc. comments that the 30,000 ppm limitation has not been sufficiently proven to be legally enforceable. An exceedance of the 30,000 ppm bioassay limitation would not indicate a toxic discharge, but only a permit excursion. Conoco further commented that an appropriate limit would be 7400 ppm or 2000 ppm and that lowering the limit to this concentration would not be backsliding, but rather a recognition of true technological limitations for drilling in the Gulf of Mexico.

*Response:* Drilling fluid toxicity has been limited to 30,000 ppm by the expired permit for over 5 years and that limit has been enforced since December 5, 1988, when the Ninth Circuit upheld the 30,000 ppm toxicity limit and remanded the provision of the permit which allowed for alternative toxicity limitations. In that case the Court upheld the 30,000 limit, stating that it "seams readily achievable by average drilling procedures." *NRDC* v. *USEPA*, 863 F.2d 1420, 1431 (9th Cir. 1988). There have been very few instances of noncompliance with the toxicity limit during that time. Thus, the limit is definitely achievable, given the technological limitations for drilling in the Gulf of Mexico. Lowering the limit would be backsliding expressly prohibited by CWA section 402(o)(1).

(27) *Comment:* Conoco Inc. asks how areas of biological concern are selected or designated, and by whom.

*Response:* Under 40 CFR 122.2, the Regional Administrator may designate areas of biological concern. As provided in the rule, in determining an area of biological concern the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10).

(28) *Comment:* Comments received indicate that the requirement for species collection for the bioaccumulation study needs clarification. Should there be five adult fish from each nektonic species and three from the crustaceans and mollusc categories also? Conoco also asked when the organisms must be collected.

*Response:* The permit is very clear in the number and type of samples required to be collected. It requires that: "organisms taken shall include one species of crustacea, one species of mollusc, and one species of nektonic fish". The permit further requires that five adult organisms be collected from each of those three species. For example, a permittee could meet this requirement by collecting the following combination: 5 blue crabs, 5 Eastern Oysters, and 5 Atlantic Croaker. The final permit also specifies that the organisms shall be collected twice per year, once in the summer months and once in the winter months.

(29) *Comment:* Conoco commented that due to the migratory nature of many aquatic species in the Gulf of Mexico, testing the animals near a rig once per year for bioaccumulation is not realistic. The collector will have no indication of how long collected species have been near the rig nor if any pollutants detected in tissue are the result of discharges from the platform.

*Response:* EPA agrees that additional monitoring is needed to account for migrational trends. Monitoring has been increased in the final permit to require that samples are collected and analyzed twice per year (summer and winter). Although the species chosen for monitoring tend not to be migratory, monitoring twice per year should help to better characterize any effects of migration. Increased monitoring will also help to account for seasonal differences in rates of uptake.

(30) *Comment:* The Lone Star Chapter of the Sierra Club commented that the produced water bioaccumulation monitoring should not be limited by requiring only the largest dischargers to conduct monitoring.

*Response:* The potential for produced water discharges to cause bioaccumulation is dependent on the amount of dilution available. Larger volume discharges are diluted less than smaller volume discharges. The proposed permit requirement that operators discharging 25,000 bbl/day or more of produced water conduct bioaccumulation monitoring was reexamined as a result of this comment. In the proposal, bioaccumulation monitoring was intended to be required for discharges with the greatest potential to cause bioaccumulation and include 10% of all produced water dischargers. Available data from EPA's 30 Platform Study were reexamined to determine appropriate discharge rates above which to require monitoring in the final permit. The reasonable potential for exceedance was calculated for the upper 90th percentile discharge rate which was determined to be 4600 bbl/day. The final permit requires those operator discharging 4600 bbl/day or more to conduct bioaccumulation monitoring. This requirement should include approximately 10% of the produced water discharges covered under this permit.

(31) *Comment:* The Sierra Club also commented that the toxicity monitoring requirements for large dischargers should apply to all dischargers. Another commenter stated that the proposed frequency of radioactivity monitoring is insufficient for the purpose of protecting human health, especially since it will only be monitored for a short period of time.

*Response:* Like bioaccumulation monitoring, the flow based monitoring frequencies for toxicity and radioactivity were reexamined using available data. Monitoring frequencies which were proposed for discharges

greater than 25,000 bbl/day have been changed and correspond to the reasonable potential calculated for the 90th percentile. This change will result in monthly monitoring for produced water toxicity and radioactivity by approximately 10% of all platforms covered under this permit. Thus, the frequency of monitoring is greatest for those discharges with the greatest potential to cause undesirable effects. Since the quality of produced water discharges is not expected to show large short term fluctuations, the monitoring frequency requirements in the final permit are deemed adequate to prevent toxic effects or to detect radioactivity.

(32) *Comment:* The Sierra Club also commented that allowing one year before the start-up of toxicity monitoring and two years before bioaccumulation monitoring is required is not acceptable.

*Response:* The time given permittees before monitoring is required is designed to alleviate problems associated with the start-up of testing requirements of these types. Toxicity monitoring will place a large demand on available toxicity testing laboratories and may cause a shortage of the species which are required to be tested. One year was given before the start-up of toxicity monitoring requirements so that laboratories can prepare for the high demand for their services. Bioaccumulation monitoring requirements will also result in complexities associated with the type of sample collection and specialized analysis required. Very few laboratories have the experience or capabilities necessary for tissue testing as required in this permit. Sample collection, handling, and transportation will also pose special problems. Permittees will need time to prepare for this monitoring so that good quality data is obtained from the monitoring.

(33) *Comment:* The commenters suggested that the testing requirement should include a control taken from a part of the Gulf of Mexico where there is no oil and gas activity. Commenters requested that a joint study be undertaken which would include more stringent data gathering requirements and better quality control.

*Response:* Requirements for bioaccumulation sampling are the minimum which permittees covered under this permit are required to conduct. Permittees who feel that the scope of bioaccumulation monitoring is not broad enough to accurately show the presence or absence of bioaccumulative effects are free to collect additional data they feel are needed. The permit has been changed to allow permittees to conduct a joint study. Permittees wishing to participate in such a study to satisfy the bioaccumulation monitoring requirements of this permit must first submit a plan to conduct an equivalent joint study to EPA Region 6 for approval. As a minimum, any alternative plan shall include all bioaccumulation monitoring requirements listed in this permit.

(34) *Comment:* The OOC commented that EPA should consider ongoing industry efforts and findings of recently completed studies before establishing the requirements for a bioaccumulation study, including radioactivity.

*Response:* Available studies were considered in the development of this permit and EPA found that very little data on bioaccumulation exists for discharges from the oil and gas extraction industry in offshore areas. EPA has considered ongoing industry efforts and is allowing permittees to submit a proposal for a joint industry study to fulfill the requirements of this permit.

(35) *Comment:* Comments were received concerning the discharge of priority pollutants. One comment suggests that priority pollutants should be specifically prohibited from discharge. The limitation "in trace amounts" is vague and confusing. The "boilerplate" and Table 3 should include a complete list of priority pollutants and the permittee should certify in writing that the discharge does not contain these pollutants. Other commenters ask that EPA define "trace amounts."

*Response:* The intent of this requirement is to prevent the use of priority pollutants (see 40 CFR part 122, appendix D, Tables II and III) in well treatment, completion, and workover fluids. Permittees are required to record the specific chemical composition of any additives to these fluids that contain priority pollutants. As stated in the definition of "trace amounts" in the permit, if material which has been added to the well contains no priority pollutants the discharge will not contain priority pollutants except for a small amount of priority pollutants which may be contributed by the formation. Additionally, these fluids are injected into the producing horizon, and normally stay in the producing horizon and are not discharged. If any of these fluids are returned to the surface they will be in extremely small amounts, will be in the produced oil stream, and will normally not be discharged. If there are any discharges of these fluids, they will be de minimis in nature. Therefore, water quality will be maintained even if there is a contribution of priority pollutants from the formation.

(36) *Comment:* For sanitary waste, monthly chlorine analysis and annual testing for proper operation of a marine sanitation device are insufficient to determine whether or not the package treatment facility is operating correctly. Sanitary waste should be sampled and analyzed for BOD5, TSS, fecal coliform and flow should be recorded on a monthly basis in addition to the monthly chlorine analyses.

*Response:* The permit requirements for sanitary discharges are designed to reflect Coast Guard regulations for marine sanitation devices on platforms. Regulations promulgated at 33 CFR part 159 include requirements for design and construction of marine sanitation devices and for Coast Guard certification thus ensuring that discharges meet EPA regulations promulgated in the Clean Water Act, section 312. Data from the manufacturer of the most commonly installed units indicated that they will achieve BOD and TSS concentrations of 30 mg/l and 45 mg/l respectively. The TSS concentration is far below the Coast Guard performance standard of 150 mg/l. Although the Coast Guard requirements do not specify a concentration standard for BOD, the devices are designed to achieve the same concentration which would be required if an onshore industry were using secondary treatment. Since marine sanitation devices used on platforms far exceed required performance standards, a more frequent monitoring interval is not justified.

(37) *Comment:* A letter from a citizen states that the DMR system of reporting allows EPA only an annual glimpse of the permittee's monthly analyses and the 24-hour reporting requirement is subject to the permittee's interpretation of endangerment. Because of this, EPA would not be aware of a chronic noncompliant situation until the annual DMR is submitted, which may be well after the discharge of pollutants. EPA should require monthly monitoring results to be submitted by the 20th day of the following month for each discharge.

*Response:* DMR's are required to be submitted only on an annual basis because of the large number of permittees covered under this permit and the administrative burden involved in processing that volume of DMR data. The twenty-four hour reporting requirements stated in part II of the permit are required by regulations found in 40 CFR 122.41(1)(6), and as the commenter stated, these regulations leave 24-hour reporting up to the permittee's interpretation of

endangerment to health or the environment. Due to the penalties which are assessed for noncompliance, it is prudent for permittees to remain in compliance with the permit limits and to come back into compliance quickly when they are out of compliance. In addition to submittal of DMR's, permittees operating under this permit are also under the scrutiny of the Coast Guard and are inspected at least once per year by the Minerals Management Service.

(38) *Comment:* The Sierra Club commented that the permit should require reinjection of produced water because it is technologically and economically achievable.

*Response:* EPA disagrees. Reinjection was rejected in this permit because it is not available everywhere due to geological conditions and engineering characteristics of the beds, and it would cause significant product loss.

(39) *Comment:* The Sierra Club also commented that EPA should prohibit discharge of rubbish, trash, incinerator ash, and other refuse. EPA is giving up its authority to the Coast Guard which does allow dumping of garbage beyond 12 miles offshore.

*Response:* EPA is only incorporating Coast Guard regulations into this permit as required by CWA section 402(g). The regulations are consistent with the International Convention for the Prevention of Pollution from ships and are more restrictive the conditions in the expiring permit.

(40) *Comment:* The Sierra Club also commented that EPA should not allow the use of a mixing zone for toxicity limits, but the toxicity limits should be applied at the end-of-pipe.

*Response:* The Agency disagrees that the use of a mixing zone is inappropriate. Use of a mixing zone, as applied in this permit, is consistent with Ocean Discharge Criteria promulgated at 40 CFR Part 122.125 Subpart M. It is also consistent with other NPDES permits where chronic toxicity testing or toxicity limits are included.

(41) *Comment*: Exxon Company, U.S.A. commented that the visual sheen observation procedure should be applicable to continuously manned facilities only for those times when a facility is manned. The majority of platforms in the Gulf are not manned full time (i.e., 24 hours per day). Many unmanned facilities effectively utilize automated or passive treatment systems. Discharges can occur at times when the facility is not manned, thereby making it impossible to comply with the proposed visual sheen observation requirements.

*Response*: The Agency agrees with the commentor that deck drainage and uncontaminated ballast water and uncontaminated sea water, for those units that are on automatic purge systems, should be allowed from platforms which are not manned, without monitoring for free oil. The final permit has been changed to allow discharge without monitoring when facilities are not manned.

(42) *Comment*: The OOC comments that the limitation restricting discharges to times when visual sheen observation is possible should apply to drilling fluids and cuttings only, and then only when oil has been added to the mud system.

*Response*: The reissued permit does not restrict discharge only to times when visual sheen observation is possible. It provides an alternative method of monitoring so that operators may continue to discharge at times when monitoring with the visual sheen method is not possible.

(43) *Comment*: Exxon Company, U.S.A. and OOC commented that the parameters required to be monitored for bioaccumulation are not appropriate. Di-n-butyl phthalate and Bis(2-ethylhexyl)phthalate should not be monitored since recent studies do not indicate the presence of these compounds in produced water.

*Response*: Available data on produced water discharges have been reexamined based on this comment to determine if modifications should be made in the list of chemicals for which tissue is required to be monitored. Based on available data, Di-n-butyl phthalate is not expected to be present in produced water discharges and monitoring is not required for this parameter. Bis(2-ethylhexyl)phthalate was reported as present above detection limits in 51% of the 113 laboratory reports submitted to Louisiana DEQ under state-issued permit requirements and has been left on the list of pollutants operators are required to monitor in fish tissue. Additionally, data from the 40 platform study conducted by the Texas Railroad Commission show that arsenic is commonly present in produced water; therefore, monitoring has also been required for arsenic. The fish tissue concentration listed in the Integrated Risk Information system for arsenic is 0.0062 ppm.

(44) *Comment*: Shell Offshore Inc. and the OOC comment that the signature requirement for DMRs should be revised to allow the signature of the last page of the DMR for each facility. Because the certification statement includes the phrase "this document and all attachments," signature of the last page of the DMR from each facility provides adequate certification of the entire document. In addition, each facility's DMR is identified as Page 1 of 3, etc. The DMRs could also be submitted on diskette with a certifying cover page attached. For facilities with no activity, a separate listing of permitted blocks having no activity should be acceptable versus completion of separate "no activity" DMRs.

*Response*: All DMRs submitted to EPA have the same requirement that all pages must be signed according to the signatory requirements. The reporting requirements in this permit are slightly less burdensome in this respect due to the ability of operators to submit one summary DMR for each lease block.

(45) *Comment*: Many industry commenters feel that the mysid fecundity test should be deleted. Commenters also stated that the toxicity tests produced highly variable results and were not reliable. Louisiana DEQ data show that approximately 30% of mysid tests acceptable for growth and survival could not be used for fecundity because of unacceptable control response for the reproduction measurement. The same data show that fecundity was not significantly different than mysid growth, which was the most sensitive measurement. The data also indicate that measurement of fecundity did not significantly affect the quantification of produced water toxicity.

*Response*: The method for conducting a toxicity test using *Mysidopsis bahia* is published in the EPA document entitled Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (U.S. EPA, 1988). Like survival and growth, fecundity is a measure of chronic toxicity which is required to be measured by the test methodology. The test using this species has been required by NPDES permits issued to industrial discharges in Region 6 for more than five years and no failure rate such as that cited has been shown. The type of test failure in the control which the commenters cited would be indicative of an unhealthy Mysid culture or poor laboratory quality controls.

(46) *Comment*: The reporting requirement for the discharge of oil does not specify a time period and should be revised to apply to the discharge of 1 barrel of free oil within a 24 hour period. The specific conditions that require 24 hour reporting should be identified in the permit at part II.D.7.b.

*Response*: The discharge of oil under this permit is limited to no free oil for most waste streams. For produced water, oil & grease are limited to a daily

average of 48 mg/l and a daily maximum of 72 mg/l. Discharges in exceedance of these limits must be reported on the DMR for the facility. The twenty-four hour reporting requirement is a standard condition for all NPDES permits and only applies to any noncompliance with the requirements of the permit which may endanger health or the environment.

(47) *Comment:* The definition of drill cuttings should be revised to include cured cement to clarify that small amounts of cured cement and fragments of downhole cementing equipment may make up a portion of the drill cuttings.

*Response:* EPA agrees that cured cement and fragments of downhole cementing equipment should be considered drill cuttings and has revised the definitions section of the permit accordingly. EPA's limits on drill cuttings including cured cement are based on its previous determinations of BAT for this waste in the prior OCS general permit and the proposal for this permit. EPA is simply recognizing that a small amount of cured cement is associated with this waste.

(48) *Comment:* The OOC suggests that EPA should reconsider the static sheen test requirement for deck drainage because sampling prior to discharge is infeasible due to the treatment system. It is currently not possible to comply with that kind of a requirement. Deck drainage discharges should be subject only to the visual observation method of complying with the no free oil standard.

*Response:* EPA agrees. It is recognized that deck drainage is normally channeled and routed to a sump. Discharges from a sump, which in effect serves as an oil/water separator, are subject to the visual sheen test to ensure that no free oil is being discharged and monitoring is required when a visual sheen observation can be made. The taking of representative samples from sumps for the purpose of a static sheen test would be difficult because the sump outlet is normally located below water. Because of these factors, the Region has concluded that requiring the taking of a representative deck drainage sample for a static sheen test would be impractical. Accordingly, the permit has been revised to exclude references to static sheen for deck drainage.

(49) *Comment:* OOC says the model EPA used to establish toxicity limits for produced water and make the requisite findings under EPA's regulations implementing CWA section 403(c) does not take into account alternate discharge systems such as diffusers. The OOC requests that operators have the flexibility to modify their discharge systems (e.g., install a diffuser) so they will not exceed the critical dilution at the edge of the 100 meter mixing zone, even if the "no effect" concentration is less than 2.5%. Exxon also commented that produced water toxicity limits should be established on a case by case analysis of each discharge.

*Response:* While modification of the outfall to increase diffusion may be environmentally desirable, it is not common practice. A generalized modeling approach to produced water dilution was chosen as a feasible way to implement the toxicity limit within the scope of this permit. The Region has insufficient staff to change the produced water toxicity limit on a case by case basis at the request of each operator covered under this permit.

(50) *Comment:* Several commenters requested that the permit be changed to allow the use of natural seawater. They stated that it is not always possible to meet all the conditions of the produced water biomonitoring when synthetic seawater is used.

*Response:* The language in the permit has been changed to allow either synthetic or natural seawater to be used for toxicity testing. The purpose of allowing the use of synthetic seawater is to ease the logistical constraints caused by the remote geographical locations of many discharges covered under this permit.

(51) *Comment:* American Petroleum Institute (API) commented on the definitions in the permit and requested that minor changes be made or that the definitions be removed from the permit.

*Response:* The requested changes were considered and many of the requested changes would not in any way change the substance of the definitions or clarify their meaning. Comments which are deemed to have substance are discussed in the following text.

(52) *Comment:* API requested that discharges from equipment washings and bilge water be added to waste streams listed under the definition for deck drainage.

*Response:* Equipment washings was added to the discharges included under deck drainage since it is not expected to be a contaminated waste stream and it is similar to discharges previously covered under deck drainage. Bilge water is not at all similar to sources covered under deck drainage and could potentially be contaminated; therefore, it has not been added to the definition of deck drainage.

(53) *Comment:* API requested that diatomaceous earth filter media be added to the list of wastewaters allowed to be discharged as miscellaneous wastes.

*Response:* This waste stream is deemed to be a minor waste stream in the proposed guidelines and has been added to the list of discharges under miscellaneous discharges.

(54) *Comment:* API requested that waste water from hand washing stations and fish cleaning stations be added to the sources listed in the definition for domestic waste.

*Response:* The change was made as requested.

(55) *Comment:* API and Exxon requested that cement be added to the definition for drilling fluids.

*Response:* Cement is not a drilling fluid and is in no way used in the manner which drilling fluids are used. Cement has not been added to the definition of drilling fluids. However, it is understood that the commentor must dispose of excess cement slurry, and the only practical method of disposal offshore is discharge. Excess cement slurry has been added in the permit as a discharge with limits of no free oil. This is considered to be a minor discharge and is consistent with the proposed drilling permits for coastal waters of Louisiana and Texas.

(56) *Comment:* API commented that the definition for sheen should not include the terms silvery, metallic, gloss, increased reflectivity, or visual color. These terms broaden the definition and result in a more stringent limit.

*Response:* The Agency strongly disagrees that descriptive words such as silvery, metallic, gloss, or visual color imply a more stringent test requirement or that lesser volumes of oil would be allowed to be discharged, using the more descriptive definition of a sheen. API implies in the above comment that a silvery sheen, metallic sheen, etc., might not constitute sheen under the previous permit. The Agency contends that the presence of any sheen resulting from an oil discharge that is visible on the receiving water regardless of its exact appearance would still constitute a sheen.

Regions 9 and 10 use slightly different static sheen tests to determine if the discharge of free oil would occur for a particular discharge, but both Regions use the same descriptive language as presented in this static sheen test method requiring the operator to observe for a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface.

(57) *Comment:* API requested that uncontaminated freshwater be defined and added as a miscellaneous discharge. Small amounts of freshwater are released when a transfer hose is

disconnected, when a potable water tank is emptied for maintenance, or from air conditioning condensate which is in no way contaminated and does not require treatment.

*Response:* EPA considers uncontaminated freshwater to be a miscellaneous discharge and it has been included as such in the final permit. As with other miscellaneous discharges, the limit of no free oil will apply.

(58) *Comment:* API and OOC commented that the modeling completed for the permit is not valid and the values proposed in Table 1 should be corrected. Model results were included which API suggested should replace modeling done by EPA. API suggested that discharges which do not satisfy generic standards in Table 1 should be allowed to perform an independent dilution analysis. Some commenters suggested use of one of EPA's plume models or the OOC model.

*Response:* Due to limitations in the UDKHDEN model, some of the calculated effluent dilutions which were listed in the proposed permit may be questionable. Without examining the model which API used it is not possible to determine if the calculated dilutions supplied by API are more accurate than those in the proposed permit. The Region has requested that API's model for produced water be made available to EPA for analysis and API has not supplied it. API has also failed to demonstrate that sufficient calibration and verification of its modeling results were conducted to show that calculated dilutions are reliable.

Additional modeling was performed using the model CORMIX1. CORMIX1 was found to be capable of calculating effluent dilutions at the edge of the mixing zone for all reasonable scenarios modeled. The effluent dilutions listed in Table 1 of the proposed permit have been replaced in the final permit with those calculated using CORMIX.

(59) *Comment:* The Department of Interior requested that the definition of no activity areas be revised to include a more recent reference than the 1983 Environmental Impact Statement.

*Response:* The definition has been revised as requested.

### State Certification

Since state waters are not included in the area covered by this NPDES general permit and thus will not be affected by the discharges it authorizes, the provisions of section 401 regarding certification of compliance with state water quality standards do not apply.

### The Coastal Zone Management Act

In accordance with section 307(c)(3) of the Coastal Zone Management Act, the Louisiana Coastal Zone Management Division of Louisiana Department of Natural Resources has reviewed NPDES permit GMG290000 and found its issuance consistent with the Louisiana Coastal Resources Program.

### The Endangered Species Act

The Endangered Species Act and its implementing regulations (5 CFR 402) require that each Federal agency shall ensure that any agency action, such as permit issuance, is not likely to jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of their critical habitats. The National Marine Fisheries Service has concurred in writing (June 28, 1991) with EPA's, Region 6, finding that the issuance of this permit will not adversely affect listed endangered or threatened species or critical habitat.

### The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. The Flower Garden Banks has been determined to be a marine sanctuary and is within the area covered under this permit. The permit is sufficiently stringent to protect marine sanctuaries since it does not allow discharge in areas of biological concern, which includes marine sanctuaries.

### Ocean Discharge Criteria Evaluation

For discharges into waters located seaward of the inner boundary of the territorial seas, the Clean Water Act at section 403, requires that NPDES permits consider guidelines for determining the potential degradation of the marine environment. These Ocean Discharge Criteria (40 CFR part 125, subpart M) are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

When the existing permit was issued, EPA determined that all authorized discharges in compliance with the permit would not cause unreasonable degradation of the marine environment (51 FR 24902, July 9, 1986). Additionally, the Ocean

Discharge Criteria Evaluation developed for this permit supports that previous determination. Because the changes being adopted here only render the permit more stringent than the existing permit, the Region finds that all authorized discharges in compliance with the effluent limitations set out in the proposed permit will not cause unreasonable degradation to the marine environment.

### Economic Impact

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order. The economic and inflationary effects of the regulations (40 CFR part 435) on which these permits are largely based were evaluated in accordance with Executive Orders 11821 and 12044.

### The Paperwork Reduction Act

The information collection required by this permit has been approved by the Office of Water Management and Budget (OMB) under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. in submissions made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports). All facilities affected by these permits will need to submit a request for coverage. EPA estimates that it will take an affected facility three hours to prepare a request for coverage. All affected facilities will be required to submit discharge monitoring reports (DMR's). EPA estimates the DMR burden will be 38 hours per facility per year.

### Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), I certify that this general permit will not have a significant impact on a substantial number of small entities. This certification is based on the fact that most parties regulated by this permit have greater than 500 employees and are not classified as small businesses under the Small Business Administration regulations established at 49 FR 5024 et. seq. (February 9, 1984). These facilities are classified as Major Group 13-Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas. For those operators having fewer than 500 employees this permit will not have a significant impact as the effluent limits being imposed in this permit are not significantly different from those of the expired permit.

Dated: September 30, 1992.

**Myron O. Knudson,**

*Acting Regional Administrator, Region 6.*

TABLE 1—STATUTORY BASIS FOR PERMIT LIMITS

| Discharge and permit condition | Statutory bases |
|---|---|
| Drilling Muds: | |
| No oil based muds | BCT |
| No diesel | BAT |
| Discharge rate limitations | Section 403(c) |
| No free oil | BCT |
| Toxicity limitation | BAT |
| Monitor volume discharged | Section 308 |
| Inventory of added substances | Section 308 |
| Monitor oil content | Section 308 |
| No discharge of mud contaminated with used oil. | BCT |
| Mercury and cadmium | BAT |
| Drill cuttings: | |
| No discharge of cuttings from oil based muds. | BCT |
| Monitor volume discharged | Section 308 |
| Deck Drainage: | |
| No free oil | BCT |
| Monitor discharge rate | Section 308 |
| Produced water: | |
| Oil and grease limitations | BCT |
| Monitor volume discharged | Section 308 |
| Toxicity limitations | Section 403(c) |
| Bioaccumulation monitoring | Section 308 |
| Produced sand: | |
| No free oil | BCT |
| Monitor weight discharged | Section 308 |
| Sanitary wastes: | |
| No floating solids or foam | BCT |
| Chlorine 1.0 mg/1 | BCT |
| Monitor discharge rate | Section 308 |
| Domestic wastes: | |
| No floating solids or foam | BCT |
| Monitor discharge rate | Section 308 |
| Miscellaneous discharges: | |
| No free oil | BCT |
| Well treatment, completion, and workover fluids: | |
| No free oil | BCT |
| Priority pollutants | BAT |
| Monitor volume discharged | Section 308 |
| All discharges: | |
| No halogenated phenols | BAT |
| No floating solids | BCT |
| Minimize discharge of surfactants, dispersants, and detergents. | Section 403(c) |
| Rubbish trash and other refuse | Section 402(a)(1) |
| No discharge in areas of biological concern. | Section 403(c) |

## Final General Permit for the Western Gulf of Mexico Outer Continental Shelf

[Permit No. GMG290000]

June 8, 1992.

U.S. Environmental Protection Agency, Region 6, 1445 Ross Ave., Dallas, TX 75202.

## Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq., the "Act"), operators of lease blocks located in Federal Waters of the Gulf of Mexico (defined as 3 miles from shore and beyond) are authorized to discharge to receiving waters in accordance with effluent limitations, monitoring requirements, and other conditions set forth in parts I, II, and III hereof.

Operators of lease blocks within the general permit area must submit written notification to the Regional Administrator that they intend to be covered (See part I.A.2). Unless otherwise notified in writing by the Regional Administrator after submission of the notification, owners or operators requesting coverage are authorized to discharge under this general permit. Operators of lease blocks within the general permit area who fail to notify the Regional Administrator of intent to be covered by this general permit are not authorized under this general permit to discharge pollutants from those facilities.

This permit does not authorize discharges from "new sources" as defined in 40 CFR 122.2.

This permit shall become effective on November 19, 1992.

This permit and the authorization to discharge shall expire November 19, 1997.

Dated: September 30, 1992.

Myron O. Knudson,

*Director, Water Management Division, EPA Region 6.*

### Part I. Requirements for NPDES Permits

*Section A. Permit Applicability and Coverage Conditions*

1. Operations Covered

This permit establishes effluent limitations, prohibitions, reporting requirements, and other conditions on discharges from oil and gas facilities engaged in production, field exploration, drilling, well completion, and well treatment operations.

The permit coverage area includes Federal waters in the Gulf of Mexico seaward of the line delineating 3 miles from shore generally seaward of Louisiana and Texas State Waters and shall include lease blocks west of the western boundary of the outer continental shelf lease areas defined as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, Lloyd, and Henderson. In Texas, where the state has mineral rights to 3 leagues, some operators with state lease tracts are required to request coverage under this Federal NPDES general permit. This permit only covers facilities located in and discharging to the federal waters listed above and does not authorize discharges from facilities in or discharging to the territorial seas of the Gulf coastal states or from facilities defined as "coastal" or "onshore" (see 40 CFR part 435, subparts C and D).

2. Notification Requirements

Written notification of intent to be covered including the legal name and address of the operator, the lease block number assigned by the Department of Interior or the state or, if none, the name commonly assigned to the lease area, and the number and type of facilities located within the lease block shall be submitted fourteen days prior to the commencement of discharge.

Permittees located in lease blocks that (a) are neither in nor adjacent to MMS-defined "no activity" areas, or (b) do not require live-bottom surveys are required only to submit a notice of intent to be covered by this general permit. Permittees who are located in lease blocks that are either in or adjacent to "no activity" areas or require live bottom surveys are required to submit both a notice of intent to be covered that specifies they are located in such a lease block, and in addition are required to submit a notice of commencement of operations.

Permittees located in lease blocks either in or immediately adjacent to MMS-defined "no activity" areas, shall be responsible for determining whether a controlled discharge rate is required. The maximum discharge rate for drilling fluids is determined by the distance from the facility to the "no activity" area boundary and the discharge rate equation provided in appendix A. The permittee shall report the distance from the permitted facillty to the "no activity" area boundary and the calculated maximum discharge rate to EPA with its notice of commencement of operations.

For permittees located in lease blocks that require live-bottom surveys, the final determination of the presence or absence of live-bottom communities, the distance of the facility from identified live-bottom areas, and the calculated maximum discharge rate shall be reported with the notice of commencement of operations.

All notifications of intent to be covered and any subsequent reports under this permit shall be sent to the following address: Director, Water Management Division (6W), Region 6, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, TX 75270.

3. Termination of Operations

Lease block operators shall notify the Regional Administrator within 60 days after the permanent termination of

discharges from their facilities within the lease block.

4. Intent To Be Covered by a Subsequent Permit

Lease block operators authorized to discharge by this permit shall notify the Regional Administrator on or before May 19, 1997 that they intend to be covered by a permit that will authorize discharge from these facilities after the termination date of this permit November 19, 1997.

*Section B. Effluent Limitations and Monitoring Requirements*

1. Drilling Fluids

The discharge of drilling fluids shall be limited and monitored by the permittee as specified in Table 3 and as below.

Special Note: The permit prohibitions and limitations that apply to drilling fluids, also apply to fluids that adhere to drill cuttings. Any permit condition that may apply to the drilling fluid system, therefore, also applies to cuttings discharges.

(a) *Prohibitions.—Oil-based drilling fluids.* The discharge of oil-based drilling fluids and inverse emulsion drilling fluids is prohibited.

*Oil contaminated drilling fluids.* The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

*Diesel oil.* Drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

(b) *Limitations.—Mineral oil.* Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill. If mineral oil is added to the drilling fluid, the drilling fluid may not be discharged unless its 96-hr LC50 is greater than 30,000 ppm SPP and there is no visible sheen on the surface of the receiving water.

*Cadmium and mercury in barite.* There shall be no discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight). The permittee shall analyze a representative sample of all stock barite used once prior to drilling each well and submit the results for total mercury and cadmium in the Discharge Monitoring Report (DMR).

If more than one well is being drilled at a site, new analyses are not required for subsequent wells, provided that no new supplies of barite have been received since the previous analysis. In this case, the results of the previous analysis should be used on the DMR.

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the barite being used on the well will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier.

Analyses shall be conducted by absorption spectrophotometry (see 40 CFR part 136, flame and flameless AAS) and the results expressed in mg/kg (dry weight).

*Toxicity.* Discharged drilling fluids shall meet both a daily minimum and a monthly average minimum of at least 30,000 ppm, (v/v) of a 9:1 seawater:mud suspended particulate phase (SPP) using a 96-hour LC50 with *Mysidopsis bahia.* Monitoring shall be performed at least once per month for both a daily minimum and the monthly average. In addition, an end-of-well sample is required for a daily minimum. The type of sample required is a grab sample, taken from beneath the shale shaker. Permittees shall report the 96-hour LC50 of the drilling fluid on the DMR for the reporting period.

*Free oil.* No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per day when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

*Discharge rate.* All facilities are subject to a maximum discharge rate of 1,000 barrels per hour.

For those facilities subject to the discharge rate limitation requirement because of their proximity to areas of biological concern, the discharge rate of drilling fluids shall be determined by the following equation:

$$R = 10\,[3\ \mathrm{Log}\,(d/15) + T_t]$$

Where:

R = discharge rate (bbl/hr)

d = distance (meters) from the boundary of a controlled discharge rate area

$T_t$ = toxicity-based discharge rate term $[\log (LC50 \times 8 \times 10^{-6})] / 0.3657$

Drilling fluids discharges (based on a mud toxicity of 30,000 ppm) equal to or less than 544 meters from areas of biological concern shall comply with the discharge rate obtained from the equation above. Drilling fluids discharges which are shunted to the bottom as required by MMS lease stipulation are not subject to this discharge rate control requirement.

Appendix A illustrates the discharge rate equation in the form of a graph.

All discharged drilling fluids, including those fluids adhering to cuttings must meet the limitations of this section except that discharge rate limitations do not apply before installation of the marine riser.

(c) *Monitoring requirements.—Drilling fluids inventory.* The permittee shall maintain a precise chemical inventory of all constituents and their total volume or mass added downhole for each well.

*Volume.* Once per month, the total monthly volume of discharged drilling fluids must be estimated and recorded.

*Oil content.* There is no numeric limitation on the oil content of discharged drilling fluids (except that fluids containing any waste oil, or diesel oil as a lubricity agent shall not be discharged). However, note that the oil added shall not cause a violation of either the toxicity or free oil limitations discussed above. The oil content of discharged drilling fluid shall be determined (by retort), once per day when discharging, on a grab sample taken from the same mud system being observed for the visual sheen-free oil test. This information shall be recorded but not reported unless otherwise requested by the EPA.

2. Drill Cuttings

The discharge of drill cuttings shall be limited and monitored by the permittee as specified in Table 3 and as below.

**Special Note:** Any limitation or prohibition of this permit which applies to a drilling fluid also applies to drill cuttings removed from that drilling fluid. Any permit condition that applies to the drilling fluid system, therefore, also applies to cuttings discharges. Monitoring requirements, however, are not the same.

(a) *Prohibitions—Cuttings from oil based drilling fluids.* The discharge of cuttings that are generated while using an oil-based or invert emulsion mud is prohibited.

(b) *Limitations.*—Limitations that apply to drilling fluids also apply to drill cuttings, i.e. cuttings associated with mineral oil pills or mineral oil lubricity additives must be greater than the 30,000 ppm SPP standard for the 96-hr LC50 for discharge to be allowed.

*Free oil.* No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per day when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

(c) *Monitoring requirements.—Volume.* Once per month, the total monthly volume of discharged drill cuttings must be estimated and recorded.

3. Deck Drainage

(a) *Limitations.—Free oil.* No free oil shall be discharged, as determined by the visual sheen method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when an observation of a sheen is possible, and the facility is manned. The number of days a sheen is observed must be recorded.

(b) *Monitoring requirements.—Volume.* An estimate of the monthly total discharge (bbls) must be recorded.

4. Produced Water

(a) *Limitations.—Oil and Grease.* Produced water discharges must meet both a daily maximum of 72 mg/1 and monthly average of 48 mg/1 limitation for oil and grease. A grab sample must be taken at least once per month. The daily maximum samples may be based on the arithmetic average of four grab samples taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. If more samples are taken, they may exceed the monthly average for any one day, provided that the average of all samples taken meets the end of the month limitation. The analytical method is that specified at 40 CFR part 136.

*Toxicity.* Produced water discharges shall not be toxic at the critical effluent dilution, as determined for the edge of the mixing zone. Produced water discharged must meet both a daily minimum and a monthly average minimum toxicity of at least the critical dilution. Critical dilution shall be determined using Table 1, found in appendix A of this permit and is based on the most recently recorded discharge rate and discharge pipe diameter. For dilutions not listed in Table 1, for the appropriate pipe diameter, the operator shall use the dilution listed which corresponds to next higher pipe diameter listed. The daily average toxicity (7-day NOEC) value is defined as the arithmetic average of all 7-day average NOEC values determined during the testing period.

(b) *Monitoring requirements.—Flow.* Once per month, an estimate of the flow (MGD) must be recorded.

*Toxicity.* The flow used to determine the frequency of toxicity testing shall be the flow most recently recorded prior to the month in which the test is conducted and shall be determined as follows:

| Discharge rate | Toxicity testing frequency |
|---|---|
| 0–500 bbl/day | Once per year. |
| 500–4,567 bbl/day | Once per quarter. |
| 4,567 bbl/day and above | Once per month. |

Toxicity testing shall be commenced within one year after the effective date of this permit.

Samples shall be collected when produced water discharges are expected to be most toxic and shall be representative of the discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operators.

If the permittee has been compliant with this toxicity limit for one full year after commencement of monitoring, the required testing frequency shall be reduced to once per year.

*Bioaccumulation.* Facilities which discharge more than 4,600 barrels of produced water per day shall collect and monitor marine organism tissue samples twice per year. The discharge rate used to determine participation under these requirements shall be the rate recorded for the most recent month. Edible marine organism tissue shall be monitored for the following pollutants: Benzo (a) Pyrene, Fluorene, Bis (2-ethylhexyl) Phthalate, Ethylbenzene, Toluene, Benzene, Phenol, Arsenic, Cadmium, Mercury, Radium 226, Radium 228, gross alpha radiation and gross beta radiation. Three seafood species, with five adult fish from each of those species, shall be collected and sampled twice annually from the receiving waters. Samples shall be collected within 100 meters downcurrent, from the point of discharge, at the time of discharge. Organisms taken shall include one species of mollusc, one species of crustacea, and one species of nektonic fish. Species sampled for edible tissue shall be from the following list:

| Crustacea | Mollusk | Nektonic Fish |
|---|---|---|
| Blue Crab | Eastern Oyster | Atlantic Croaker. |
| Stone Crab | Clam Species | Snapper Species. |
| Shrimp Species | Mussel Species. | Grouper Species. |

Sampling shall be conducted once during the summer months (June through August) and once during the winter months (December through February). Results shall be reported in the DMR for the reporting period in which samples are collected and analyzed. Monitoring shall commence two years after the effective date of this permit.

Alternatively, operators required to conduct bioaccumulation monitoring under this permit may submit a plan for an equivalent industry-wide bioaccumulation monitoring study to EPA Region 6 for approval. If Region 6 approves an equivalent bioaccumulation monitoring study, the monitoring conducted under that study shall constitute compliance with the bioaccumulation monitoring requirements of part I.B.4.(b) of this permit.

*Radioactivity.* Produced water discharges shall be monitored for Radium 226, Radium 228, gross alpha radiation and gross beta radiation. The flow used to determine the frequency of radiation monitoring shall be the flow most recently recorded prior to the month in which the test is conducted and shall be determined as follows:

| Discharge rate | Monitoring frequency |
|---|---|
| 0–500 bbl/day | Once per year. |
| 500–4,600 bbl/day | Once per quarter. |
| 4,600 bbl/day and above | Once per month. |

Monitoring shall commence one year after the effective date of this permit. When the permittee has monitored for radioactivity for one full year the required testing frequency shall be reduced to once per year.

5. Produced Sand

(a) *Limitations.—Free oil.* No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per day when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

(b) *Monitoring requirements.—Weight.* An estimate of the total monthly discharge (lbs) must be recorded.

6. Well Treatment Fluids, Completion Fluids, and Workover Fluids

(a) *Limitations.—Free oil.* No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the

operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per day when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

*Priority pollutants.* For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants is prohibited except in trace amounts. Information on the specific chemical composition of any additives containing priority pollutants shall be recorded.

Note: If materials added downhole as well treatment, completion, or workover fluids contain no priority pollutants, the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

(b) *Monitoring requirements.—Volume.* Once per month, an estimate shall be recorded for the average discharge volume (bbls).

7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

(a) *Prohibitions.—Solids.* No floating solids may be discharged. Observations must be made once per day, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meals and at the time during maximum estimated discharge.

(b) *Limitations.—Residual chlorine.* Total residual chlorine is a surrogate parameter for fecal coliform. Discharge of residual chlorine must meet a minimum of 1 mg/l and shall be maintained as close to this concentration as possible. A grab sample must be taken once per month and the concentration recorded (approved method, Hach CN–66–DPD).

[Exception] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

(c) *Monitoring requirements.—Flow.* Once per month, the average flow (MGD) must be estimated and recorded for the flow of sanitary wastes.

8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

(a) *Prohibitions.—Solids.* No floating solids may be discharged to the receiving waters. An observation must be made once per day for floating solids. Observation must be made during daylight in the vicinity of sanitary waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

[Exception] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

9. Domestic Waste

(a) *Prohibitions.—Solids.* No floating solids shall be discharged. In addition, food waste, comminuted or not, may not be discharged within 12 nautical miles from nearest land.

(b) *Limitations.—Solids.* Comminuted food waste which can pass through a 25 mm mesh screen (approximately 1 inch) may be discharged 12 or more nautical miles from nearest land.

(c) Monitoring requirements.—An observation must be made during daylight in the vicinity of domestic waste outfalls following the morning and midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

10 Excess Cement Slurry

(a) *Limitations.—Free oil.* No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per day when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

11. Miscellaneous Discharges

Desalination Unit Discharge
Diatomaceous Earth Filter Media
Blowout Preventor Fluid
Uncontaminated Ballast Water
Uncontaminated Bilge Water
Mud, Cuttings, and Cement at the Seafloor
Uncontaminated Freshwater
Uncontaminated Seawater
Boiler Blowdown
Source Water and Sand

(a) *Limitations.—Free oil.* No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per day when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

[Exception] Uncontaminated seawater and uncontaminated ballast water may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facilities are not manned.

*Section C. Other Discharge Limitations*

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam from any source in other than trace amounts.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds as a part of any waste stream authorized in this permit.

3. Dispersants, Surfactants, and Detergents

The facility operator shall minimize the discharge of dispersants, surfactants and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the Minerals Management Service. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. The restriction is imposed because detergents disperse and emulsify oil, thereby increasing toxicity and making the detection of a discharge of oil more difficult.

4. Rubbish, Trash, and Other Refuse

The discharge of any solid material not authorized in the permit (as described above) is prohibited.

This permit includes limitations set forth by the U.S. Coast Guard in its interim final rule implementing Annex V of MARPOL 73/78 for domestic waste disposal from all fixed or floating offshore platforms and associated vessels engaged in exploration or exploitation of seabed mineral resources. These limitations, as specified by Congress (33 U.S.C. 1901, the Act to Prevent Pollution from ships), apply to all navigable waters of the United States.

This permit prohibits the discharge of "garbage" including food wastes, within 12 nautical miles from nearest land. Comminuted food waste (able to pass through a screen with a mesh size no larger than 25 mm, approx. inch) may be discharged when 12 nautical miles or more from land. Graywater, drainage

from dishwater, shower, laundry, bath, and washbasins are not considered garbage within the meaning of Annex V. Incineration ash and non-plastic clinkers that can pass through a 25 mm mesh screen may be discharged greater than 3 miles from nearest land, otherwise ash and non-plastic clinkers can only be discharged beyond 12 nautical miles from nearest land. (See Interim Final Regulations Implementing Annex V of MARPOL 73/78, 54 FR 18384, April 28, 1989).

5. Area of Biological Concern

There shall be no discharge in Areas of Biological Concern.

*Section D. Other Conditions*

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. Drilling Fluids Toxicity Test

The approved test method for permit compliance is identified as:

U.S. Environmental Protection Agency Industrial Technology Division, May 1985. Appendix 3—Drilling Fluids Toxicity Test Proposed Regulation for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category, 50 FR 34592, at 34631.

3. Produced Water Toxicity Testing Requirements

1. The permittee shall test the produced water discharge for toxicity in accordance with the provisions in this section. Toxicity is herein defined as a statistically significant difference at the 95% confidence level) between survival and/or reproduction or growth of the appropriate test organism in a specified effluent dilution and the control (0% effluent).

2. All test organisms, procedures, and quality assurance requirements used shall be in accordance with the latest revision of "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms," EPA/600/4–87/028, or the most recent update thereof. The following tests shall be used:

a. Chronic static renewal 7-day survival, growth, and fecundity test using *Mysidopsis bahia* (Method 1007.0).

b. Chronic static renewal 7-day larval survival and growth test using sheepshead minnow (*Cyprinodon variegatus*) (Method 1004.0).

3. Five (5) dilutions in addition to an appropriate control (0% effluent) shall be used in the toxicity tests. One of the additional effluent concentrations shall correspond to the whole effluent toxicity (7-day NOEC) limitation established in part I of this permit.

4. The samples shall be collected at a point following the last treatment unit. Dilution water used in the toxicity tests will be synthetic water or natural seawater collected from an area unaffected by produced water discharges. The synthetic dilution water must fulfill the requirements of item 7 and have a pH and hardness similar to that of the receiving water, and a salinity as required by the test methods.

5. Grab samples representative of produced water discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations shall be collected from outfalls discharging produced water. These samples shall be collected when produced water discharges are expected to be most toxic.

The toxicity test must be initiated within 36 hours after the collection of the grab. Samples shall be chilled to 4 degrees Centigrade when collected, shipped, and/or stored and shall be stored in a manner which minimizes loss of volatiles.

6. Test Acceptance

a. The toxicity test control (0% effluent) must have a survival equal to or greater than 80% to be considered valid. Should the control survival be less than 80%, that test (both the control and all effluent dilutions) shall be repeated.

b. The mean weight of unpreserved sheephead minnow larvae at the end of 7 days in the control (0% effluent) must be 0.60 mg or greater. Should the control larval mean weight be less than 0.60 mg, the toxicity test including the control and all effluent dilutions shall be repeated.

c. The mean weight of mysid shrimp at the end of 7 days in the control (0% effluent) must be 0.20 mg or greater. Should the control mean weight be less than 0.20 mg, the toxicity test including the control and all effluent dilutions shall be repeated.

d. The minimum number of mysid shrimp females producing eggs must be 50% or greater in the control (0% effluent). Should the number of egg producing females be less than 50%, then the fecundity data cannot be used as an endpoint in the test.

e. The percent coefficient of variation shall be 40% or less for the control (0% effluent), and the effluent concentration defining the NOEC. Should the percent coefficient of variation be greater than 40% in the control, that test (both the control and all effluent dilutions) shall be repeated.

7. The permittee shall prepare a full report of the results according to the Report Preparation Section of "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms." The report shall be retained pursuant to the provisions of Part II.C.3 of this permit. The permittee shall also prepare the toxicity testing information contained in Appendix A, Table 2. The information in Table 2 shall be retained pursuant to the provisions of Part II.C.3 of this permit.

8. The NOEC (no observed effect concentration) for a specific species is defined as the greater effluent concentration which does not illicit a response that is statistically different from the control (0% effluent) at the 95% confidence level.

9. The whole effluent toxicity (7-day NOEC) value to be used in determining DMR reporting values is the lowest NOEC determined during the 7-day test period for either of the two test species specified in this permit. The permittee shall report both the critical effluent dilution from Table 1, appendix A and the 7-day NOEC in the DMR for the reporting period.

4. Bioaccumulation Testing

The approved test methods for bioaccumulation testing of edible fish tissue are:

*Organics:* Gas Chromatograph/Mass Spectrometric, Method Number 516, Standard Methods for Examination of Water and Waste Water, 16th Edition.

*Metals:* Electrothermal Atomic Absorption Spectrometry, Method Number 304, Standard Methods for Examination of Water and Waste Water, 16th Edition.

5. Retort Test

The approved test method for permit reporting is identified as:

American Petroleum Institute, 1985. Standard procedure for field testing drilling fluids. API Recommended Practice Bulletin 13B. 11th Edition, May 1985. API, Dallas, TX. pp. 13–15.

6. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. The operator must conduct a visual sheen test only at times when a sheen could be observed. This restriction eliminates observations when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., overcast skies, rough seas, etc.).

The observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

7. Static Sheen Test

1. Scope and Application

The static sheen test is to be used as a compliance test for all discharges in this permit with the "no free oil discharge" requirement, when it is not possible for the operator to accomplish a visual sheen observation on the surface of the receiving water. This would preclude an operator from attempting a visual sheen observation when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., during rough seas, etc.). Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

2. Summary of Method

15 ml samples of drilling fluids; deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities, or 15 gm (wet weight basis) samples of drill cuttings or produced sand are introduced into ambient seawater in a container having an air to liquid interface area of 1000 $cm^2$ (155.5 $in^2$). Samples are dispersed within the container and observations made no more than one hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

3. Interferences

Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

4. Apparatus, Materials, and Reagents

4.1 Apparatus.

4.1.1 Sampling Containers—1 L polyethylene beakers and 1 L glass beakers.

4.1.2 Graduated cylinder—100 ml graduated cylinder required only for operations where predilution of mud discharges is required.

4.1.3 Plastic disposable weighing boats.

4.1.4 Triple-beam scale.

4.1.5 Disposable pipets—25 ml disposable pipets.

4.1.6 Magnetic stirrer and stirring bar.

4.1.7 Stainless steel spatula.

4.1.8 Test container—open plastic container whose internal cross-section parallel to its opening has an area of $1000 \pm 50$ $cm^2$ ($155.5 \pm 7.75$ $in^2$), and a depth of at least 13 cm (5 inches) and no more than 30 cm (11.8 inches).

4.2 Materials and Reagents.

4.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 ml diesel fuel added to the lined test container under the test conditions and protocol described below.

4.2.2 Ambient receiving water.

5. Calibration

None currently specified.

6. Quality Control Procedures

None currently specified.

7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid to be tested shall be taken at the shale shaker after cuttings have been removed. The sample volume should range between 200 ml and 500 ml.

7.3 Samples of drill cuttings will be taken from the shale shaker screens with a clean spatula or similar instrument and placed in a glass beaker. Cuttings samples shall be collected prior to the addition of any washdown water and should range between 200 g and 500 g.

7.4 Samples of produced sand must be obtained from the solids control equipment from which the discharge occurs on any given day and shall be collected prior to the addition of any washdown water; samples should range between 200 g and 500 g.

7.5 Samples of deck drainage, well treatment, completion and workover fluids, formation test fluids and treated wastewater from drilling fluid dewatering activities must be obtained from the holding facility prior to discharge; the sample volume should range between 200 ml and 500 ml.

7.6 Samples must be tested no later than 1 hour after collection.

7.7 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to the test using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

7.8 Drill cuttings must be stirred and well mixed by hand in their sampling containers prior to testing, using a stainless steel spatula.

8. Procedure

8.1 Ambient receiving water must be used as the "receiving water" in the test. The temperature of the test water shall be as close as practicable to the ambient conditions in the receiving water, not the room temperature of the observation facility. The test container must have an air to liquid interface area of $1000 \pm 50$ $cm^2$. The surface of the water should be no more than 1.27 cm (½ inch) below the top of the test container.

8.2 Plastic liners shall be used, one per test container, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

8.3 A 15 ml sample of drilling fluid, deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities must be introduced by pipet into the test container 1 cm below the water surface. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogeneously throughout the test water. The pipet must be used only once for a test and then discarded.

8.4 Drill cuttings or produced sand should be weighed on plastic weighing boats; 15 grams samples must be transferred by scraping test material

into the test water with a stainless steel spatula. Drill cuttings shall not be prediluted prior to testing. Also, drilling fluids and cuttings must be tested separately. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The drill cuttings or produced sand must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

8.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. It is recommended that the water surface of the test container be observed under a fluorescent light source such as a dissecting microscope light. The light source shall be positioned above and directed over the entire surface of the pan.

8.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence; or an oil slick, on the water surface of the test container surface shall constitute a demonstration of "free oil". These visual observations include patches, streaks, or sheets of such altered surface characteristics shall constitute a demonstration of free oil. If the free oil content of the sample approaches or exceeds 10 percent, the water surface of the test container may lack color, a sheen or iridescence, due to the increased thickness of the film; thus, the observation for an oil slick is required. The surface of the test container shall not be disturbed in any manner that reduced the size of any sheen or slick that may be present.

If an oil sheen or slick occurs on less than one-half of the surface area after drilling muds or cuttings are introduced to the test container, observations will continue for up to one hour. If the sheen or slick increases in size and covers greater than one-half of the surface area of the test container during the observation period, the discharge of the material shall cease. If the sheen or slick does not increase in size to cover greater than one-half of the test container surface area after one hour of observation, discharge may continue and additional sampling is not required.

If a sheen or slick occurs on greater than one-half of the surface area of the test container after the test material is introduced, discharge of the tested material shall cease. The permittee may retest the material causing the sheen or slick. If subsequent tests do not result in a sheen or slick covering greater than one-half of the surface area of the test container, discharge may continue.

**Part II. Standard Conditions for NPDES Permits**

*Section A. General Conditions*

1. Introduction

In accordance with the provisions of 40 CFR 122.41, *et seq.*, this permit incorporates by reference all conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended (hereinafter known as the "Act") as well as all applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding part II.A.5, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR part 122.6 and any subsequent amendments.

5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–122.64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

7. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

8. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State Law or regulation under authority preserved by section 510 of the Act.

11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

*Section B. Proper Operation and Maintenance*

1. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of parts II.B.4.b and 4.c.

b. Notice.

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass.

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met.

No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

*Section C. Monitoring and Records*

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

The operator shall maintain records at development and production facilities

for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operators control and at a specific shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

*Section D. Reporting Requirements*

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at part II.D.9.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such requirements as may be necessary under the Act.

4. Discharge Monitoring Reports and Other Reports

The operator of each lease block shall be responsible for submitting monitoring results for all facilities within each lease block. The monitoring results for the facilities (platform, drilling ship, or semisubmersible) within the particular lease block shall be summarized on the annual Discharge Monitoring Report for that lease block.

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1). In addition, the highest monthly average for all activity within each lease block shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

If any category of waste (discharge) is not applicable for all facilities within the lease block, due to the type of operations (e.g., drilling, production) no reporting is required; however, "no discharge" must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period then "no activity" must be written on the DMR. All pages of the DMR must be signed and certified as required by Part II.D.11 and returned when due.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under parts II.D.4 and D.7 at the time monitoring reports are submitted. The reports shall contain the information listed at part II.D.7.

9. Other Information

Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, he shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR part 122, appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred microgram per liter (200 ug/1) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/1) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) The level established by the Director.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) The level established by the Director.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship-by a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency-by either a principal executive officer or ranking elected official. For purposes of this election, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

12. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

*Section E. Penalties for Violations of Permit Conditions*

1. Criminal

a. Negligent Violations.

The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations.

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318 or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment.

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False Statements.

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties.

The Act provides that any person who violates a permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. Class I Penalty.

Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. Class II Penalty.

Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

*Section F. Additional General Permit Conditions*

1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitations guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

(g) The bioaccumulation monitoring results show concentrations of the listed pollutants in excess of levels safe for human consumption.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit May Be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of this individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

3. Permit Reopener Clause

If applicable new or revised effluent limitations guidelines covering the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435) are promulgated in accordance with sections 301(b), 304(b)(2), and 307(a)(2), and the new or revised effluent limitations guidelines are more stringent than any effluent limitations in this permit or control a pollutant not limited in this permit, the permit may, at the Director's discretion, be modified to conform to the new or revised effluent limitations guidelines.

Notwithstanding the above, if an offshore oil and gas extraction point source discharge facility is subject to the ten year protection period for new source performance standards under the Clean Water Act section 306(d), this reopener clause may not be used to modify the permit to conform to more stringent new source performance standards or technology based standards developed under section 301(b)(2) during the ten year period specified in 40 CFR 122.29(d).

The Director may modify this permit upon meeting the conditions set forth in this reopener clause.

*Section G. Definitions*

All definitions contained in section 502 of the Act shall apply to this permit and are incorporated herein by references. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. *Act* means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. *Administrator* means the Administrator of the U.S. Environmental Protection Agency.

3. *Annual Average* means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and/or measured, divided by the number of discharges sampled and/or measured during such year.

4. *Applicable effluent standards and limitations* means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

5. *Applicable water quality standards* means all water quality standards to which a discharge is subject under the Act.

6. *Areas of Biological Concern* means a portion of the OCS identified by EPA, in consultation with the Department of Interior as containing potentially productive or unique biological communities or as being potentially sensitive to discharges associated with oil and gas activities.

7. *Blow-Out Preventer Control Fluid* means fluid used as actuate the hydraulic equipment on the blow-out preventer.

8. *Boiler Blowdown* means discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

9. *Bulk Discharge* any discharge of a discrete volume or mass of effluent from a pit tank or similar container that occurs on a one-time, infrequent or irregular basis.

10. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

11. *Completion Fluids* means salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

12. *Controlled Discharge Rates Areas* means zones adjacent to areas of biological concern or the territorial seas of the State of Mississippi.

13. *Daily Discharge* means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations

expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

14. *Daily Average* (also know as monthly average) discharge limitations means the highest allowable average of daily discharge(s) over a calendar month, calculated as the sum of all daily discharge(s) measured during a calendar month divided by the number of daily discharge(s) measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all daily discharge(s) of concentration determined during the calendar month where C=daily concentration, F=daily flow, and n=number of daily samples; daily average discharge=

$$\frac{C_1F_1+C_2F_2+* \ * \ *+C_nF_n}{F_1+F_2+* \ * \ *+F_n}.$$

15. *Daily Maximum* discharge limitations means the highest allowable *daily discharge* during the calendar month.

16. *Desalinization Unit Discharge* means wastewater associated with the process of creating freshwater from seawater.

17. *Deck Drainage* means all waste resulting from platform washings, deck washings, deck area spills, equipment washings, rainwater, and runoff from curbs, gutters, and drains, including drip pans and wash areas.

18. *Development Drilling* means the drilling of wells required to efficiently produce a hydrocarbon formation or formations.

19. *Diesel Oil* means the distillate fuel oil typically used in conventional oil-based drilling fluids, which contains a number of toxic pollutants. For the purpose of any particular operation under this permit, diesel oil shall refer to the fuel oil present on the facility.

20. *Director* means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

21. *Domestic Waste* means discharges from galleys, sinks, showers, safety showers, eye wash stations, hand washing stations, fish cleaning stations, and laundries.

22. *Drill Cuttings* means particles generated by drilling into the subsurface geological formations including cured cement carried to the surface with the drilling fluid.

23. *Drilling Fluids* means any fluid sent down the hole, including drilling muds and any specialty products, from the time a well is begun until final cessation of drilling in that hole.

24. *End of Well Sample* means the sample taken after the final log run is completed and prior to bulk discharge.

25. *Environmental Protection Agency* (EPA) means the U.S. Environmental Protection Agency.

26. *Excess Cement Slurry* means the excess mixed cement, including additives and wastes from equipment washdown, after a cementing operation.

27. *Fecal Coliform Bacteria Sample* consists of one effluent grab portion collected during a 24-hour period at peak loads.

28. *Grab sample* means an individual sample collected in less than 15 minutes.

29. *Inverse Emulsion Drilling Fluids* means an oil-based drilling fluid which also contains a large amount of water.

30. *Live bottom areas* means those areas which contain biological assemblages consisting of such sessile invertebrates as seas fans, sea whips, hydroids, anemones, ascideians sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with fishes and other fauna.

31. *Maximum Hourly Rate* means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

32. *Muds, Cuttings, and Cement at the Seafloor* means discharges that occur at the seafloor prior to installation of the marine riser and during marine riser disconnect, well abandonment and plugging operations.

33. *National Pollutant Discharge Elimination System* (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402, and 405 of the Act.

34. *No Activity Zones* means those areas identified by the Minerals Management Service (MMS) where no structures, drilling rigs, or pipelines will be allowed. Those zones are identified as lease stipulations in U.S. Department of the Interior, MMS, August, 1990, Environmental Impact Statement for Sales 131, 135, and 137, Western, Central, and Eastern Gulf of Mexico. Additional no activity areas may be identified by MMS during the life of this permit.

35. *Packer Fluid* means low solids fluids between the packer, production string and well casing. They are considered to be workover fluids.

36. *Priority Pollutants* means those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act and 40 CFR 401.15.

37. *Produced Sand* means sand and other solids removed from the produced waters. Produced sand also includes desander discharge from produced water waste stream and blowdown of water phase from produced water treating system.

38. *Produced Water* means water and particulate matter associates with oil and gas producing formations. Produced water includes small volumes of treating chemicals that return to the surface with the produced fluids and pass through the produced water treating system.

39. *Sanitary Waste* means human body waste discharged from toilets and urinals.

40. *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

41. *Sheen* means a silvery or metallic sheen, gloss, or increased reflectively, visual color or iridescence on the water surface.

42. *Source Water and Sand* means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery including the entrained solids.

43. *Spotting* means the process of adding a lubricant (spot) downhole to free stuck pipe.

44. *Territorial Seas* means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

45. *Trace Amounts* means that if materials added downhole as well treatment, completion, or workover fluids do not contain priority pollutants then the discharge is assumed not to

contain priority pollutants, except possibly in trace amounts.

46. *Uncontaminated Ballast/Bilge Water* means seawater added or removed to maintain proper draft.

47. *Uncontaminated Seawater* means seawater which is returned to the sea without the addition of chemicals. Included are (1) discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps (2) excess seawater from pressure maintenance and secondary recovery projects (30 water released during the training and testing of personnel in fire protection (4) seawater used to pressure test piping, and (5) once through noncontact cooling water.

48. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

49. *Well Treatment Fluids* mean any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

50. *Workover Fluids* mean salt solutions, weighted brines, polymers, and other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

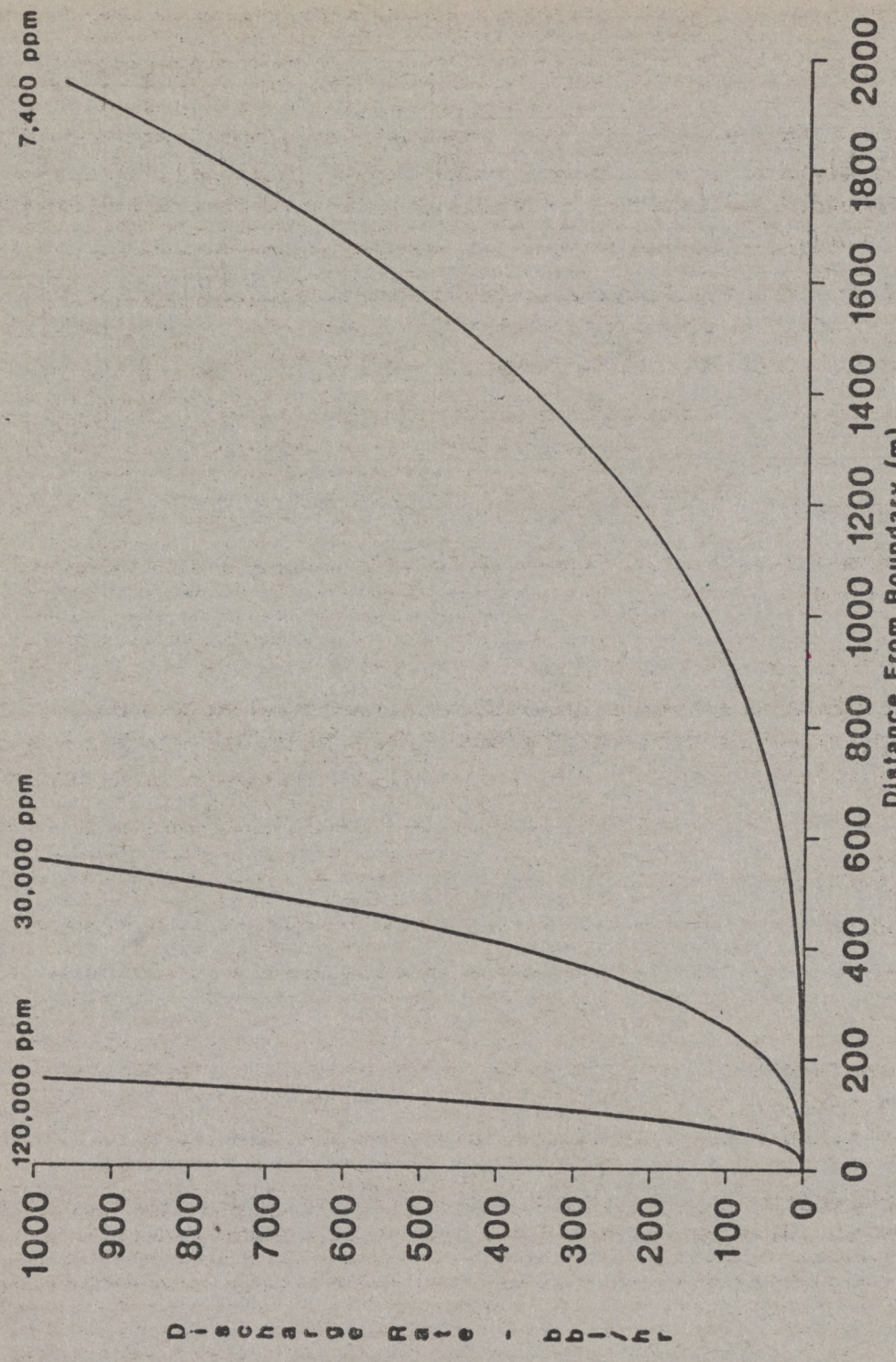
51. The term *MGD* shall mean a million gallons per day.

52. The term *mg/1* shall mean milligrams per liter or parts per million (ppm).

53. The term *ug/1* shall mean micrograms per liter or parts per billion (ppb).

BILLING CODE 6560-50-M

## Appendix A
## Discharge Rate Graph




BILLING CODE 6560-50-C

TABLE 1—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT)

| Discharge Rate (bbl/day) | Pipe Diameter | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2" | 4" | 6" | 8" | 10" | 12" | 24" |
| 0 to 500 | 1.17 | 1.15 | 1.15 | 1.15 | 1.15 | 1.15 | 1.15 |
| 500 to 1,000 | 1.60 | 1.62 | 1.62 | 1.62 | 1.62 | 1.62 | 1.62 |
| 1,000 to 2,000 | 2.16 | 2.48 | 2.48 | 2.48 | 2.48 | 2.48 | 2.48 |
| 2,000 to 3,000 | 2.41 | 3.25 | 3.14 | 3.14 | 3.14 | 3.14 | 3.14 |
| 3,000 to 4,000 | 2.51 | 3.78 | 3.68 | 3.68 | 3.68 | 3.68 | 3.68 |
| 4,000 to 5,000 | 2.52 | 4.15 | 4.16 | 4.16 | 4.16 | 4.16 | 4.16 |
| 5,000 to 6,000 | 2.50 | 4.43 | 4.66 | 4.58 | 4.58 | 4.58 | 4.57 |
| 6,000 to 7,000 | 2.46 | 4.63 | 5.17 | 4.97 | 4.97 | 4.97 | 4.97 |
| 7,000 to 8,000 | 2.58 | 5.03 | 5.83 | 5.54 | 5.53 | 5.53 | 5.53 |
| 8,000 to 9,000 | 2.45 | 5.50 | 6.62 | 6.29 | 6.29 | 6.28 | 6.29 |
| 9,000 to 10,000 | 2.33 | 5.88 | 7.31 | 6.98 | 6.98 | 6.97 | 6.97 |
| 10,000 to 12,500 | 2.11 | 6.53 | 8.64 | 8.72 | 8.49 | 8.49 | 8.48 |
| 12,500 to 15,000 | 1.94 | 6.88 | 9.58 | 10.3 | 9.78 | 9.78 | 9.77 |
| 15,000 to 20,000 | 1.71 | 7.13 | 10.7 | 12.6 | 11.9 | 11.9 | 11.9 |
| 20,000 to 25,000 | 1.54 | 7.13 | 11.3 | 14.0 | 14.5 | 13.7 | 13.7 |
| 25,000 and above | 1.29 | 7.13 | 11.3 | 15.8 | 19.5 | 21.3 | 19.7 |

BILLING CODE 6560-50-M

TABLE 2 (SHEET 1 OF 4)

Permit No.: GMG290000
Permittee:
Facility No.:

MYSIDOPSIS BAHIA SURVIVAL, GROWTH, AND FECUNDITY

Date Composite Collected: FROM _____ TO _____

Test initiated: _____ am/pm _____ date

DATA TABLE FOR M. BAHIA GROWTH

Average Dry Weight in milligrams in Replicate Chambers

| Effluent Conc (%) | A | B | C | D | E | F | G |
|---|---|---|---|---|---|---|---|
| 0% | | | | | | | |
| ___% | | | | | | | |
| ___% | | | | | | | |
| ___% | | | | | | | |
| ___% | | | | | | | |
| ___% | | | | | | | |
| ___% | | | | | | | |

DATA TABLE FOR M. BAHIA GROWTH

| | 0% | ___% | ___% | ___% | ___% | ___% |
|---|---|---|---|---|---|---|
| Mean Dry Weight (mg) | | | | | | |
| CV (%)* | | | | | | |

*coefficient of variation = standard deviation x 100/mean

PERCENT SURVIVAL

Percent Effluent (%)

| Time of Reading | 0% | ___% | ___% | ___% | ___% | ___% |
|---|---|---|---|---|---|---|
| 24 h | | | | | | |
| 48 h | | | | | | |
| 7 day | | | | | | |

TABLE 2 (SHEET 2 OF 4)

Permit No.: GMG290000
Permittee:
Facility No.:

NUMBER OF FEMALES WITH EGGS @ 7 DAYS

| REP | Percent Effluent (%) | | | | | |
|---|---|---|---|---|---|---|
| | 0% | ___% | ___% | ___% | ___% | ___% |
| A | | | | | | |
| B | | | | | | |
| C | | | | | | |
| D | | | | | | |
| E | | | | | | |
| F | | | | | | |
| G | | | | | | |
| H | | | | | | |
| I | | | | | | |
| J | | | | | | |
| Mean % Fecundity | | | | | | |

MYSIDOPSIS BAHIA SURVIVAL, GROWTH, AND FECUNDITY

1. Indicate statistical package employed to determine the NOEC (Reproduction) as per EPA Methods: _____

2. Enter percent effluent corresponding to the NOEC for reproduction:

NOEC reproduction = _____% effluent

3. Indicate the Statistical Package employed to determine the NOEC (survival) as per EPA Methods: _____

4. Enter percent effluent corresponding to the NOEC for survival:

NOEC survival = _____% effluent

TABLE 2 (SHEET 3 OF 4)

Permit No.: GMG290000
Permittee:
Facility No.:

SHEEPSHEAD MINNOW (CYPRINODON VARIEGATUS) LARVAL SURVIVAL AND GROWTH

Date Composite Collected: FROM _____ TO _____

Test initiated: _____ am/pm _____ date

SHEEPSHEAD MINNOW (CYPRINODON VARIEGATUS) LARVAL SURVIVAL AND GROWTH

DATA TABLE FOR SHEEPSHEAD MINNOW GROWTH

| Effluent Conc (%) | Average Dry Weight in Milligrams in Replicate Chambers | | | | Mean Dry Weight (mg) | CV%* |
|---|---|---|---|---|---|---|
| | A | B | C | D | | |
| 0% | | | | | | |
| ___% | | | | | | |
| ___% | | | | | | |
| ___% | | | | | | |
| ___% | | | | | | |
| ___% | | | | | | |

* coefficient of variation = standard deviation x 100/mean

1. Indicate the Statistical Package employed to determine the NOEC (Growth) as per EPA Methods: _____

2. Enter percent effluent corresponding to the NOEC for growth:

NOEC growth = _____% effluent

TABLE 2 (SHEET 4 OF 4)

Permit No.: GMG290000
Permittee:
Facility No.:

DATA TABLE FOR SHEEPSHEAD MINNOW SURVIVAL

| Effluent Conc (%) | Percent Survival in Replicate Chambers | | | | Mean Percent Survival | | | CV%* |
|---|---|---|---|---|---|---|---|---|
| | A | B | C | D | 24h | 48h | 7 days | |
| 0% | | | | | | | | |
| ___% | | | | | | | | |
| ___% | | | | | | | | |
| ___% | | | | | | | | |
| ___% | | | | | | | | |
| ___% | | | | | | | | |

* coefficient of variation = standard deviation x 100/mean

3. Indicate the Statistical Package employed to determine the NOEC (Survival) as per EPA Methods:_____

4. Enter percent effluent corresponding to the NOEC for survival:

NOEC survival = _____% effluent

5. Enter the percent effluent corresponding to the lowest NOEC determined for either species in this toxicity test:

Lowest NOEC = _____% effluent

BILLING CODE 6560-50-C

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS

| Discharge | Regulated and monitored discharged parameter | Discharge limitations/ prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/ method | Recorded value(s) |
| Drilling Fluid | Free Oil | No free oil | Once day [1] | Visual sheen | Number of days sheen observed. |
| | Toxicity [2] 96-hr LC50 | 30,000 ppm daily minimum. | Once/month | Grab | 96-hr LC50. |
| | | | Once/end of well [3]. | Grab | 96-hr LC50. |
| | | 30,000 ppm monthly average minimum. | Once/month | Grab | 96-hr LC50. |
| | Discharge Rate | 1,000 barrels/hour | Once/hour | Estimate | Max. hourly rate. |
| | Discharge Rate for controlled discharge rate areas [4]. | 1,000 barrels/hour (see Figure 1). | Once/hour [1] | Measure | Max. hourly rate. |
| | Oil Content | | Once/day [1] | Grab/retort [5] | Percent oil.[6] |
| | Volume (barrels) | x | Once/month | Estimate | Monthly total.[6] |
| | Mercury and cadmium | No discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight). | Once prior to drilling each well [7]. | Aborption Spectro-photometry. | mg mercury/kg barite mg cadmium/kg barite. |
| Drilling Cuttings | Free oil | No free oil | Once/day [1] | Visual sheen | |
| | Volume (barrels) | | Once month | Estimate Number of days sheen observed. | |
| | Toxicity [2] 96-hr LC50 | 30,000 ppm daily minimum. | Once/month | Grab | 96-hr LC50. |
| | | | Once/end of well [3]. | Grab | 96-hr LC50. |
| | | 30,000 ppm monthly average minimum. | Once/month | Grab | 96-hr LC50. |
| | Discharge Rate | 1,000 barrels/hour | Once/hour [1] | Estimate | Max. hourly rate. |
| | Discharge Rate for controlled discharge rate areas [4]. | (see Figure 1) | Once/hour [1] | Measure | Max. hourly rate. |
| | Oil Content | | Once/day [1] | Grab/retort [5] | Percent oil.[6] |
| | Volume (barrels) | | Once/month | Estimate | Monthly total.[6] |
| | Mercury and cadmium | No discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight). | Once prior to drilling each well [7]. | Absorption Spectro-photometry. | mg mercury/kg barite, mg admium/kg barite. |
| Deck Drainage | Free Oil | No free oil | Once/day [8] | Visual sheen | Number of days sheen observed |
| | Volume (barrels) | | Once month | Estimate | Monthly total.[6] |
| Produced Water | Oil and grease | 72 mg/l daily max., 48 mg/l monthly average. | Once/month | Grab [9] | Daily max., monthly average. |
| | Toxicity | Critical Dilution [10] daily and monthly avg. min. | Rate Dependent | 24-hr. Composite | |
| | Flow (MGD) | | Once/month | Estimate | |
| Produced Sand | Free oil | No free oil | Once/day [1] | Visual sheen | Number of days sheen observed. |
| Well treatment fluids,[11] completion | Free oil | No free oil | Once/day [1] | Visual sheen | Number of days sheen observed. |
| Fluids,[11] and workover fluids [11] includes packer fluids. | Volume (barrels) | | Once month | Estimate | Monthly total.[6] |
| Sanitary waste [13] | Residual chlorine [14] | 1 mg/l | Once/month | Grab | Concentration. |
| Continuously manned by 10 or more persons. | Flow (MGD) | | Once/month | Estimate | Monthly Average.[6] |
| Sanitary waste [13] continuously manned by 9 or fewer persons or intermittently by any number. | Dolids | No floating solids | Once/day | Observation | Number of days solids observed. |
| Domestic waste [15] | Solids | No floating solids | Once/day | Observation [16] | Number of days sheen observed. |
| Miscellaneous discharges: Desalinization unit discharge; blowout preventer fluid; uncontaminated ballast water; uncontaminated bilge water; mud, cuttings and cement at seafloor; uncontaminated seawater; boiler blow-down; source water and sand. | Free oil | No free oil | Once/day [12] | Visual sheen | Number of days sheen observed. |

[1] When discharging, discharge is authorized only during times when visual observation is possible, unless the static sheen method is used.

[2] Suspended particulate phase (SPP) with *Mysidopsis bahia* following approved test method. The sample shall be taken beneath the shale shaker; or if there are no returns across the shaker then the sample must be taken from a location that is characteristic of the overall mud system to be discharged.
[3] Sample shall be taken after the final log run is completed and prior to bulk discharge.
[4] See Appendix A, Discharge Rate Graph.
[5] Percent oil shall be recorded for the same drilling fluid as monitored for visual sheen.
[6] This information shall be recorded but not reported unless otherwise requested by EPA.
[7] Analyses shall be conducted on each new stock of barite used.
[8] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.
[9] May be based on the arithmetic average of four grab sample results in the 24 hr. period.
[10] See Table 1, Appendix A.
[11] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.
[12] When discharging, discharge is authorized only during times when visual sheen observation is possible, unless the static sheen method is used. Uncontaminated seawater and uncontaminated ballast water from platforms on automatic purge systems may be discharged without monitoring from platforms which are not manned.
[13] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under Section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation, and test results maintained at the facility.
[14] Hach method CN-66 DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.
[15] The discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land.
[16] Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls. Observations shall be made following either the morning or midday meals at a time of maximum estimated discharge.

federal register

Thursday
November 19, 1992

Part III

# Office of Management and Budget

## Cumulative Report on Rescissions and Deferrals; Notice

## OFFICE OF MANAGEMENT AND BUDGET

### Cumulative Report on Rescissions and Deferrals

November 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven deferrals contained in the First Special Message for FY 1993, which was transmitted to Congress on October 1, 1992.

**Rescissions**

As of the date of this report, no rescission proposals are pending before the Congress.

**Deferrals (Attachments A and B)**

Attachment A provides the status of the $930.9 million in budget authority being deferred from obligation as of November 1, 1992. Attachment B provides the status of each deferral reported during FY 1993.

**Information from Special Message**

The special message containing information on the deferrals that are covered by this cumulative report is printed in the **Federal Register** cited below:

57 FR 46730, Friday, October 9, 1992.

**Richard Darman,**

*Director.*

Attachments

BILLING CODE 3110–01–M

## ATTACHMENT A

## STATUS OF FY 1993 DEFERRALS

| | Amounts (In millions of dollars) |
|---|---|
| Deferrals proposed by the President..... | 930.9 |
| Routine Executive releases through November 1, 1992 | --- |
| Overturned by the Congress..... | --- |
| Currently before the Congress..... | 930.9 |

ATTACHMENT B
Status of FY 1993 Deferrals - As of November 1, 1992
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 11-1-92 |
|---|---|---|---|---|---|---|---|---|---|
| **FUNDS APPROPRIATED TO THE PRESIDENT** | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Economic support fund | D93-1 | 492,736 | | 10-1-92 | | | | | 492,736 |
| Agency for International Development | | | | | | | | | |
| Demobilization and transition fund | D93-2 | 13,750 | | 10-1-92 | | | | | 13,750 |
| **DEPARTMENT OF AGRICULTURE** | | | | | | | | | |
| Forest Service | | | | | | | | | |
| Cooperative work | D93-3 | 364,582 | | 10-1-92 | | | | | 364,582 |
| Expenses, brush disposal | D93-4 | 40,241 | | 10-1-92 | | | | | 40,241 |
| **DEPARTMENT OF DEFENSE - CIVIL** | | | | | | | | | |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation, Defense | D93-5 | 2,175 | | 10-1-92 | | | | | 2,175 |
| **DEPARTMENT OF HEALTH AND HUMAN SERVICES** | | | | | | | | | |
| Social Security Administration | | | | | | | | | |
| Limitation on administrative expenses | D93-6 | 7,267 | | 10-1-92 | | | | | 7,267 |
| **DEPARTMENT OF STATE** | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund | D93-7 | 10,123 | | 10-1-92 | | | | | 10,123 |
| **TOTAL, DEFERRALS** | | 930,875 | 0 | | 0 | 0 | | 0 | 930,875 |



[FR Doc. 92-28086 Filed 11-18-92; 8:45 am]
BILLING CODE 3110-01-C

# Reader Aids

Federal Register

Vol. 57, No. 224

Thursday, November 19, 1992

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