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# federal register

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# federal register

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

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# Presidential Documents

Title 3—

The President

## Proclamation 6534 of March 6, 1993

## To Revoke Proclamation No. 6491 of October 14, 1992

By the President of the United States of America

A Proclamation

WHEREAS, the provisions of the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494, as amended), and the provisions of all other acts, Executive orders, proclamations, rules, regulations, or other directives providing for the payment of locally prevailing wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act, were suspended by Proclamation No. 6491 of October 14, 1992, within specified geographic areas affected by Hurricanes Andrew and Iniki until otherwise provided;

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, do by this Proclamation revoke Proclamation No. 6491 of October 14, 1992, as to all construction contracts for which bids are opened or negotiations concluded on or after fifteen (15) days after the date of this Proclamation, whether direct Federal construction or federally assisted construction subject to Proclamation No. 6491.

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

William J. Clinton

[FR Doc. 93-5680
Filed 3-8-93; 4:21 pm]
Billing code 3195-01-M

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Parts 432 and 752**

**RIN 3206–AE96**

## Performance Based Reduction in Grade and Removal Actions Adverse Actions

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is adopting interim rules as final regulations under parts 432 and 752 to implement the Civil Service Due Process Amendments (DPA), granting procedural and appeal rights to certain nonpreference eligible employees in the excepted service. These regulations clarify which employees the act covers and which it does not. They also reflect the later enactment of a separate personnel system for employees of the Administrative Office of the United States Courts.

**EFFECTIVE DATE:** April 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sharon C. Snellings on part 432; Cynthia L. Field on part 752. They may be reached on (202) 606–2920.

**SUPPLEMENTARY INFORMATION:** On May 11, 1992, OPM published for comment in the **Federal Register** (57 FR 20041) interim regulations reflecting passage of the Civil Service Due Process Amendments (DPA), Public Law 101–376, effective August 17, 1990. We received two formal written comments from agencies and one from an employee organization. None suggested any changes.

Subsequent to the publication of the interim regulations, Congress passed in 1992 a technical amendment to correct the unintended exclusion by the 1990 Due Process Amendments of 155,000 employees of the Department of Veterans Affairs working in the Veterans Health Administration from the coverage of chapter 75 of title 5, United States Code, (and by implication, from chapter 43). Before passage of the DPA, these employees were covered under chapter 43 and chapter 75 of title 5, United States Code, either because they were in the competitive service or because title 38, United States Code, gave them such rights as if they were in the competitive service. The technical amendments in Public Law 102–378 of October 2, 1992, included them retroactively under chapter 75 of title 5, United States Code, (and thus brought them under chapter 43). The final regulations reflect this retroactive change.

The regulations amend the coverage statements in parts 432 (Performance Based Reduction in Grade and Removal Actions) and 752 (Adverse Actions) to reflect the procedural and appellate rights which the statute provides for nonpreference eligible employees in the excepted service who meet certain conditions.

### 1. Completion of 2 Years of Service for Nonpreference Eligibles in the Excepted Service

For the purposes of determining the completion of the 2 years of service, employment in the competitive service, the excepted service, the Senior Executive Service, or in more than one agency during the period is counted as long as the service was current, continuous, in the same or similar positions in an executive agency, and not in a temporary appointment limited to 2 years or less. Thus, the determination of the completion of this 2 years differs in significant respects from the completion of the probationary period as discussed in Federal Personnel Manual Chapter 315. In contrast to the provisions governing the completion of the probationary period, the statute allows employees credit for service from more than one agency, and the definition of "similar" positions is somewhat less restrictive than that of "same line of work." Further, the service must be continuous (i.e., no breaks of a workday), and the law does not permit "tacking on" of past service in a temporary appointment to current service in a nontemporary appointment.

### 2. Statutory Exceptions From Coverage Under the DPA

*Incorrect Exclusion of Certain Positions in the Department of Veterans Affairs*

The interim regulations showed all positions in the Veterans Health Services and Research Administration (VHSRA) as excluded. While some positions in this organization (since renamed the Veterans Health Administration (VHA)) are properly excluded, the majority of positions were always covered under chapter 43 and chapter 75 of title 5, United States Code, and were incorrectly excluded by the 1990 DPA. We delayed issuance of final regulations in order to incorporate the planned retroactive legislative correction, which has now been enacted. The statutory and regulatory language reflect the correct exclusion.

*Positions Which Are Excluded Under Agency Statutory Authority*

As the supplementary information on the interim regulations pointed out, the DPA specifically lists certain agencies and groups of employees as excluded entirely from coverage under chapters 43 and 75 of title 5, United States Code. These agencies and positions (for example, the Foreign Service and the Central Intelligence Agency) were previously excluded by their own separate statutory authority from appointing requirements of title 5, United States Code. Furthermore, Public Law 101–474 later excluded all positions in the Administrative Office of the Courts from such requirements. In addition to these agencies and positions which the DPA or subsequent law specify as excluded, OPM is aware of the existence of other groups of positions which are also excluded from appointing requirements of title 5, United States Code. Consequently, if positions were previously effectively excluded by an agency's statutory authorities from adverse action protections whether the incumbents were preference eligibles or nonpreference eligibles, they continue to be excluded, in the absence of any provisions to include them. This is true whether or not they are specifically listed as excluded in the DPA.

Discussion with agencies has suggested to OPM that some minor changes would clarify the meaning of § 752.401(d)(12) pertaining to these employees whose positions have been

excluded by statute from the appointing provisions of title 5, United States Code, and in some cases, other provisions as well. The problem with trying to characterize the groups of positions that are excluded by statute from the coverage of chapter 75 of title 5, United States Code, but not specified in the DPA exclusions, is that Congress has used variable language to describe these exclusions, ranging from exceptions to the appointing requirements of the competitive service to exclusions from all provisions of title 5. The most commonly used language, however, provides appointing authority for the agency head "without regard to the provisions of title 5, United States Code, governing appointments in the competitive service" or in some cases "without regard to the civil-service laws." Under long-established legal interpretations (currently set out in FPM Chapter 212, *Framework of the Federal Civilian Service*), "the authority to separate, suspend, or furlough an employee or to reduce the employee's grade or pay is inherent in the power to appoint." In other words, when agencies have the power to appoint without regard to the usual competitive or civil service laws, including veterans' preference, this broad authority carries with it the authority to remove (and take adverse actions) without regard to those same laws. In most of these statutory provisions, there is no specific exclusion from the provisions of chapter 75 of title 5, United States Code. Therefore, we are making clarifying changes to § 752.401(d)(12) to indicate that all that is required for a statutory exclusion from chapter 75 is a legislative exclusion from the appointing requirements of title 5, United States Code, in the absence of any provision to place the employee within the coverage of chapter 75 of title 5.

**E.O. 12291, Federal Regulation**

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

**List of Subjects in 5 CFR Parts 432 and 752**

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Director.*

Accordingly, OPM's interim rule amending 5 CFR part 432 and part 752, published at 57 FR 20041 on May 11, 1992, is adopted as a final rule with the following changes:

## PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

1. The authority citation for part 432 continues to read as follows:

**Authority:** 5 U.S.C. 4302a, 4303, and 4305.

2. In § 432.102, paragraph (f)(6) is revised to read as follows:

**§ 432.102 Coverage.**

* * * * *

(f) * * *

(6) An employee who holds a position with the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless such employee was appointed to such a position under section 7401(3) of title 38;

* * * * *

3. In § 432.108, paragraphs (a)(2) and (b)(1)(ii) are revised to read as follows:

**§ 432.108 Appeal and grievance rights.**

(a) * * *

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position(s) under other than a temporary appointment limited to 1 year or less;

* * * * *

(b) * * *

(1) * * *

(ii) In the competitive service, serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position(s) under other than a temporary appointment limited to 1 year or less;

* * * * *

## PART 752—ADVERSE ACTIONS

4. The authority citation for part 752 is revised to read as follows:

**Authority:** 5 U.S.C. 7504, 7514, and 7543.

5. In § 752.201, paragraph (b)(5) is revised to read as follows:

**§ 752.201 Coverage.**

* * * * *

(b) * * *

(5) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

* * * * *

6. In § 752.301, paragraphs (b)(7) through (b)(9) of statutory § 7511 are revised and paragraph (b)(10) is added to read as follows:

**§ 752.301 Principal statutory requirements.**

* * * * *

*§ 7511. Definitions; Application*

* * * * *

(b) * * *

(7) Whose position is within the Central Intelligence Agency or the General Accounting Office;

(8) Whose position is within the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence, Agency, or an intelligence activity of a military department covered under section 1590 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability;

(9) Who is described in section 5102(c)(11) of this title; or

(10) Who holds a position with the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.

* * * * *

7. In § 752.401, paragraphs (c) and (d) are revised to read as follows:

**§ 752.401 Coverage.**

* * * * *

(c) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous service in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an executive agency as defined at section 105 of title 5, United States Code, the U.S. Postal Service, or the Postal Rate Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100–90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at section 105 of title, 5, United States Code, and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position in Schedule B of part 213 of this chapter;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position;

(8) An employee of the Department of Veterans Affairs appointed under section 7401(3) of title 38, United States Code; and

(9) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by: the President for a position that the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in section 8337(h)(1) of title 5, United States Code, who is employed under section 709(b) of title 32, United States Code;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency or the General Accounting Office;

(8) An employee of the Veterans Health Administration (Department of Veterans Affairs) in a position which has been excluded from the competitive service by or under a provision of title 38, United States Code, unless the employee was appointed to the position under section 7401(3) of title 5, United States Code;

(9) A nonpreference eligible employee with the U.S. Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10, United States Code;

(10) An employee described in section 5102(c)(11) of title 5, United States Code, who is an alien or noncitizen occupying a position outside the United States;

(11) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service; and

(12) An employee whose agency or position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of chapter 75 of title 5, United States Code.

[FR Doc. 93–5351 Filed 3–9–93; 8:45 am]
BILLING CODE 6325–01–M

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## 5 CFR Part 532

**RIN 3206–AF16**

## Prevailing Rate Systems

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to authorize a special schedule practice for U.S. civil service prevailing rate (wage) employees in the Commonwealth of the Northern Mariana Islands (CNMI)—a practice consistent with the special schedules authorized in the other U.S. insular areas of Gram, Midway, American Samoa, and the U.S. Virgin Islands. No change in pay rates is involved, since this special schedule practice authorizes rates identical to those on the foreign area schedule from which the employees are currently paid. The Department of the Interior, which has four authorized wage positions at the American Memorial Park on Saipan, CNMI, is assigned lead agency responsibility for establishing and issuing this schedule. This change is necessary because the pay of wage employees in CNMI is based on the foreign area wage schedule—a schedule no longer applicable since the change in status of CNMI from territory to commonwealth (part of the United States).

**EFFECTIVE DATE:** April 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Paul Shields, (202) 606–2848.

**SUPPLEMENTARY INFORMATION:** On September 30, 1992, OPM published a proposed rule (57 FR 45004) to authorize a special schedule practice for U.S. civil service prevailing rate employees in the Commonwealth of the Northern Mariana Islands. The use of the foreign area schedule to set the wages for these employees dates back to the period when the Northern Mariana Islands were part of the Trust Territory of the Pacific Islands (TTPI), a United Nations Trusteeship administered by the United States. With implementation of the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States," the trusteeship agreement was terminated, and in December 1990, the United Nations terminated the TTPI. Under the Covenant, U.S. Federal law applies to CNMI.

This final rule also puts in regulation the entitlement to post differentials for wage employees recruited from outside of the insular area where employed—an entitlement previously described in Federal Personnel Manual Supplement 532–1.

A number of administrative changes in the regulatory descriptions of foreign and insular area special schedules are also included. Specifically, the amended regulations (1) split treatment of the foreign area schedule and the related special schedules into separate sections, (2) adopt the term "insular areas" to cover U.S. territories, possessions, and associated commonwealths (not otherwise surveyed—e.g., Puerto Rico), (3) change "will" to "shall" in § 532.255, (4) delete the production facilitating chart in § 532.255 because that chart is now shown in § 532.263 (production facilitating special schedules), and (5) remove the reference in § 532.259 to the U.S. Virgin Islands transition that ended in fiscal year 1990.

No comments were received during the 60-day comment period. The proposed rule, therefore, is being adopted as a final rule without any changes.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
**Patricia W. Lattimore,**
*Acting Director.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. Section 532.255 is amended by revising the heading and paragraph (a), removing the word "will" where it appears in the introductory text to paragraph (b) and in paragraphs (c) and (d) and inserting in its place the word "shall", and by revising paragraph (e) to read as follows:

**§ 532.255 Regular appropriated fund wage schedules in foreign areas.**

(a) The Department of Defense shall establish and issue regular appropriated fund wage schedules for U.S. citizens who are employees in foreign areas. These wage schedules shall provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

* * * * *

(e) Pay schedules for production facilitating positions shall be established in accordance with the table in § 532.263(c) of this subpart.

3. Section 532.259 is revised to read as follows:

**§ 532.259 Special appropriated fund wage schedules for U.S. insular areas.**

(a) Lead agencies shall establish and issue special wage schedules for U.S. civil service wage employees in certain U.S. insular areas. The Department of Defense is the lead agency for Guam, Midway, and the U.S. Virgin Islands. The Department of Transportation is the lead agency for American Samoa. The Department of the Interior is the lead agency for the Commonwealth of the Northern Mariana Islands. These schedules shall provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees.

(b) Special schedules shall be established at the same time and with rates identical to the foreign area appropriated fund wage schedules established under § 532.255 of this subpart.

(c) Wage employees recruited from outside the insular area where employed, who meet the same eligibility requirements as those specified for General Schedule employees in § 591.209 of subpart B of part 591, are also paid as a part of basic pay a differential for recruitment and retention purposes. The differential rate shall be that established for General Schedule employees in appendix B of subpart B of part 591 and shall be adjusted effective concurrently with the special schedules.

[FR Doc. 93–5350 Filed 3–9–93; 8:45 am]
BILLING CODE 6325–01–M

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**5 CFR Part 532**

**RIN 3206–AE84**

### Prevailing Rate Systems

**AGENCY:** Office of Personnel Management.
**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final rule to add Wayne Country, West Virginia, as an area of application to the Franklin, Ohio, Nonappropriated Fund (NAF) wage area. The Department of Veterans Affairs Medical Center in Huntington, West Virginia, previously had been misidentified as being located in Cabell County, West Virginia, for pay-setting purposes, although its actual location is within adjacent Wayne County, West Virginia. The intent of this action is to correct the discrepancy in our regulation.

**EFFECTIVE DATE:** April 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Brenda Roberts, (202) 606–2848.

**SUPPLEMENTARY INFORMATION:** On July 27, 1992, OPM published a proposed rule to add Wayne County, West Virginia, to the Franklin, Ohio, wage area as an area of application (57 FR 33130). No comments were received during the 30-day comment period. The proposed rule, therefore, is being adopted as a final rule without any changes.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
**Patricia W. Lattimore,**
*Acting Director.*

Accordingly, OPM is amending 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. Appendix D to subpart B is amended by revising the West Virginia wage area listing under Franklin, Ohio, to read as follows:

**Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas**

* * * * *

Ohio

FRANKLIN

*Survey Area*

* * * * *

*Area of Application. Survey area plus:*

* * * * *

West Virginia:
Cabell
Raleigh
Wayne

* * * * *

[FR Doc. 93–5349 Filed 3–9–93; 8:45 am]
BILLING CODE 6325–01–M

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## DEPARTMENT OF AGRICULTURE

### Rural Electrification Administration

**7 CFR Part 1703**

### Distance Learning and Medical Link Grant Program

**AGENCY:** Rural Electrification Administration, USDA.
**ACTION:** Notice of Extension of Grant Application Deadline for First Selection Period.

**SUMMARY:** The Rural Electrification Administration (REA) is hereby giving notice to interested parties that an extension has been given to submit applications under the first selection period of the Distance Learning and Medical Link Grant Program.
**DATES:** Applications to be considered for the first selection period must be postmarked no later than April 30, 1993.

**ADDRESSES:** Applications may be submitted to the Administrator, Rural Electrification Administration, U.S. Department of Agriculture, 14th and Independence Ave., SW., Washington, DC 20250–1500. Applications should be marked "Attention: Assistant Administrator, Economic Development and Technical Services."

**FOR FURTHER INFORMATION CONTACT:** Larry Bryant, Chief, Planning Branch, Rural Development Assistance Staff, room 2237-S, U.S. Department of Agriculture, Rural Electrification Administration, at the above address. Telephone: (202) 690–3594.

**SUPPLEMENTARY INFORMATION:** The final rule implementing the Distance Learning and Medical Link Grant Program was published in the **Federal Register** on February 26, 1993 and the rule becomes effective March 29, 1993. This filing deadline extension affects 7 CFR part 1703, subpart D, section 1703.113, Application filing dates and location. All other terms and conditions remain as in 7 CFR part 1703, subpart D. This is a one time extension. This action is necessary to allow interested parties wishing to make application for grants under this program sufficient time to file applications. Potential applicants should call the Rural Development Assistance Staff *first* in order to obtain the application and application processing guide.

Dated: March 5, 1993.

**James B. Huff, Sr.,**

*Administrator.*

[FR Doc 93–5545 Filed 3–9–93; 8:45 am]

BILLING CODE 3410–15–F

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 4

[T.D. 93–12]

## Conforming Amendments to the Customs Regulations

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** In accordance with Customs policy of periodically reviewing its Regulations to ensure that they are current, this document makes certain conforming changes to the Customs Regulations dealing with vessels in foreign and domestic trades, which are necessary because of various legislative and administrative actions.

**EFFECTIVE DATE:** March 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Larry Burton, Carrier Rulings Branch, (202) 482–6940.

**SUPPLEMENTARY INFORMATION:**

### Background

As part of a continuing program to keep its Regulations current, the Customs Service has determined that various legislative and administrative actions require conforming amendments to Part 4 of the Customs Regulations (19 CFR part 4). Following is a summary of these changes.

### Discussion of Changes

1. Section 4.20(a) generally provides for the payment of regular tonnage tax on vessels entering from a foreign port or place. Section 4.20(a) is revised to reflect changes in the amount of regular tonnage tax applicable in such circumstances, and to include among those vessels which are subject to the tax certain vessels which depart a U.S. port or place and return to the same port or place without being entered in the U.S. from another port or place (voyages to nowhere). These changes are necessitated by Public Law 101–508, which amended 46 U.S.C. app. 121 to this effect on November 5, 1990. Pursuant to this, footnotes 36 and 38 are deleted from part 4, given Customs policy of deleting footnotes at the time the regulatory provisions to which they relate are amended and ensuring that the relevant contents of such footnotes are included in the provisions themselves.

2. Section 4.20(b) is amended to add a sentence revising and incorporating the substance of footnote 37 which is also deleted from Part 4.

3. Section 4.20(c) generally provides for the payment of special tonnage tax and light money on vessels entering from a foreign port or place. The present table in this section listing the vessel tonnage and light money rates payable under various conditions is unclear regarding the treatment of vessels of foreign nations if they enter from a foreign port or place where vessels of the U.S. are not ordinarily permitted to enter and trade. Such foreign vessels are subject to special tonnage tax and light money of $2.50 per net ton if they are not of a nation listed in § 4.22, Customs Regulations (19 CFR 4.22). However, if of a nation so listed, such vessels are not subject to that $2.50 per net ton special tonnage tax and light money. The table in § 4.20(c) is thus revised to clarify this. Also in this connection, footnote 39 is deleted from part 4.

4. Section 4.21(b) lists the vessels which are exempt from the payment of tonnage tax and light money. This section is amended by revising its introductory language to clarify this purpose, and by revising the exemption contained in paragraph (b)(13) to make clear that it applies only to vessels arriving in the United States on a voyage otherwise than by sea from a port in the province of Ontario, Canada. As a result, footnote 44 is deleted from part 4.

Furthermore, § 4.21(b) is also amended by adding to the list of exemptions an exemption for coastwise-qualified vessels solely engaged in the coastwise trade, which arrive from a foreign port or place transporting cargo in a movement for which coastwise trade vessel documentation is required. The statutory authority for this additional exemption is 46 U.S.C. App. 122.

Prior to 1931, the Customs Regulations exempted vessels engaged in the coastwise trade from the payment of tonnage tax. In the 1931 Customs Regulations, the provisions on tonnage tax and light money (Articles 129–136) were substantially revised and the provisions exempting vessels of the U.S. engaged in the coastwise trade from tonnage tax were omitted, without explanation. Customs has held that a coastwise-qualified vessel arriving in the United States from a foreign port or place transporting merchandise in the coastwise trade is not subject to tonnage tax (Customs Ruling 108700/109303, dated April 1, 1988). This ruling was published as C.S.D. (Customs Service Decision) 88–8, 22 Cust. Bull. 335 (1988). The additional listing reflects this Customs ruling and the underlying law.

5. Section 4.64 provides that clearance shall not be granted to any documented vessel bound to a foreign port or place unless it has a Certificate of Documentation with a registry or, if departing for Canada, a Great Lakes license endorsement. The authority for this regulation is R.S. 4337 (1878 edition), as amended, 46 U.S.C. App. 278. Section 127 of the Vessel Documentation Act of 1980, Public Law 96–594, 94 Stat. 3453, 3459, repealed § 4337, and there is now no authority for denying clearance to a vessel which is engaged or will engage in the coastwise trade and which is documented with a Certificate of Documentation with a coastwise endorsement only, when that vessel is bound to a foreign port or place. Customs so concluded in Ruling 108700, dated May 22, 1987, which was published as C.S.D. 87–16, 21 Cust. Bull. 386 (1987). Accordingly, § 4.64 is deleted from the regulations.

6. Section 4.92 provides for the enforcement of the restrictions on coastwise towing in 46 U.S.C. App.

316(a), the coastwise towing statute. This statute was amended by § 10, Act of May 19, 1986, Public Law 99–307, 100 Stat. 447. The amended provisions at § 316(a) are incorporated into § 4.92, and footnote 124 is deleted from part 4.

7. Section 4.96 relates to U.S. and foreign vessels engaged in the U.S. fisheries. The primary statutory authorities for this provision are R.S. 4311, as amended, codified as 46 U.S.C. App. 251, 46 U.S.C. 12101(a)(1) and 12108, and they are added to the authority listing. Paragraph (c) of § 4.96, which contains the definition of the term "fisheries" formerly set forth in 46 U.S.C. 12101(6), is now revised in conformance with the definition thereof set forth in 46 U.S.C. 12101(a)(1).

**Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291**

Inasmuch as these amendments merely conform the Customs Regulations to existing law or practice as noted above, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These amendments do not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required thereunder.

**Drafting Information**

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 4**

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels, and Yachts.

**Amendments to the Regulations**

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows, the specific sectional authority citations for §§ 4.3, 4.7, 4.7a, 4.9, 4.15, 4.20, 4.21, 4.36, 4.65a, 4.66, 4.66a, 4.68, 4.74, 4.75, 4.80, 4.81, 4.81a, 4.82, 4.83, and 4.84 are revised to read as follows, and specific sectional authority citations for §§ 4.92 and 4.96 are added in appropriate numerical order to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

§ 4.3 also issued under 19 U.S.C. 288, 1434, 1435, 1441, 46 U.S.C. App. 111;

* * * * *

§ 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583, 46 U.S.C. App. 883a, 883b;

§ 4.7a also issued under 19 U.S.C. 1431, 1432, 1439, 1465, 1498, 1584, 46 U.S.C. App. 674;

* * * * *

§ 4.9 also issued under 19 U.S.C. 1434, 1435, 42 U.S.C. 269, 46 U.S.C. App. 677;

* * * * *

§ 4.15 also issued under 46 U.S.C. U.S.C. App. 310;

* * * * *

§ 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511, 14512, 14513, 14701, 14702, 46 U.S.C. App. 121, 128;

§ 4.21 also issued under 19 U.S.C. 1441, 46 U.S.C. App. 121–125, 128, 129, 132, 135;

* * * * *

§ 4.36 also issued under 19 U.S.C. 1431, 1457, 1458, 46 U.S.C. App. 100;

* * * * *

§ 4.65a also issued under 46 U.S.C. 5101–5102, 5106–5109, 5112–5114, 5116;

§ 4.66 also issued under 46 U.S.C. App. 91;

§ 4.66a also issued under 33 U.S.C. 1321, 46 U.S.C. App. 91;

* * * * *

§ 4.68 also issued under 46 U.S.C. App. 674, 817d, 817e;

§ 4.74 also issued under 46 U.S.C. App. 91;

§ 4.75 also issued under 46 U.S.C. App. 91;

§ 4.80 also issued under 46 U.S.C. App. 251, 289, 319, 802, 808, 883, 883–1;

§ 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486, 46 U.S.C. App. 251, 313, 314, 883;

§ 4.81a also issued under 46 U.S.C. App. 883;

§ 4.82 also issued under 19 U.S.C. 293, 294, 46 U.S.C. App. 123;

§ 4.83 also issued under 46 U.S.C. App. 91, 111, 123;

§ 4.84 also issued under 19 U.S.C. 1433, 1435, 1437, 46 U.S.C. App. 91, 313, 314, 883–1;

* * * * *

§ 4.92 also issued under 46 U.S.C. App. 316(a);

* * * * *

§ 4.96 also issued under 46 U.S.C. 12101(a)(1), 12108, 46 U.S.C. App. 251;

* * * * *

2. Section 4.20 is amended by revising the first sentence of the introductory text of paragraph (a), revising paragraphs (a)(1), (a)(2), and (a)(3), adding a sentence at the end of paragraph (b), and by revising the table set forth in paragraph (c), to read as follows:

**§ 4.20 Tonnage taxes.**

(a) Except as specified in § 4.21, a regular tonnage tax or duty of 9 cents per net ton, not to exceed in the aggregate 45 cents per net ton in any 1 year, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River), or the high seas adjacent to the U.S. or the above listed foreign locations, and on all vessels (except vessels of the U.S., recreational vessels, and barges, as defined in § 2101 of Title 46) that depart a U.S. port or place and return to the same port or place without being entered in the United States from another port or place, and regular tonnage tax of 27 cents per net ton, not to exceed $1.35 cents per net ton per annum, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. * * *

(1) When the vessel has proceeded in ballast from a port to which the 27-cent rate is applicable to a port to which the 9-cent rate applies and there has laden cargo or taken passengers, tonnage tax upon entry in the United States shall be assessed at the 9-cent rate.

(2) The same rate shall be applied in a case in which the vessel has transported cargo or passengers from a 27-cent port to a 9-cent port when all such cargo or passengers have been unladen or discharged at the 9-cent port, without regard to whether the vessel thereafter has proceeded to the United States in ballast or with cargo or passengers laden or taken on board at the 9-cent port.

(3) The 27-cent rate shall be applied when the vessel proceeds from a 9-cent port to a 27-cent port en route to the United States under circumstances similar to paragraph (a) (1) or (2) of this section.

* * * * *

(b) * * * There may be 5 payments at the maximum (27 cent) and 5 at the minimum (9-cent) rate during a tonnage year, so that the maximum assessment of tonnage duty may amount to $1.80 per net ton for the tonnage year of a vessel engaged in alternating trade.

(c) * * *

| Classes of vessels | Rate per net ton | | |
|---|---|---|---|
| | Regular tax | Special tax | Light money |
| Vessels of the United States: | | | |
| 1. Under provisional register, without regard to citizenship of officers | $0.09 or $0.27 | ..... | ..... |
| 2. All others: | | | |
| (i) If all the officers are citizens | .09 or .27 | ..... | ..... |
| (ii) If any officer is not a citizen | .09 or .27 | [1] 0.50 | [1] .50 |
| Undocumented vessels which are owned by citizens [2] | .09 or .27 | .50 | [3] .05 |
| Foreign vessels: | | | |
| 1. Of nations whose vessels are exempted from special tax or light money | .09 or .27 | ..... | ..... |
| 2. All others: | | | |
| (i) Built in the U.S | .09 or .27 | .30 | .50 |
| (ii) Not built in the U.S | .09 or .27 | .50 | .50 |
| (iii) In addition to (i) or (ii) of 2., Foreign Vessels, when entering from a foreign port or place where vessels of the U.S. are not ordinarily permitted to enter and trade [3a]. | .09 or .27 | [4] 2.00 | [4] .50 |

[1] This does not apply on the first arrival of a vessel in a port of the United States from a foreign or intercoastal voyage if all the officers who are not citizens are below the grade of master and are filling vacancies which occurred on the voyage.
[2] This special tax and light money do not apply if the vessel is documented as a vessel of the United States before leaving the port.
[3] This does not apply if the vessel is under a certificate of protection and the owner or master files with the district director the oath required by 46 U.S.C. App. 129. An unrecorded bill of sale is not such a document as will exempt a vessel from the payment of light money under 46 U.S.C. App. 128, and the recording of such bill of sale after the arrival of the vessel is not sufficient to relieve it from the payment of the tax.
[3a] The following countries ordinarily do not permit vessels of the United States to enter and trade: Democratic Kampuchea (Cambodia); Democratic People's Republic of Korea (North Korea); and, the Socialist Republic of Vietnam.
[4] This is to be collected on each entry of a vessel from such a port or place.

* * * * *

3. Footnotes 36 through 39 are removed from part 4 and reserved.

4. Section 4.21 is amended by revising the introductory text of paragraph (b), by revising paragraph (b)(13), and by adding paragraph (b)(14) to read as follows:

**§ 4.21 Exemptions from tonnage tax.**

* * * * *

(b) The following vessels, or vessels arriving in the circumstances as defined below, shall be exempt from tonnage tax and light money:

* * * * *

(13) It enters otherwise than by sea from a foreign port at which tonnage or lighthouse duties or equivalent taxes are not imposed on vessels of the United States (applicable only where the vessel arrives from a port in the province of Ontario, Canada).

(14) It is a coastwise-qualified vessel solely engaged in the coastwise trade (although arriving from a foreign port or place, it is engaged in the transportation of merchandise or passengers, or the towing of a vessel other than a vessel in distress, between points in the U.S. via a foreign point) (see §§ 4.80, 4.80a, 4.80b, and 4.92).

* * * * *

5. Footnote 44 is removed from part 4 and reserved.

**§ 4.64 [Removed]**

6. Section 4.64 is removed and reserved.

7. Footnote 124 is removed from part 4 and reserved.

8. Section 4.92 is revised to read as follows:

**§ 4.92 Towing.**

No vessel other than a vessel documented for the coastwise or Great Lakes trade, or which would be entitled to be so documented except for its tonnage (see § 4.80), may tow a vessel other than a vessel in distress between points in the U.S. embraced within the coastwise laws, or for any part of such towing (46 U.S.C. App. 316(a)). The penalties for violation of this prohibition are a fine of from $250 to $1000 against the owner or master of the towing vessel and a further penalty against the towing vessel of $50 per ton of the towed vessel.

9. Section 4.96 is amended by revising the second sentence of paragraph (c) to read as follows:

**§ 4.96 Fisheries.**

* * * * *

(c) * * * "Fisheries" includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or the exclusive economic zone.

* * * * *

Approved: January 21, 1992.

**Carol Hallett,**

*Commissioner of Customs.*

**John P. Simpson,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 93–5310 Filed 3–9–93; 8:45 am]

BILLING CODE 4820–02–M

## Office of Foreign Assets Control

## 31 CFR Part 505

## Transaction Control Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Foreign Assets Control is amending the Transaction Control Regulations to generally license transactions authorized by certain countries designated by the U.S. Commerce Department as fully cooperating with the Coordinating Committee for Multilateral Export Controls ("COCOM"), to add Cambodia and delete Hungary and Tibet from the schedule of proscribed countries, and to update the names of certain countries in the schedule. This amendment serves to bring the Transaction Control Regulations into conformity with changes in the Export Administration Regulations.

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

**FOR FURTHER INFORMATION CONTACT:** Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410).

**SUPPLEMENTARY INFORMATION:** The Transaction Control Regulations, 31 CFR part 505 (the "TCR"), supplement the national security export controls administered by the Commerce Department by restricting involvement of "persons within the United States" in the exportation of strategic goods from third countries to certain countries designated under the TCR. The designated countries now controlled

under the TCR are: Albania, Bulgaria, Cambodia, the Czech Republic, Estonia, Latvia, Lithuania, North Korea, Mongolia, the People's Republic of China, Poland, Romania, the Slovak Republic, the geographic area formerly known as the Union of Soviet Socialist Republics, and Vietnam. Hungary is deleted from the list in accordance with its removal from the list of "controlled countries" under the EAR on May 8, 1992 (57 FR 19805). Cambodia is no longer an embargoed country, although it remains a COCOM-proscribed destination. Tibet is removed from the list, since it is not recognized as a country.

The term "person within the United States" is defined by reference to 31 CFR 500.330 to include: Any individual, wherever located, who is a resident of the United States; any person within the United States; any corporation organized under the laws of the United States; and any domestic or foreign entity owned or controlled by any of the foregoing. Any such person who sells or purchases, or arranges the purchase or sale or financing of strategic exports from third countries to a designated country, must apply to the Office of Foreign Assets Control for a license authorizing the transaction, unless the strategic goods are being exported from a COCOM-participating or fully-cooperating country that has already authorized the exportation. This rule augments the list of COCOM-participating countries currently set forth in the TCR to add countries determined to be fully cooperating in the multilateral export control regime. This rule allows involvement by "persons within the United States" in exports of multilaterally-controlled ("A" level) commodities from COCOM participating and fully cooperating countries to destinations in designated countries other than North Korea and Vietnam.

Since the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

**List of Subjects in 31 CFR Part 505**

Administrative practice and procedure, Austria, Banking, Cambodia, Communist countries, Exports, Finland, Foreign Trade, Hong Kong, Ireland, New Zealand, Sweden, Switzerland.

For the reasons set forth in the preamble, 31 CFR part 505 is amended as set forth below:

## PART 505—TRANSACTION CONTROL REGULATIONS

1. The authority citation for part 505 continues to read as follows:

**Authority:** 50 U.S.C. app. 5(b), as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp, p. 748.

2. The schedule to paragraph (b) of § 505.10 is revised to read as follows:

**§ 505.10 Prohibitions.**

(b) * * *

**Schedule**

Albania
Bulgaria
Cambodia
The Czech Republic
Estonia
Latvia
Lithuania
North Korea
Mongolia
People's Republic of China
Poland
Romania
The Slovak Republic
The geographic area formerly known as the Union of Soviet Socialist Republics
Vietnam

3. Paragraphs (a) (1) and (2) of § 505.31 are revised to read as follows:

**§ 505.31 General license for offshore transactions from certain countries.**

(a) * * *

(1) Shipment is to a country listed in the schedule to § 505.10, other than North Korea and Vietnam.

(2) Shipment is made from and licensed by one of the following foreign countries: Australia, Austria, Belgium, Canada, Denmark, France, Finland, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom.

* * * * *

Dated: February 22, 1993.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: February 26, 1993.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 93–5446 Filed 3–5–93; 12:44 pm]

BILLING CODE 4810–25–M

**31 CFR Part 550**

**Libya Sanctions Regulations**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendments.

**SUMMARY:** The Office of Foreign Assets Control ("FAC") is amending the Libyan Sanctions Regulations by adding a section providing FAC's interpretation of the prohibition on the exportation of services to Libya, and a section setting forth licensing policy with regard to the provision of certain legal services to the Government of Libya ("GOL") and persons in Libya.

**EFFECTIVE DATE:** March 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Steven I. Pinter, Chief of Licensing, tel.: (202) 622–2490, or William B. Hoffman, Chief Counsel, tel.: (202) 622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** The Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR"), are amended by adding § 550.422, further interpreting the prohibition in § 550.202 of the LSR against the exportation of "goods, technology (including technical data or other information) or services" to Libya from the United States. This prohibition includes the provision of services performed in the United States (including legal services), the benefit of which is received in Libya. The benefit of services performed on behalf of the GOL is presumed to be received in Libya, whether rendered in the United States, in Libya, or in a third country on behalf of the GOL or a Libyan government entity located in a third country by a person located in or ordinarily resident in the United States.

This final rule also adds § 550.517, generally authorizing the exportation of certain legal services and containing a statement of licensing policy stating that the receipt of payment for such legal services exported to Libya will normally be authorized by specific license. Such circumstances are limited to cases involving (1) the provision of legal advice and counselling to the GOL on requirements of and compliance with U.S. law; (2) representation of the GOL or a person in Libya when named as a defendant in domestic U.S. legal or administrative proceedings; and (3) initiation of domestic legal or administrative proceedings in defense of the GOL's property interests in existence prior to the blocking of GOL property on January 8, 1986, or of a person in Libya. Furthermore, the

enforcement of any judgment, decree, attachment, or lien through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a GOL property interest must be specifically licensed in accordance with § 550.210(e).

Legal services performed by U.S. persons outside the United States with respect to property interests of the GOL are prohibited pursuant to § 550.209, which prohibits U.S. persons from dealing in any property (including contracts) in which the GOL has an interest. Section 550.205, which prohibits performance of a contract by U.S. persons in support of an industrial or other commercial or governmental project in Libya, may also be applicable in these instances. For example, it continues to be prohibited pursuant to § 550.205 and/or § 550.209 of the LSR for U.S. persons to represent a foreign entity in contract negotiations, contract performance, arbitration or other dealings with the GOL. Such representation may only be authorized by specific license.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

**List of Subjects in 31 CFR Part 550**

Exports, Libya, Services.

For the reasons set forth in the preamble, 31 CFR part 550 is amended as set forth below:

## PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 9; E.O. 12543, 3 CFR, 1986 Comp., pp. 181–2; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, April 17, 1992.

### Subpart D—Interpretations

2. Section 550.422 is added to subpart D to read as follows:

**§ 550.422 Exportation of services; performance of service contracts; legal services.**

(a) The prohibition on the exportation of services contained in § 550.202 applies to services performed:

(1) In the United States;

(2) By an entity located in the United States, including its overseas branches; or

(3) Outside the United States by an individual U.S. person ordinarily resident in the United States; on behalf of the Government of Libya, or where the benefit of such services is otherwise received in Libya. The benefit of services performed anywhere in the world on behalf of the Government of Libya, including services performed for a controlled entity or specially designated national of the Government of Libya, is presumed to be received in Libya.

(b) The prohibitions contained in §§ 550.205 and 550. 209 apply to services performed by U.S. persons, wherever located:

(1) On behalf of the Government of Libya;

(2) With respect to property interests of the Government of Libya; or

(3) In support of an industrial or other commercial or governmental project in Libya.

(c) *Example:* U.S. persons may not, without specific authorization from the Office of Foreign Assets Control, represent an individual or entity with respect to contract negotiations, contract performance, commercial arbitration, or other business dealings with the Government of Libya. See § 550.517 on licensing policy with regard to the provision of certain legal services.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Section 550.517 is added to subpart E to read as follows:

**§ 550.517 Exportation of certain legal services to the Government of, or persons in, Libya**

(a) The provision to the Government of Libya, or to a person in Libya, of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment therefor must be specifically licensed. The provision of any other legal services as interpreted in § 550.422 requires the issuance of a specific license.

(b) Specific licenses are issued, on a case-by-case basis, authorizing receipt, from unblocked sources, of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to the Government of Libya or to a person in Libya:

(1) Provision of legal advice and counselling to the Government of Libya or to a person in Libya on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions in violation of subpart B of this part;

(2) Representation of the Government of Libya or of a person in Libya when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of the Government of Libya that were in existence prior to January 8, 1986, or of a person in Libya;

(4) Representation of the Government of Libya or a person in Libya before any federal agency with respect to the imposition, administration, or enforcement of U.S. sanctions against Libya; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) Enforcement of any lien, judgment, arbitral award, decree or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of the Government of Libya is prohibited unless specifically licensed in accordance with § 550.210(e).

Dated: January 13, 1993.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: January 13, 1993.

**John P. Simpson,**

*Acting Assistant Secretary (Enforcement).*

[FR Doc. 93–1616 Filed 3–5–93; 12:44 pm]

BILLING CODE 4810–25–M

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## 31 CFR Part 585

## Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Foreign Assets Control of the U.S. Treasury Department is issuing the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations to implement the President's declaration of national emergency and imposition of sanctions against the former Yugoslav republics of Serbia and Montenegro.

**EFFECTIVE DATE:** March 10, 1993, except as follows: §§ 585.201 through 585.202 & 585.214, 11:59 p.m. EDT, May 30, 1992; §§ 585.204 through 585.213, with the exception of §§ 585.206(c) and 585.207(b)(3), 12:20 p.m. EDT, June 5,

1992; § 585.203, July 15, 1992; § 585.206(c) and § 585.207(b)(3), January 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Steven I. Pinter, Chief of Licensing, Tel.: 202/622–2480, or William B. Hoffman, Chief, Counsel, Tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** On May 30, 1992, the President issued Executive Order 12808, declaring a national emergency with respect to Serbia and Montenegro, and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). The order blocks all property and interests in property of the Governments of Serbia and Montenegro, as well as all property and interests in property held in the name of the former Government of Socialist Federal Republic of Yugoslavia or the Government of the Federal Republic of Yugoslavia. The order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of the order.

Pursuant to this declaration, and pursuant to his authority under the United Nations Participation Act of 1945 (22 U.S.C. 287c), the President issued Executive Orders 12810 of June 5, 1992 and 12831 of January 15, 1993, continuing the blocking under Executive Order 12808 and imposing additional sanctions on the unrecognized Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter referred to as the "FRY (S&M)"), consistent with United Nations Security Council Resolutions 757, dated May 30, 1992, and 787, dated November 16, 1992. In implementation of these orders, the Treasury Department is issuing the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations (the "Regulations").

The Regulations block all property and interests in property of the FRY (S&M), as well as property and interests in property in the name of the former Government of the Socialist Federal Republic of Yugoslavia, or any person purporting to be the FRY (S&M), its agencies, instrumentalities, and controlled entities, including the National Bank of Yugoslavia, the Yugoslav National Army, the Yugoslav Chamber of Economy, the National Bank of Serbia, the Serbian Chamber of Economy, the National Bank of Montenergo, and Montenegrin Chamber of Economy, that are in the United States, that hereinafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches. Section 2(g)of Executive Order 12810 also prohibits any transfer of funds by U.S. persons to or for the benefit of the Government of the FRY (S&M) or any person in the FRY (S&M). General License No. 4, however, issued on July 15, 1992, authorizes transfers for the benefit of individuals located in Serbia and Montenegro, provided that no funds are transferred into Serbia or Montenegro or for the benefit of the Government of the FRY (S&M).

The Regulations also generally prohibit:

(a) Imports into the United States of goods or services exported from the FRY (S&M) after May 30, 1992;

(b) Exports from the United States of goods, technology, or services to the FRY (S&M) or entities operated from the FRY (S&M) or owned or controlled by the Government of the FRY (S&M);

(c) Any dealing by any U.S. person in property originating in the FRY (S&M) and exported therefrom after May 10, 1992, or any other property intended for importation or exportation between the FRY (S&M) and any country or being transhipped through the FRY (S&M), or activities that promote or are intended to promote such dealings;

(d) Transactions by U.S. persons, or involving the use of U.S.-registered vessels and aircraft, relating to transportation to or from the FRY (S&M) and transportation services to or from the United States by any person or vessel or aircraft registered in the FRY (S&M), or any transaction relating to a vessel owned or controlled by persons or entities in or operating from the FRY (S&M), regardless of registration, or the sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in the FRY (S&M);

(e) The granting of permission to any aircraft to take off from, land in, or overfly the United States en route to or from the FRY (S&M);

(f) Performance by U.S. persons of contracts in support of industrial, commercial, public utility, or governmental projects in the FRY (S&M);

(g) Any commitment or transfer, direct or indirect, of funds, or other financial or economic resources by any U.S. person to or for the benefit of the Government of the FRY (S&M) or to any other person in the FRY (S&M);

(h) Any transaction related to participation in sporting events in the United States by persons or groups representing the FRY (S&M); and

(i) Any transaction related to scientific and technical cooperation and cultural exchanges and other visits involving persons officially sponsored by or representing the FRY (S&M). The Regulations are not applicable to activities related to the United Nations Protection Force (UNPROFOR), the Conference on Yugoslavia, or the European Community Monitor Mission.

All General Licenses issued by the Office of Foreign Assets Control prior to March 10, 1993, may continue to be relied on to validate actions prior to this date during the period of their validity. Specific licenses issued prior to this date continue in effect according to their terms unless modified by the Office of Foreign Assets Control. Authorizations contained in General Licenses issued prior to publication of the Regulations can now be found in the following sections:

| Issuance date | General license No. | Regulation section |
|---|---|---|
| 06/30/92 | 1 | 585.514 |
| 06/30/92 | 2 | 585.513 |
| 06/30/92 | 3 | 585.507 & .519 |
| 07/15/92 | 4 | 585.203/.503/.520/.523 & .603 |
| 07/16/92 | 5 | 585.507 & .508 |
| 07/24/92 | 6 | 585.512 |
| 07/27/92 | 7 | 585.509 |

Transactions otherwise prohibited under this part may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 585.801 of subpart H.

Since the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

The Regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collections of information contained in the Regulations are being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning the collection of information and the accuracy of estimated average

annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505-****), Washington, DC 20503, with copies to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220. Any such comments should be submitted not later than May 10, 1993. Notice of OMB action on these requests will be published in the Federal Register.

The collections of information in the Regulations are contained in §§ 585.503, 585.506, 585.509, 585.510, 585.511, 585.515–585.518, 585.520, 585.521, subpart F, and §§ 585.703 and 585.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and recordkeepers are individuals and business organizations.

Estimated total annual reporting and/or recordkeeping burden: 1000 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 10 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1–12.

List of Subjects in 31 CFR Part 585

Administrative practice and procedure, Banking and finance, Blocking of assets, Exports, Federal Republic of Yugoslavia (Serbia and Montenegro), Foreign trade, Imports, Intellectual property, Loans, Penalties, Reporting and recordkeeping requirements, Securities, Services, Shipping, Telecommunications, Transfer of assets, Vessels.

For the reasons set forth in the preamble, 31 CFR part 585 is added as follows:

## PART 585—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) SANCTIONS REGULATIONS

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 3 U.S.C. 301; E.O. 12808, 57 FR 23299 (May 30, 1992); E.O. 12810, 57 FR 24347 (June 9, 1992); E.O. 12831, 58 FR 5253 (January 21, 1993).

### Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

585.101 Relation of this part to other laws and regulations.

### Subpart B—Prohibitions

585.201 Prohibited transactions involving blocked property; transactions with respect to securities.
585.202 Effect of transfers violating the provisions of this part.
585.203 Holding of certain types of blocked property in interest-bearing accounts.
585.204 Prohibited importation of goods or services from the FRY (S&M).
585.205 Prohibited exportation and reexportation of goods, technology, or services to the FRY (S&M).
585.206 Prohibited dealing in property.
585.207 Prohibited transportation-related transactions involving the FRY (S&M).
585.208 Prohibited overflights, takeoffs and landings of aircraft en route to or from the FRY (S&M).
585.209 Prohibited performance of contracts.
585.210 Prohibited transfers of funds to or for the benefit of the Government of the FRY (S&M) or any person in the FRY (S&M).
585.211 Prohibited transactions related to participation in sporting events.
585.212 Prohibited transactions related to scientific and technical cooperation, cultural exchanges, and other official visits.
585.213 Exemption of activities related to certain international entities.
585.214 Evasions; attempts; conspiracies.

### Subpart C—General Definitions

585.301 Effective date.
585.302 Blocked account; blocked property.
585.303 Interest.
585.304 Property; property interest.
585.305 Transfer.
585.306 License.
585.307 General license.
585.308 Specific license.
585.309 Person.
585.310 Entity.
585.311 Government of the FRY (S&M).
585.312 Govenment of the Socialist Federal Republic of Yugoslavia.
585.313 Federal Republic of Yugoslavia (Serbia and Montenegro); FRY (S&M).
585.314 Goods and services origination in the FRY (S&M).
585.315 Persons in the FRY (S&M).
585.316 United States.
585.317 United States person; U.S. person.
585.318 U.S. financial institution.
585.319 UNSC Resolution 757.

### Subpart D—Interpretations

585.401 Reference to amended sections.
585.402 Effect of amendment.
585.403 Termination and acquisition of an interest in blocked property.
585.404 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.
585.405 Acquisition of instruments including bankers acceptances.
585.406 Extensions of credits or loans.
585.407 Payments in connection with certain authorized transactions.
585.408 Offshore transactions.
585.409 Transshipments through the United States prohibited.
585.410 Imports of goods from third countries originating in the FRY (S&M); transshipments.
585.411 Exports to third countries; transshipments.
585.412 Release of goods originating in the FRY (S&M) from a bonded warehouse or foreign trade zone.
585.413 Importations and purchases of goods from the FRY (S&M).
585.414 Services performed in the FRY (S&M) or by the Government of the FRY (S&M).
585.415 Setoffs prohibited.
585.416 Exportation of services; performance of service contracts; legal services.
585.417 Transactions incidental to a licensed transaction.

### Subpart E—Licenses, Authorizations and Statements of Licensing Policy

585.501 Effect of license or authorization.
585.502 Exclusion from licenses and authorizations.
585.503 Payments and transfers to blocked accounts in U.S. financial institutions.
585.504 Investment and reinvestment of certain funds.
585.505 Completion of certain transactions related to bankers acceptances authorized.
585.506 Payment by the Government of the FRY (S&M) of obligations to persons within the United States authorized.
585.507 Certain exports to the FRY (S&M) authorized.
585.508 Import of household and personal effects from the FRY (S&M) authorized.
585.509 Trading in certain pre-sanction obligations authorized.
585.510 Payment and transfers authorized for goods and services exported to the FRY (S&M) prior to the effective date.
585.511 Extensions or renewals of letters of credit authorized.
585.512 Transactions relating to travel to or within the FRY (S&M).
585.513 Transactions related to telecommunications authorized.
585.514 Transactions related to mail and informational materials authorized.
585.515 Certain transactions related to patents, trademarks and copyrights authorized.
585.516 Procedures established for export transactions initiated prior to the effective date.
585.517 Exportation of certain legal services to the Government of, or persons in, the FRY (S&M).
585.518 Certain standby letters of credit and performance bonds.
585.519 Certain imports for diplomatic or official personnel authorized.
585.520 Entries in certain accounts for normal service charges authorized.

585.521 Donations of food to relieve human suffering authorized.
585.522 Donations of medical supplies authorized.
585.523 Certain transactions for the benefit of individuals in the FRY (S&M) authorized.

Subpart F—Reports

585.601 Required records.
585.602 Reports to be furnished on demand.
585.603 Registration of persons holding blocked property subject to § 585.201.

Subpart G—Penalties

585.701 Penalties.
585.702 Prepenalty notice.
585.703 Presentation responding to prepenalty notice.
585.704 Penalty notice.
585.705 Referral to United States Department of Justice.

Subpart H—Procedures

585.801 Licensing.
585.802 Decisions.
585.803 Amendment, modification, or revocation.
585.804 Rulemaking.
585.805 Delegation by the Secretary of the Treasury.
585.806 Rules governing availability of information.

Subpart I—Paperwork Reduction Act

585.901 [Reserved].

## Subpart A—Relation of This Part to Other Laws and Regulations

### § 585.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

## Subpart B—Prohibitions

### § 585.201 Prohibited transactions involving blocked property; transactions with respect to securities.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before 11:59 p.m. Eastern Daylight Time ("EDT"), May 30, 1992, no property or interest in property of the Government of the FRY (S&M), or that are held in the name of the Federal Republic of Yugoslavia or the former Government of the Socialist Federal Republic of Yugoslavia, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, the transfer (including the transfer on the books of any issuer or agent thereof), the endorsement or guaranty of signatures on, or any other dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of the Federal Republic of Yugoslavia or the former Government of the Socialist Federal Republic of Yugoslavia and held within the possession or control of a U.S. person is prohibited, irrespective of the fact that at any time either at or subsequent to the effective date the registered or inscribed owner thereof may have, or appears to have, assigned, transferred, or otherwise disposed of any such security.

### § 585.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property held in the name of the Government of the Federal Republic of Yugoslavia or the former Government of the Socialist Federal Republic of Yugoslavia, or in which the Government of the FRY (S&M) has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which the Government of the FRY (S&M) has an interest, or has had an interest since such date, or which is held in the name of the Government of the Federal Republic of Yugoslavia or the former Government of the Socialist Federal Republic of Yugoslavia, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, the United Nations Participation Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder, or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; the person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the

circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed evidence that the terms of paragraphs (d) (1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of the Government of the FRY (S&M) or that was held in the name of the Government of the Federal Republic of Yugoslavia or the former Government of the Socialist Federal Republic of Yugoslavia.

**§ 585.203 Holding of certain types of blocked property in interest-bearing accounts.**

(a)(1) Any person, including a U.S. financial institution, currently holding property subject to § 585.201, which, as of July 15, 1992, or the date of receipt if subsequent to July 15, 1992, is not being held in an interest-bearing account or otherwise invested in a manner authorized by the Office of Foreign Assets Control, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status in a U.S. financial institution as of July 15, 1992, or the date of receipt if subsequent to July 15, 1992, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement set forth in paragraph (a)(1) of this section shall apply to currency, bank deposits, accounts, obligations, and any other financial or economic resources or assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the entity of the FRY (S&M) having an interest in the accounts. If the account is held in the name of the Government of the Federal Republic of Yugoslavia or the former Government of the Socialist Federal Republic of Yugoslavia, the name of the account to which interest is credited must be the same.

(b) For purposes of this section, the term "interest-bearing account" means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account, *i.e.*, a rate similar to that currently offered other depositors on deposits of comparable size and maturity. Overnight investment of blocked funds is authorized, provided that the funds remain within the possession and control of the U.S. person holding the funds and that the funds remain in a blocked status at all times. Except as otherwise authorized, the funds may not be re-invested or held in instruments the maturity of which exceeds 90 days.

(c) U.S. financial institutions receiving instructions to execute a payment or transfer of funds they hold in which the Government of the FRY (S&M) has an interest, or which are held in the name of the Government of the Federal Republic of Yugoslavia or the former Government of the Socialist Federal Republic of Yugoslavia, or to persons located in the FRY (S&M), shall block the funds and provide written notification to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—2131 Annex, Washington, DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into an existing or newly-established blocked account, and shall provide the account number, the name of the account, the location of the account, the name and address of the transferor and transferee financial institutions, the date of the deposit and the amount of the payment or transfer.

(d) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

**§ 585.204 Prohibited importation of goods or services from the FRY (S&M).**

Except as otherwise authorized, no goods originating in, or services performed in, the FRY (S&M), exported from the FRY (S&M) after May 30, 1992, may be imported into the United States, nor may any U.S. person engage in any activity that promotes or is intended to promote such importation.

**§ 585.205 Prohibited exportation and reexportation of goods, technology, or services to the FRY (S&M).**

Except as otherwise authorized, no goods, technology (including technical data or other information controlled for export pursuant to the Export Administration Regulations, 15 CFR parts 768–799), or services, either (a) from the United States, (b) requiring the issuance of a license by a Federal agency, or (c) involving the use of U.S.-registered vessels or aircraft, may be exported, directly or indirectly, to the FRY (S&M), or to any entity operated from the FRY (S&M), or owned or controlled by the Government of the FRY (S&M), nor may any U.S. person engage in any activity that promotes or is intended to promote such exportation.

**§ 585.206 Prohibited dealing in property.**

Except as otherwise authorized, no U.S. person may deal in:

(a) Property originating in the FRY (S&M) and exported from the FRY (S&M) after May 30, 1992, or

(b) Property intended for exportation from the FRY (S&M) to any country, or for exportation to the FRY (S&M) from any country, or

(c) Property being transshipped through the FRY (S&M), or in any activity of any kind that promotes or is intended to promote such dealing.

**§ 585.207 Prohibited transportation-related transactions involving the FRY (S&M).**

Except as otherwise authorized, the following are prohibited:

(a) Any transaction by a U.S. person, or involving the use of U.S. registered vessels and aircraft, relating to transportation to or from the FRY (S&M);

(b) The provision of transportation to or from the United States by:

(1) Any person in the FRY (S&M) or

(2) Any vessel or aircraft registered in the FRY (S&M), or

(3) Any vessel in which a majority or controlling interest is held by a person or entity in or operating from the FRY (S&M), regardless of registry; or

(c) The sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*) of any transportation by air that includes any stop in the FRY (S&M).

(d) *Example:* Unless licensed or exempted, no U.S. person may insure, or provide ticketing, ground, port, refueling, bunkering, clearance, or freight forwarding services with respect to, (i) any sea or air transportation the destination of which is the FRY (S&M), or which is intended to make a stop in the FRY (S&M), or (ii) any vessel in which a majority or controlling interest is held by a person or entity in or operating from the FRY (S&M).

**§ 585.208 Prohibited overflights, takeoffs and landings of aircraft enroute to or from the FRY (S&M).**

Except as otherwise authorized, no aircraft, regardless of registry, may take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or as a continuation of that flight, is destined to land in or has taken off from the territory of the FRY (S&M). See also: Special Federal Aviation Regulation (SFAR) No. 66, 14 CFR part 91.

**§ 585.209 Prohibited performance of contracts.**

Except as otherwise authorized, no U.S. person may perform any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in the FRY (S&M).

**§ 585.210 Prohibited transfer of funds to or for the benefit of the Government of the FRY (S&M) or any person in the FRY (S&M).**

Except as otherwise authorized, no U.S. person may commit or transfer, directly or indirectly, funds or other financial or economic resources to or for the benefit of the Government of the FRY (S&M) or any person in the FRY (S&M).

**§ 585.211 Prohibited transactions related to participation in sporting events.**

Except as otherwise authorized, transactions in the United States or by a U.S. person related to participation in sporting events in the United States by persons or groups representing the FRY (S&M) are prohibited.

**§ 585.212 Prohibited transactions related to scientific and technical cooperation, cultural exchanges, and other official visits.**

Except as otherwise authorized, transactions in the United States or by a U.S. person related to scientific and technical cooperation and cultural exchanges involving persons or groups officially sponsored by or representing the FRY (S&M), or related to visits to the United States by such persons or groups other than as authorized for the purpose of participation at the United Nations, are prohibited.

**§ 585.213 Exemption of activities related to certain international organizations.**

Any activities related to the United Nations Protection Force (UNPROFOR), the Conference on Yugoslavia, or the European Community Monitor Mission are exempt from the prohibitions and regulations of this part.

**§ 585.214 Evasions; attempts; conspiracies.**

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this subpart, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

## Subpart C—General Definitions

**§ 585.301 Effective date.**

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in subpart B as follows:

(a) With respect to §§ 585.201, 585.202, and 585.214, 11:59 p.m. EDT, May 30, 1992;

(b) With respect to §§ 585.204, 585.205, 585.206, 585.207, 585.208, 585.209, 585.210, 585.211, 585.212, and 585.213, 12:20 p.m. EDT, June 5, 1992, except as provided in paragraph (d) of this section;

(c) With respect to § 585.203, July 15, 1992; and

(d) With respect to § 585.206(c) and § 585.207(b)(3), January 15, 1993.

**§ 585.302 Blocked account; blocked property.**

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 585.201 in which the Government of the FRY (S&M) has an interest, or that is held in the name of the Government of the FRY (S&M) or the former Government of the Socialist Federal Republic of Yugoslavia, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

**§ 585.303 Interest.**

Except as otherwise provided in this part, the term *interest* when used with respect to property (*e.g., an interest in property*) means an interest of any nature whatsoever, direct or indirect.

**§ 585.304 Property; property interest.**

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

**§ 585.305 Transfer.**

The term *transfer* means any actual or purported act of transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property, including funds, and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

**§ 585.306 License.**

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

**§ 585.307 General license.**

The term *general license* means any license or authorization the terms of which are set forth in this subpart E.

**§ 585.308 Specific license.**

The term *specific license* means any license or authorization not set forth in subpart E but issued pursuant to this part in response to an application.

**§ 585.309 Person.**

The term *person* means an individual, partnership, association, corporation, or other organization.

**§ 585.310 Entity.**

The term *entity* includes a corporation, partnership, association, or other organization.

**§ 585.311 Government of the FRY (S&M).**

The term *Government of the FRY (S&M)* includes:

(a) The state and the Government of the FRY (S&M), the Government of Serbia, and the Government of Montenegro, including any subdivisions thereof or local governments therein, their respective agencies or instrumentalities, including the National Bank of Yugoslavia, the Yugoslav National Army, the Yugoslav Chamber of Economy, the National Bank of Serbia, the Serbian Chamber of Economy, the National Bank of Montenegro, and the Montenegrin Chamber of Economy;

(b) Any entity owned or controlled by the foregoing. For purposes of the prohibitions of this part, all entities located in or organized under the laws of any jurisdiction within the FRY (S&M) are presumed to be controlled by the Government of the FRY (S&M), unless proven otherwise;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act, directly or indirectly, on behalf of any of the foregoing; and

(d) Any person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section, or owned or controlled by such a person or organization.

[Note: On July 6, 1992, the Office of Foreign Assets Control issued a list of "Blocked Yugoslav Entities Currently Identified," containing the names of entities owned or deemed to be controlled by the Government of the FRY (S&M). Property interests of these entities in the United States or in the possession or control of U.S. persons is thus blocked under § 585.201. Section 585.210 further prohibits the transfer of funds or other financial or economic resources by U.S. persons to or for the benefit of entities appearing on the list. This list may be updated periodically as further information becomes available. A copy of the list may be obtained from the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220.]

**§ 585.312 Government of the Socialist Federal Republic of Yugoslavia.**

The term *Government of the Socialist Federal Republic of Yugoslavia* is used in this part only in reference to property held in the name of the former Government of the Socialist Federal Republic of Yugoslavia. Property and property interests held solely in the name of the Government of Slovenia, Croatia, Bosnia-Hercegovina or Macedonia, or in the name of any political subdivision, agency, or instrumentality thereof, do not constitute property held in the name of the former Government of the Socialist Federal Republic of Yugoslavia.

**§ 585.313 Federal Republic of Yugoslavia (Serbia and Montenegro); FRY (S&M).**

The term *Federal Republic of Yugoslavia (Serbia and Montenegro)* or *FRY (S&M)* means the territory of Serbia and Montenegro.

**§ 585.314 Goods and services originating in the FRY (S&M).**

The term *goods or services originating in the FRY (S&M)* includes:

(a) Goods produced, manufactured, grown, or processed within the FRY (S&M);

(b) Goods which have entered into the commerce of the FRY (S&M);

(c) Services performed in the FRY (S&M), or by a national thereof, wherever located, who is acting as an agent, employee, or contractor of the Government of the FRY (S&M) or of a business entity located in the FRY (S&M). Such services are not considered imported into the United States when such services are provided in the United States by a national of the FRY (S&M) employed in the United States who is not acting on behalf of the Government of the FRY (S&M).

**§ 585.315 Person in the FRY (S&M).**

The term *person in the FRY (S&M)* includes any individual, partnership, association, corporation, or other organization or entity located in or organized under the laws of any jurisdiction in the FRY (S&M).

**§ 585.316 United States.**

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

**§ 585.317 United States person; U.S. person.**

The term *United States person* or *U.S. person* means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; or any person in the United States, and vessels and aircraft of U.S. registration.

**§ 585.318 U.S. financial institution.**

The term *U.S. financial institution* means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

**§ 585.319 UNSC Resolution 757.**

The term *UNSC Resolution 757* means United Nations Security Council Resolution No. 757, adopted May 30, 1992, prohibiting certain transactions with respect to the FRY (S&M).

## Subpart D—Interpretations

**§ 585.401 Reference to amended sections.**

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

**§ 585.402 Effect of amendment.**

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such

amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

**§ 585.403 Termination and acquisition of an interest in blocked property.**

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) from the Government of the FRY (S&M) or the former Government of the Socialist Federal Republic of Yugoslavia, such property shall no longer be deemed to be property in which the Government of the FRY (S&M) has or has had an interest, or which is held in the name of the Government of the FRY (S&M) or the former Government of the Socialist Federal Republic of Yugoslavia, respectively, unless there exists in the property another interest of the Government of the FRY (S&M), or an interest held in the name of the Government of the FRY (S&M) or the former Government of the Socialist Federal Republic of Yugoslavia, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of the FRY (S&M), such property shall be deemed to be property in which there exists an interest of the Government of the FRY (S&M).

**§ 585.404 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.**

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods, technology or services exported prior to the effective date, except as authorized pursuant to this part.

**§ 585.405 Acquisition of instruments including bankers acceptances.**

No U.S. person may acquire or deal in any obligation, including bankers acceptances and debt of or guaranteed by the Government of the FRY (S&M) or the former Government of the Social Federal Republic of Yugoslavia, where the documents evidencing the obligation indicate, or the U.S. person has actual knowledge, that the underlying transaction is in violation of § 585.201 and §§ 585.204–585.212. This interpretation does not apply to obligations arising from an underlying transaction licensed or otherwise authorized pursuant to this part.

**§ 585.406 Extensions of credits or loans.**

(a) The prohibition in § 585.210 applies to the unlicensed renewal of credits or loans held in the name of the Government of the FRY (S&M) or has had an interest since the effective date, or that is held in the name of Government of the FRY (S&M) or the former Government of the Socialist Federal Republic of Yugoslavia, or in which the Government of the FRY (S&M) has an interest, that were in existence on the effective date, whether by affirmative action or operation of law.

(b) The prohibition in § 585.210 applies to credits or loans extended in any currency.

**§ 585.407 Payments in connection with certain authorized transactions.**

Except as otherwise specified, payments are authorized in connection with transactions authorized in or pursuant to subpart E.

**§ 585.408 Offshore transactions.**

(a) The prohibitions contained in §§ 585.201 and 585.206 apply to transactions by U.S. persons in locations outside the United States with respect to property in which the U.S. person knows, or has reason to know, the Government of the FRY (S&M) has or has had an interest since the effective date, or that is held in the name of Government of the FRY (S&M) or the former Government of the Socialist Federal Republic of Yugoslavia.

(b) Prohibited transactions include, but are not limited to, importation into locations outside the United States of, or dealings within such locations in, goods or services originating in the FRY (S&M).

(c) *Examples:* (1) A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in, shoes made in the FRY (S&M).

(2) A U.S. person may not, within the United States or abroad, conduct transactions of any nature whatsoever with an entity that the U.S. person knows or has reason to know is operated from the FRY (S&M) or owned or controlled by the Government of the FRY (S&M).

**§ 585.409 Transshipments through the United States prohibited.**

(a) The prohibitions in § 585.205 apply to the importation into the United States, for transshipment or transit, of goods which are intended or destined for the FRY (S&M), or an entity operated from the FRY (S&M), or to the Government of the FRY (S&M) in any country.

(b) The prohibitions in § 585.204 apply to the importation into the United States, for transshipment or transit, of goods originating in the FRY (S&M) which are intended or destined for third countries.

(c) Goods in which the Government of the FRY (S&M) has an interest that are imported into or transshipped through the United States are blocked pursuant to § 585.201.

**§ 585.410 Imports from third countries of goods originating in the FRY (S&M); transshipments.**

Importation into the United States from third countries of goods containing raw materials or components originating in the FRY (S&M) is prohibited. In light of the universal prohibition in UNSC Resolution 757 on the importation of goods exported from the FRY (S&M) after May 30, 1992, substantial transformation or incorporation of such goods in a third country does not exempt the third-country products from the prohibitions contained in this part.

**§ 585.411 Exports to third countries; transshipments.**

Exportation of goods or technology (including technical data and other information) from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods or technology are intended for reexportation or transshipment to the FRY (S&M), including passage through, or storage in, intermediate destinations. The exportation of goods and technology intended specifically for incorporation or substantial transformation into a third-country product is also prohibited if the particular product is to be used in the FRY (S&M), is being specifically manufactured to fill an order from the FRY (S&M), or if the manufacturer's sales of the particular product are predominantly to the FRY (S&M).

**§ 585.412 Release of goods originating in the FRY (S&M) from a bonded warehouse or foreign trade zone.**

Section 585.204 does not prohibit the release from a bonded warehouse or foreign trade zone of goods originating in the FRY (S&M) imported into a bonded warehouse or a foreign trade zone either prior to the effective date or in a transaction authorized pursuant to this part after the effective date.

**(Note:** Pursuant to § 585.201, property in which the Government of the FRY (S&M) has an interest may not be released unless

authorized or licensed by the Office of Foreign Assets Control.)

**§ 585.413 Imports of goods originating in the FRY (S&M), and purchases of goods from the FRY (S&M).**

Goods originating in the FRY (S&M) imported into the United States pursuant to an authorization or license are not blocked by the provisions of § 585.201. However, any payment in connection with such importation are subject to the prohibitions contained in §§ 585.201 and 585.210, prohibiting transfers to the FRY (S&M) or in which the Government of the FRY (S&M) has an interest.

**§ 585.414 Services performed in the Federal Republic of Yugoslavia (Serbia and Montenegro) or by the Government of the FRY (S&M).**

Services performed in the FRY (S&M), or by the Government of the FRY (S&M), as defined in § 585.312, are imported into the United States when the benefit of such services is received in the United States. Services performed in the FRY (S&M) or by the Government of the FRY (S&M) for the benefit of a U.S. person outside the United States are prohibited pursuant to §§ 585.201 and 585.206. Services provided in the United States by a national of the FRY (S&M) resident in the United States and not acting on behalf of the Government of the FRY (S&M) are not imported into the United States.

**§ 585.415 Setoffs prohibited.**

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 585.201 if effected after May 30, 1992.

**§ 585.416 Exportation of services; performance of service contracts; legal services.**

(a) The prohibition on the exportation of services contained in § 585.205 applies to services performed:

(1) In the United States;

(2) Outside the United States by an entity located in the United States, including its overseas branches; or

(3) Outside the United States by an individual U.S. person ordinarily resident in the United States; on behalf of the Government of the FRY (S&M), or where the benefit of such services is otherwise received in the FRY (S&M). The benefit of services performed anywhere in the world on behalf of the Government of the FRY (S&M), including services performed for a controlled entity or specially designated national of the Government of the FRY (S&M), is presumed to be received in the FRY (S&M).

(b) The prohibitions contained in §§ 585.201 and 585.209 apply to services performed by U.S. persons, wherever located:

(1) On behalf of the Government of the FRY (S&M);

(2) With respect to property interests of the Government of the FRY (S&M); or

(3) In support of an industrial or other commercial or governmental project in the FRY (S&M).

(c) *Example:* U.S. persons may not, without specific authorization from the Office of Foreign Assets Control, represent an individual or entity with respect to contract negotiations, contract performance, commercial arbitration, or other business dealings with the Government of the FRY (S&M). *See* § 585.517 on licensing policy with regard to the provision of certain legal services.

**§ 585.417 Transactions incidental to a licensed transaction.**

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, blocked person or involving an unlicensed debit to a blocked account.

(b) *Example:* A license authorizing an exportation of goods to the FRY (S&M) also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, brokers, transfer agents, banks, etc.

## Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

**§ 585.501 Effect of license or authorization.**

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

**§ 585.502 Exclusion from licenses and authorizations.**

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

**§ 585.503 Payments and transfers to blocked accounts in U.S. financial institutions.**

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account may only be made to another blocked account held in the same name on the books of the same U.S. financial institution. A U.S. financial institution must provide written notification of any transfer into a blocked account to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW.—2131 Annex, Washington, DC 20220, within 10 days from the value date of the payment or transfer.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

**§ 585.504 Investment and reinvestment of certain funds.**

U.S. financial institutions are hereby authorized to invest and reinvest blocked assets in which the Government of the FRY (S&M) has an interest, or that are held in blocked accounts in the name of the Government of the FRY (S&M) or the former Government of the Socialist Federal Republic of Yugoslavia, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or

subaccount which is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but in no case may funds be transferred outside the United States for this purpose; and

(b) The proceeds of such investments and reinvestments are not credited to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to the Government of the FRY (S&M).

**§ 585.505 Completion of certain transactions related to bankers acceptances authorized.**

(a) Persons other than the Government of the FRY (S&M) are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, involving an interest of the Government of the FRY (S&M) as long as the bankers acceptances were created or the deferred payment undertakings were incurred prior to the effective date.

(b) Persons other than the Government of the FRY (S&M) are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, involving the importation or exportation of goods to or from the FRY (S&M) that do not involve an interest of the Government of the FRY (S&M) as long as the bankers acceptances or the deferred payment undertakings were accepted prior to the effective date.

(c) Nothing in this section shall authorize or permit a debit to a blocked account. Specific licenses for the debiting of a blocked account may be issued on a case-by-case basis.

**§ 585.506 Payment by the Government of the FRY (S&M) of obligations to persons within the United States authorized.**

(a) The transfer of funds after the effective date by, through, or to any U.S. financial institution or other U.S. person solely for the purpose of payment of obligations of the Government of the FRY (S&M) to persons or accounts within the United States is authorized, provided that the obligation arose prior to the effective date, and the payment requires no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

(b) A person receiving payment under this section may distribute all or part of that payment to any person, provided that any such payment to the Government of the FRY (S&M) must be to a blocked account in a U.S. financial institution.

(c) The authorization in this section is subject to the condition that written notification from the U.S. financial institution or U.S. person transferring or receiving funds is furnished to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, within 10 business days from the date of transfer or receipt. The notification shall provide the account number, name and address of the transferor and/or transferee U.S. financial institution or person, and the account number, name and address of the person into whose account payment is made.

**§ 585.507 Certain exportations to the FRY (S&M) authorized.**

(a) All transactions ordinarily incident to the exportation of any item, commodity, or product from the United States to or destined for the FRY (S&M) are authorized if:

(1) Such exports would ordinarily be authorized under one of the following regulations administered by the Department of Commerce: 15 CFR 771.6—General license BAGGAGE (accompanied and unaccompanied baggage); 15 CFR 771.13—General license GUS (shipments to personnel and agencies of the U.S. Government); or,

(2) Such exports are for the official use of the United Nations, its personnel and agencies (excluding its relief or development agencies).

(b) All transactions related to exportation or reexportation not otherwise authorized in this part are prohibited unless licensed by the Office of Foreign Assets Control pursuant to the procedures described in § 585.801.

**§ 585.508 Importation of household and personal effects from the FRY (S&M) authorized.**

The importation of household and personal effects originating in the FRY (S&M), including baggage and articles for family use, of persons arriving in the United States directly or indirectly from the FRY (S&M) is authorized. Articles included in such effects may be imported without limitation provided they were actually used by such persons or their family members abroad, are not intended for any other person or for sale, and are not otherwise prohibited from importation.

**§ 585.509 Trading in certain pre-sanctions obligations authorized.**

(a) All transactions by U.S. persons involving secondary market trading in debt obligations, or portions thereof, originally incurred by banks ("Original Borrowers") organized and headquartered in the Republics of Slovenia, Croatia, Bosnia-Hercegovina, and Macedonia, and rescheduled pursuant to the "New Financing Agreement" of September 20, 1988 (the "NFA"), are authorized, notwithstanding the joint and several liability undertaken by the National Bank of Yugoslavia and/or of banks located in the FRY (S&M), for repayment of such obligations.

(b) Nothing in this section shall authorize trading in debt obligations, or portions thereof, subject to the NFA for which the Original Borrower was the National Bank of Yugoslavia or an entity organized or headquartered in Serbia or Montenegro.

(c) No transfer of debt obligations, or portions thereof, for which the National Bank of Yugoslavia or a bank located in the FRY (S&M) has joint or several liability may be completed unless the transferee undertakes in writing that the debt obligations will not be further transferred to or for the benefit of the Government of the FRY (S&M), including the National Bank of Yugoslavia, or any person in the FRY (S&M), until permitted by U.S. law.

(d) A U.S. person involved in the transfer of any debt obligation for which the National Bank of Yugoslavia or an entity located in the FRY (S&M) has joint or several liability must file a report with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, within 10 days of the transfer, providing:

(1) The names and addresses of the transferor, transferee and the U.S. person involved if neither of the foregoing;

(2) (i) A copy of the "Refinancing Loan Notice" required pursuant to the NFA concerning the debt obligation transferred, and

(ii) If an Original Borrower located or headquartered in Serbia or Montenegro, including the National Bank of Yugoslavia, is included in a consortium of obligors identified in a "Refinancing Loan Notice" for the debt obligation transferred, a copy of the transferor's confirmation(s) that each portion of the debt obligation transferred is that of an Original Borrower organized and headquartered in the Republic of Slovenia, Croatia, Bosnia-Hercegovina, or Macedonia; and

(3) A certification that the transfer documents include the transferee's undertaking required in paragraph (c) of this section.

**§ 585.510 Payments and transfers authorized for goods and services exported to the FRY (S&M) prior to the effective date.**

(a) Specific licenses may be issued on a case-by-case basis to permit payment involving an irrevocable letter of credit issued or confirmed by a U.S. bank, or a letter of credit reimbursement confirmed by a U.S. bank, from a blocked account or otherwise, of amounts owed to or for the benefit of a person with respect to goods or services exported prior to May 30, 1992, directly or indirectly to the FRY (S&M), or to third countries for an entity operated from the FRY (S&M), or for the benefit of the Government of the FRY (S&M), where the license application presents evidence satisfactory to the Office of Foreign Assets Control that the exportation occurred prior to the effective date (such evidence may include, for example, the bill of lading, the air waybill, the purchaser's written confirmation of completed services, customs documents, and insurance documents).

(b) This section does not authorize exportation or the performance of services after the effective date pursuant to a contract entered into or partially performed prior to the effective date.

(c) Separate criteria may be applied to the issuance of licenses authorizing payment from an account of or held by a blocked U.S. bank owned or controlled by the Government of the FRY (S&M).

**§ 585.511 Extensions or renewals of letters of credit authorized.**

(a) The extension or renewal, at the request of the account party, of a letter of credit or a standby letter of credit issued or confirmed by a U.S. financial institution is authorized, provided no transfer of funds is made except to a blocked account.

(b) Transactions conducted pursuant to this section must be reported to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, within 10 days after completion of the transaction.

**§ 585.512 Transactions relating to travel to or within the FRY (S&M).**

(a) All transactions by U.S. persons related to nonbusiness travel to, from, and within the FRY (S&M) are authorized, including the booking of travel arrangements, the payment of living expenses, and the acquisition of goods for personal consumption within the FRY (S&M), provided that no such transactions may involve transportation by air into or out of the FRY (S&M).

(b) All transactions by U.S. persons related to travel to, from, and within, and to activities within, the FRY (S&M) for the conduct of the official business of the United States Government or the United Nations and journalistic activity by persons regularly employed in such capacity by a newsgathering organization, are authorized, provided that no such transactions may involve transportation by air into or out of the FRY (S&M).

(c) This section does not authorize U.S. persons to utilize charge cards, including, but not limited to, debit cards, credit cards or other credit facilities, or to engage in transactions, while traveling in the FRY (S&M). This section also does not authorize payments to be sent into the FRY (S&M) from the United States or by a U.S. person located outside the FRY (S&M).

**§ 585.513 Transactions related to telecommunications authorized.**

(a) All transactions of U.S. common carriers with respect to the receipt and transmission of telecommunications involving the FRY (S&M) are authorized, provided any payment owed to the Government of the FRY (S&M) or to any other person in the FRY (S&M) is paid into a blocked account in a U.S. financial institution. This section does not authorize the exportation of equipment to upgrade telecommunications facilities.

(b) The term "telecommunications" shall mean telephone, telex and telegraph transmissions, and transmissions for the gathering or broadcast of news.

**§ 585.514 Transactions related to mail authorized.**

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between the United States and the FRY (S&M) are authorized. For purposes of this authorization, mail is limited to personal communications not involving a transfer of anything of value, and publications and other informational materials, subject to a maximum weight limitation of 12 ounces.

**§ 585.515 Certain transactions related to patents, trademarks and copyrights authorized.**

(a) All of the following transactions in connection with patent, trademark, copyright, or other intellectual property protection in the United States or the FRY (S&M) are authorized.

(1) The filing and prosecution of any application for a patent, trademark or copyright, or for the renewal thereof;

(2) The receipt of any patent, trademark or copyright; and

(3) The filing and prosecution of opposition or infringement proceedings with respect to any patent, trademark, or copyright, and the prosecution of a defense to any such proceeding.

(b) The payment of reasonable and customary fees currently due to the United States Government or to attorneys or representatives within the United States in connection with any transaction authorized by paragraphs (a)(1)–(3) of this section may be made from a blocked account held in the name of the entity in the FRY (S&M) holding the patent, trademark or copyright.

(c) The payment of fees currently due to the Government of the FRY (S&M) directly or through an attorney or representative, in connection with any of the transactions authorized by paragraphs (a)(1)–(3) of this section, or for the maintenance of any patent, trademark, or copyright, must be made into a blocked account in a domestic U.S. financial institution in the name of the appropriate governmental entity. In addition, fees currently due to individual attorneys or representatives in the FRY (S&M) in connection with any of the transactions authorized by paragraphs (a)(1)–(3) of this section may not be transferred to the FRY (S&M), but may otherwise be transferred as authorized in § 585.523.

(d) Payments of amounts due into a blocked account in the name of the Government of the FRY (S&M) must be reported to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220. The report shall include the date and amount deposited, the account title, the account number, and the name and address of the U.S. financial institution.

**§ 585.516 Procedures established for export transactions initiated prior to effective date.**

Goods awaiting exportation to the FRY (S&M) on the effective date and seized or detained by the U.S. Customs Service on the effective date or thereafter may be released to the exporter, provided the following documents are filed with Customs officials at the port where such goods are located:

(a) A copy of the contract governing the exportation (sale or other transfer) of the goods to the FRY (S&M) or, if no contract exists, a written explanation of the circumstances of exportation,

including in either case a description of the manner and terms of payment received or to be received by the exporter (or other person) for, or by reason of, the exportation of the goods;

(b) An invoice, bill of lading, or other documentation fully describing the goods; and

(c) A statement by the exporter substantially in the following form:

Any amount received from or on behalf of the Government of the FRY (S&M) by reason of the attempted exportation of the goods released to [name of exporter] by the U.S. Customs Service on [date], and fully described in the attached documents, has been or will be placed into a blocked account in a U.S. bank and the Office of Foreign Assets Control, Blocked Assets Section, will be immediately notified. [Name of exporter] agrees to fully indemnify the U.. Government for any amount ultimately determined by a court of competent jurisdiction to be due or payable to or for the benefit of any person by reason of the failure of [name of exporter] to properly pay into a blocked account any amount received for the goods from or on behalf of the Government of the FRY (S&M). [Name of exporter] also agrees to waive all claims (1) against any payments received and placed into a blocked account, except as may be later authorized by law, regulations, or license, and (2) against the U.S. Government with regard to the disposition of the amounts placed into a blocked account.

The statement should be dated and signed by the exporter or by a person authorized to sign on the exporter's behalf. The Customs Service may release the goods to the exporter upon receipt of the documentation and statement described above, provided it is satisfied that all customs laws and regulations have been complied with, including the execution of such hold harmless assurances as it shall determine to be appropriate. The documentation and statement received by Customs will be forwarded to the Office of Foreign Assets Control for review and appropriate action.

**§ 585.517 Exportation of certain legal services to the Government of, or persons in, the FRY (S&M).**

(a) The provision to the Government of the FRY (S&M), or to a person in the FRY (S&M), of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment therefor must be specifically licensed. The provision of any other legal services as interpreted in § 585.416 requires the issuance of a specific license.

(b) Specific licenses are issued, on a case-by-case basis, authorizing receipt, from unblocked sources, of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to the Government of the FRY (S&M) or to a person in the FRY (S&M):

(1) Provision of legal advice and counselling to the Government of the FRY (S&M) or to a person in the FRY (S&M) on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions in violation of subpart B of this part;

(2) Representation of the Government of the FRY (S&M) or of a person in the FRY (S&M) when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of the Government of the FRY (S&M) that were in existence prior to May 30, 1992, or of a person in the FRY (S&M);

(4) Representation of the Government of the FRY (S&M) or a person in the FRY (S&M) before any federal agency with respect to the imposition, administration, or enforcement of U.S. sanctions against the FRY (S&M); and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) Enforcement of any domestic lien, judgment, arbitral award, decree, or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of the Government of the FRY (S&M) is prohibited unless specially licensed in accordance with § 585.202(e).

**§ 585.518 Certain standby letters of credit and performance bonds.**

(a) Notwithstanding any other provision of law, payment into a blocked account in a U.S. financial institution by an issuing or confirming bank under a standby letter of credit in favor of a beneficiary that is the Government of the FRY (S&M) or a person in the FRY (S&M) is prohibited by § 585.201 and not authorized, notwithstanding the provisions of § 585.503, if

(1) The account party is a U.S. person; and

(2)(i) A specific license has been issued pursuant to the provisions of paragraph (b) of this section, or (ii) 10 business days have not expired after notice to the account party pursuant to paragraph (b) of this section.

(b) Whenever an issuing or confirming bank shall receive such demand for payment under such a standby letter of credit, it shall promptly notify the account party. The account party may then apply within 5 business days for a specific license authorizing the account party to establish a blocked account on its books in the name of the FRY (S&M) beneficiary in the amount payable under the credit, in lieu of payment by the issuing or confirming bank into a blocked account and reimbursement therefor by the account party. Nothing in this section relieves any such bank or such account party from giving any notice of defense against payment or reimbursement that is required by applicable law.

(c) Where there is outstanding a demand for payment under a standby letter of credit, and the issuing or confirming bank has been enjoined from making payment, upon removal of the injunction, the account party may apply for a specific license for the same purpose and in the same manner as that set forth in paragraph (b) of this section. The issuing or confirming bank shall not make payment under the standby letter of credit unless:

(1) 10 business days have expired since the bank has received notice of the removal of the injunction, and

(2) A specific license issued to the account party pursuant to the provisions of this paragraph has not been presented to the bank.

(d) If necessary to assure the availability of the funds blocked, the Director of the Office of Foreign Assets Control may at any time require the payment of the amounts due under any letter of credit described in paragraph (a) of this section into a blocked account in a U.S. financial institution or the supplying of any form of security deemed necessary.

(e) Nothing in this section precludes the account party on any standby letter or credit or any other person from at any time contesting the legality of the demand from a beneficiary in the FRY (S&M) or from raising any other legal defense to payment under the standby letter of credit.

(f) This section does not affect the obligation of the various parties to the instruments covered by this section if the instruments and payments thereunder are subsequently unblocked.

(g) This section does not authorize any U.S. person to reimburse a non-U.S. bank for payment to an FRY (S&M) beneficiary under a standby letter of credit, except by payments into a blocked account in accordance with § 585.503 or paragraph (b) or (c) of this section.

(h) A person receiving a specific license under paragraph (b) or (c) of this section shall certify to the Office of

Foreign Assets Control within 5 business days after receipt of that license that it has established the blocked account on its books as provided in those paragraphs. However, in appropriate cases, this time period may be extended upon application to the Office of Foreign Assets Control when the account party has filed a petition with an appropriate court seeking a judicial order barring payment by the issuing or confirming bank.

(i) For the purposes of this section:

(1) The term *standby letter of credit* shall mean a letter of credit securing performance of a contract, or repayment of any advance payments or deposits under a contract, or any similar obligation in the nature of a performance bond;

(2) The term *account party* shall mean the person for whose account the standby letter of credit was opened; and

(3) The term *FRY (S&M) beneficiary* shall mean a beneficiary that is (i) a person in the FRY (S&M), (ii) an entity operated from the FRY (S&M), or (iii) the Government of the FRY (S&M).

**§ 585.519 Certain imports for diplomatic or official personnel authorized.**

All transactions ordinarily incident to the importation of any goods or services into the United States, which are not for resale, and which are destined for official or personal use by personnel employed by the diplomatic missions of the Government of the FRY (S&M) to the United States and to international organizations located in the United States are authorized, unless the importation is otherwise prohibited by law.

**§ 585.520 Entries in certain accounts for normal service charges authorized.**

(a) U.S. financial institutions are hereby authorized to:

(1) Debit any blocked account on their books in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account; and

(2) Make book entries against any foreign currency account maintained by it with a financial institution in the FRY (S&M) for the purpose of responding to debits to such account for normal service charges in connection therewith.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail insurance, stationery and supplies, check books, and other similar items.

**§ 585.521 Donations of food to relieve human suffering authorized.**

(a) Specific licenses may be issued on a case-by-case basis to permit exportation to the FRY (S&M) of donated food intended to relieve human suffering.

(b) In general, specific licenses will only be granted for donations of food to be provided through the United Nations in accordance with UNSC Resolution 757 and in cooperation with the International Committee of the Red Cross or other appropriate humanitarian agencies for distribution by them or under their supervision, or in such other manner as may be approved under UNSC Resolution 757 and any other applicable Security Council resolutions, in order to ensure that such donations reach the intended beneficiaries.

(c) Applications for specific licenses pursuant to paragraph (a) of this section shall be made in advance of the proposed exportation, and provide the following information:

(1) The nature, quantity, value, and intended use of the donated food; and

(2) The terms and conditions of distribution, including the intended method of compliance with such terms and conditions of distribution as may have been adopted by the United Nations Security Council or a duly authorized body subordinate thereto to govern the shipment of foodstuffs under applicable United Nations Security Council resolutions, including UNSC Resolution 757.

**§ 585.522 Donations of medical supplies authorized.**

(a) Specific licenses may be issued on a case-by-case basis to permit exportation to the FRY (S&M) of donated supplies intended strictly for medical purposes, in accordance with the provisions of UNSC Resolution 757 and other applicable Security Council resolutions.

(b) In general, specific licenses will only be granted for the exportation of medical supplies through the International Committee of the Red Cross or other appropriate humanitarian agencies for distribution by them or under their supervision, or in such other manner as may be approved under applicable Security Council resolutions, in order to ensure that such supplies reach the intended recipient.

(c) Applications for specific licenses pursuant to paragraph (a) of this section shall be made in advance of the proposed exportation, and provide the following information:

(1) The nature, quantity, value, and intended use of the medical supplies;

(2) The terms and conditions of distribution, including the intended method of compliance with such terms and conditions of distribution as may have been adopted by the United Nations Security Council or a duly authorized body subordinate thereto to govern the shipment of medical supplies under applicable Security Council resolutions.

**§ 585.523 Certain transactions for the benefit of individuals in the FRY (S&M) authorized.**

All transactions are authorized by U.S. financial institutions that are not blocked, including their foreign branches, for the benefit of individuals located in the FRY (S&M) provided that such transactions do not result in the transfer of funds to or for the benefit of the Government of the FRY (S&M) or to persons in the FRY (S&M).

## Subpart F—Reports

**§ 585.601 Required records.**

(a) Except as otherwise provided, every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction. Except as otherwise provided, every person holding property subject to § 585.201 shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 5 years after the date such property is unblocked.

(b) Any person, other than individual, required to maintain records pursuant to this section, must designate an individual to be responsible for providing information concerning such records to the Office of Foreign Assets Control when so requested.

**§ 585.602 Reports to be furnished on demand.**

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books

of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

**§ 585.603 Registration of persons holding blocked property subject to § 585.201.**

(a) Any individual holding property subject to § 585.201 must register with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, by the latter of July 31, 1992, or within 10 days after the date such property is received or becomes subject to § 585.201.

(b) Any person, other than an individual, holding property subject to § 585.201 must register an individual designated under § 585.601(b) with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, by the latter of July 31, 1992, or 10 days after the date such property is received and becomes subject to § 585.201.

## Subpart G—Penalties

**§ 585.701 Penalties.**

(a) Attention is directed to § 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705), which provides that a civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under the International Emergency Economic Powers Act, and whoever willfully violates any license, order, or regulation issued under the International Emergency Economic Powers Act, shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. Section 206 of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is directed to the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in this section shall, upon conviction, be fined not more than $10,000 or, if a natural person, be imprisoned for not more than 10 years, or both; and the officer, director or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a similar fine, imprisonment or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States.

(c) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

(d) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

**§ 585.702 Prepenalty notice.**

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

**§ 585.703 Presentation responding to prepenalty notice.**

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

**§ 585.704 Penalty notice.**

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

**§ 585.705 Referral to United States Department of Justice.**

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within 30 days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred for administrative collection measures or to the United States

Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

## Subpart H—Procedures

### § 585.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in subpart B of this part. All such licenses in effect on the date of publication are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in subpart B of this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of the principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to the Director, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220.

### § 585.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

### § 585.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

### § 585.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

### § 585.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Orders 12808, 12810, 12831, and any further Executive orders relating to the national emergency declared in Executive Order 12808 may be taken by the Director, Office of Foreign Assets Control.

### § 585.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Treasury Department issued pursuant to 5 U.S.C. 552 and published at 31 CFR part 1.

(b) Any form issued for use in connection with the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, or by calling 202/622–2480.

## Subpart I—Paperwork Reduction Act

### § 585.901 [Reserved]

Dated: January 13, 1993.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: January 14, 1993.

**John P. Simpson,**

*Acting Assistant Secretary (Enforcement).*

[FR Doc. 93–1668 Filed 3–5–93; 12:44 pm]

BILLING CODE 4810-25-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD7 93-06]

### Special Local Regulations; City of Augusta, GA

**AGENCY:** Coast Guard, DOT.
**ACTION:** Temporary rule.

**SUMMARY:** Special local regulations are being adopted for the Augusta Port Authority Invitational Rowing Regatta. The event will be held from 7 a.m. EST (Eastern Standard Time) to 5 p.m. EST on March 25–28, 1993 on the Savannah River at Augusta, Georgia. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATES:** These regulations will become effective from 7 a.m. on March 25, 1993 to 5 p.m. March 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** CDR A. A. Sarra, Coast Guard Group Charleston, at (803) 724–7619.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The updated information to hold the event was not received until January 15, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

#### Drafting Information

The drafters of these regulations are LTJG J. M. Sicard, Assistant Operations Officer, Coast Guard Group Charleston, project officer, and LT J. M. Losego, project attorney, Seventh Coast Guard District Legal Office.

#### Discussion of Regulations

There will be 1,000 participants racing 4 and 8 man racing shells on a fixed course. The event will take place on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1/78/278 Bridge, at mile marker 199.45, and mile marker 197. These regulations are required to promote the safety of life and property on the navigable waters during the running of the Invitational Rowing Regatta.

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the Georgia Department of Natural Resources, the Army Corps of Engineers, and the National Marine Fisheries Services regarding the environmental impact of this event, and it was determined that the event does not threaten protected species.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

### PART 100—[AMENDED]

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

**Authority:** 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0706 is added to read as follows:

**§ 100.35–T0706 Augusta Port Authority Invitational Rowing Regatta.**

(a) *Regulated Area.* A regulated area is established on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1/78/278 Bridge, at mile marker 199.45, and mile marker 197. The regulated area encompasses the width of the Savannah River between these two points.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After termination of the Augusta Invitational Regatta on March 28, 1993, all vessels may resume normal operation.

(2) Four temporary overhead cables will be used to delineate the course's racing lanes, and floats will be used on the surface of the river to mark lane separations.

(c) *Effective dates:* These regulations become effective each day from 7 a.m. EST to 5 p.m. EST on March 25, 26, 27, and 28, 1993.

Dated: February 23, 1993.

**William P. Leahy,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 93–5242 Filed 3–9–93; 8:45 am]
BILLING CODE 4910–14–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

[Docket No. 921107–2307]

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.
**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for Pacific cod by the inshore component in the Western Regulatory area of the Gulf of Alaska (GOA), statistical area 61. This action is necessary to prevent exceeding the allowance of the interim specification of Pacific cod total allowable catch (TAC) for the inshore component in this area.

**EFFECTIVE DATES:** Effective 12 noon, Alaska local time (A.l.t.), March 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(A), the allowance of the interim specification of Pacific cod TAC for the inshore component in the statistical area 61 was established by the proposed specifications (57 FR 57982, December 8, 1992) as 4,208 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the allowance of the 1993 interim specification of Pacific cod TAC for the inshore component in the statistical area 61 soon will be

reached. Therefore, the Regional Director has established a directed fishing allowance of 3,788 mt, with consideration that 420 mt will be taken as incidental catch in directed fishing for other species in the statistical area 61. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by the inshore component in statistical area 61, effective from 12 noon A.l.t., March 9, 1993, through 12 noon A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

## Classification

This action is taken under 50 CFR 672.20 and is in compliance with E.O. 12291.

## List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 5, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–5449 Filed 3–5–93; 1:12 pm]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 58, No. 45
Wednesday, March 10, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 21 and 25

**[Docket No. NM–79, Notice No. SC–93–2–NM]**

### Special Conditions; Boeing Model 777 Series Airplanes

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Boeing Model 777 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25 of the Federal Aviation Regulations.

**DATES:** Comments must be received on or before April 26, 1993.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–79, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–79. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bob McCracken, FAA, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2118.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–79." The postcard will be date stamped and returned to the commenter.

#### Background

On June 18, 1990, the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207, applied for a type certificate for their new Model 777 airplane. The Model 777 is a long range, transport category airplane powered by two Pratt & Whitney 4073A, Rolls-Royce RB211-Trent 870, or General Electric GE90–B3 engines with 73,500, 71,200, and 74,500 lb. thrust ratings, respectively. The overall length of the Model 777 is 209 feet, the height is 61 feet, and the wingspan is 198 feet. The airplane has a seating capacity in a typical three class configuration of 305 to 328 passengers, or 375 to 400 passengers in a two class configuration. The Model 777 has a maximum takeoff weight of 535,000 lbs., a maximum landing weight of 445,000 lbs., a maximum operating altitude of 43,100 ft., and a range of 4,200 nautical miles in a two class configuration or 6,600 nautical miles in a three class configuration.

#### Type Certification Basis

Under the provisions of § 21.17, Boeing must show that the Model 777 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–71. Boeing has also elected to comply with certain aspects of Amendment 25–72, and all of Amendments 25–73 through 25–77. The amendment levels of the applicable Federal Aviation Regulations (FAR) are: Part 25 through Amendment 25–77, except for § 25.571(e)(1), which remains at Amendment 25–71 level; part 36, as amended at the time of certification; and part 34, as amended through Amendment 34–1. In addition, the certification basis will be upgraded to include any subsequent amendments to part 25 that are required for operation under part 121, and the special conditions proposed in this notice.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 777 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.17(a)(2).

#### Model 777 Design Features

The structure of the Model 777 is generally of conventional design and construction, but with considerable use of composite materials. Elements of the primary structure (the fin and horizontal tail) are constructed of composites, as are some elements of secondary structure, including the elevators, rudders, flaps, spoilers, ailerons, engine cowls, and main deck floor beams.

The Model 777 utilizes a combination of multiple computer channels and redundant sensors which channel command signals to various control surface actuators in response to programmed control laws. This control architecture, referred to as fly-by-wire (FBW), provides closed loop command to move servo-actuators for the elevators, ailerons, rudder, spoilers, horizontal stabilizer, slats and flaps, and engine power levers. In the unlikely event of simultaneous failure of all digital primary and analog backup

computers, mechanical control is available to control the airplane's attitude until computer control is restored. This mechanical backup is not designed for controlling the airplane to a landing.

Hydraulic power for the flight control system is provided by three independent hydraulic systems. Functions are shared among these systems to ensure airplane control in the event of loss of one or two systems. The left and right systems are pressurized by variable displacement pumps driven from the engine accessory gearboxes. In addition, the left and right systems each have one electrically-driven demand pump. The center system can be pressurized by two electrically-driven hydraulic pumps. This system also has two air-driven demand pumps that use air from the airplane pneumatic system.

Normal electrical power is supplied by two integrated drive generators, one on each engine. An electrical generator powered by an auxiliary power unit (APU) is also available. Backup electrical power is available to selected airplane alternating current (AC) busses from two variable speed constant frequency generators, one of which is mounted on each engine. The main direct current (DC) system can also receive power from the backup generators. Primary power for the FBW system is provided by dedicated permanent magnet generators in each of the two backup generator units. The FBW system can alternately receive power from the main DC system or the standby DC system. The standby DC system is powered by a ram air turbine (RAT) driven AC generator, which can provide a source of standby electrical power that is not time limited. The RAT is deployed automatically upon loss of all normal and backup AC power sources. A manual deploy feature is available to the flightcrew should the RAT fail to deploy automatically.

The engine control system consists of dual channel, full authority, digital engine controls (FADEC) mounted on the fan cases of each engine. The FADEC's are interfaced with the various airplane systems to provide redundant control of the engines through a "hard-wired" throttle angle resolver system. In addition, the throttles move in proportion to commanded changes in engine power, and in the event of a total failure of the engine indicating and crew alerting system (EICAS), analog rotor speeds are available to determine engine power levels. Each FADEC provides gas generator control, engine limit protection, power management, input to the thrust reverser system, and engine parameter inputs for the flight deck displays.

Control inputs are made through conventional flight deck control wheels, columns, and rudder pedals. The flight instruments are displayed on six liquid crystal flat panel displays. Two flat panel displays are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two flat panel displays are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The proposed type design of the Model 777 contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards and therefore special conditions are considered necessary in the following areas:

*Systems*

1. Operation Without Normal Electrical Power

The Model 777 fly-by-wire control system requires a continuous source of electrical power. Section 25.1351(d), "Operation without normal electrical power," requires safe operation in VFR conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control, while the crew took time to sort out the electrical failure, start engine(s) if necessary, and re-establish some of the electrical power generation capability.

In order to maintain the same level of safety associated with traditional designs, the Model 777 design must not be time limited in its operation, including being without the normal source of electrical power generated by the engine or auxiliary power unit (APU). It should be noted that service experience has shown that the loss of all electrical power generated by the airplane's engines or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue through safe flight and landing with inoperative normal engine and auxiliary power unit generator electrical power (electrical power sources excluding the battery and any other standby electrical sources). Therefore, Special Condition No. 1 is proposed.

2. Command Signal Integrity

The Model 777 airplane will be using fly-by-wire technology as a means of sending command and control signals to the Primary Flight Computers (PFC). The PFC's send signals to the Actuator Control Electronics (ACE) which, in turn, send analog command and control signals to the Power Control Units (PCU). The PCU's move the elevator, aileron, flaperon, rudder, spoiler, feel actuator, rudder trim, horizontal stabilizer, and autospeed-brake actuators. In the Model 777 fly-by-wire design being presented, command and control of the airplane's aerodynamic control surfaces will be achieved by electronic interfaces depending on AC and DC signals and digital data buses. These interfaces involve not only direct commands to the PCU, but all the necessary feedback sensor signals, including some that are transmitted on new ARINC 629 buses. These signal paths, as well as the digital electronics that manage them, can be susceptible to outside interferences from electromagnetic and electrostatic sources, as well as internal causes that could modify the command and control signals. Internal causes may include, but are not restricted to, the loss of data bits, unwanted transients in the power supply source, capacity saturation inside a computer, processing of signals by parallel asynchronous computers, and adverse effects caused by transport lag and any other cause that may alter the command and control signals. For these reasons, special design measures, and laboratory tests intended to validate these designs, will be required to demonstrate the integrity of the fly-by-wire flight control system, to a level of safety equivalent to that which is achieved with traditional hydro-mechanical designs. In addition, similar to the conventional steel cable controls, wire routing and electronic box location must provide separation and redundancy to ensure protection from common cause damage. In order to maintain the Model 777 airplane's systems at a level of safety that is equivalent to that intended by the regulations, Special Condition No. 2 is proposed.

3. Protection From Lightning and Unwanted Effects of High Intensity Radiated Fields (HIRF)

The Model 777 airplane will utilize electrical and electronic systems that perform critical and essential functions. These systems include electronic displays, electronic engine controls, fly-by-wire flight controls, and others.

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection

(§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

The existing airworthiness regulations do not contain adequate or appropriate safety standards for protection of the Model 777 electrical and electronic systems from the effects of lightning and HIRF external to the airplane. Therefore, Special Condition No. 3 is proposed.

*Airframe*

4. Effect of Flight Control Systems on Structures

The Model 777, when in normal operation, incorporates a three-axis digital fly-by-wire (FBW) electronic flight control system (EFCS), with an alternate pilot selectable direct analog system. The FBW is used for all primary, secondary and high lift control surfaces. Under normal operation, the systems significant to loads development include a longitudinal stability augmentation system, yaw damper, rudder limiter, elevator limiter, flap load relief system, and wheel-rudder crosstie. The certification rules for transport airplanes did not envision this relationship between systems and structure. To provide comprehensive criteria in which the structural design safety margins are dependent on systems reliability, Special Condition No. 4 is proposed.

5. Design Maneuver Requirements

The Model 777 is equipped with electronic flight controls that provide control of the airplane through pilot inputs to the flight computer. The flight computer uses airplane flight data to adjust and limit pilot commands. The certification rules for transport airplanes did not envision this relationship between the pilot inputs and the control surfaces. To provide criteria in which the design maneuver requirements of airplane may be addressed, Special Condition No. 5 is proposed.

6. Limit Engine Torque Loads for Sudden Engine Stoppage

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines have changed considerably from what was envisioned when the engine seizure requirement, § 25.361(b), was first adopted. The latest generation of jet engines, as used in the Model 777, are much larger and are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines. The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage.

The proposed criteria distinguish between the more common seizure events and those rare seizure events resulting from structural failures. For the more rare but severe seizure events, the proposed criteria would allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher factor of safety for those structures. To provide appropriate structural design criteria for the engine torque on the Model 777, Special Condition No. 6 is proposed.

*Flight Characteristics*

7. Flight Characteristics Compliance via Handling Qualities Rating Method

The Model 777 design incorporates an Electronic Flight Control System (EFCS). This system will provide an electronic interface between the pilot's flight controls and the flight control surfaces (for both normal and failure states), generating the actual surface commands that provide for stability augmentation and control about all three airplane axes. Because EFCS technology has out-paced existing regulations (written essentially for unaugmented airplanes, with provision for limited ON/OFF augmentation), Special Condition No. 7 is proposed to aid in the certification of flight characteristics.

8. Electronic Flight Control System: Control Surface Awareness

With an electronic flight control system and no direct coupling from cockpit controller to control surface, the pilot may not be aware of the actual surface position utilized to fulfill the requested demand. Some unusual flight condition, arising from atmospheric conditions and/or airplane or engine failures, may result in full, or near-full, surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, piloted or Auto-Flight System control of the airplane might be inadvertently continued in such a manner as to cause airplane loss-of-control or other unsafe stability or performance characteristic. To provide criteria in which this feature may be addressed, Special Condition No. 8 is proposed.

In the event additional novel or unusual design features are identified at a later date, appropriate additional special conditions will be proposed for the Model 777.

**Conclusion**

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Parts 21 and 25**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

**Authority:** 49 U.S.C. app 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; and 49 U.S.C. 106(g).

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 777 series airplanes.

*1. Operation Without Normal Electrical Power*

In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the

maximum diversion time capability being certified.

The emergency electrical power system must be designed to supply:

1. Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal engine (which includes APU power) generator electrical power system.

2. Electrical power required for continued safe flight and landing.

3. Electrical power required to restart the engines.

*2. Command Signal Integrity*

In addition to compliance with § 25.671 of the FAR:

(a) It must be shown that the Primary Flight Control System (PFCS) signals cannot be altered unintentionally, or that the altered signal characteristics are such that:

(1) Stable gain and phase margins must be maintained for all aerodynamically closed loop systems, excluding pilot in the loop control.

(2) Sufficient pitch, roll, and yaw control power must be available to provide control for continued safe flight and landing, considering all the malfunctions that are not extremely improbable.

(3) The effect of spurious signals on the systems which are included in the aerodynamic loop must not result in unacceptable transients or degradation of the airplane's performance. Specifically, signals that would cause a significant uncommanded motion of a control surface actuator must be readily detected and deactivated or the surface motion must be arrested by other means in a satisfactory manner. Small amplitude residual system oscillations may be acceptable.

(4) The change of mode in one of the flight critical control systems must not be greater than $10^{-5}$/flt. hr. This applies to the primary flight control systems. A change of mode can be caused by an automatic switching from the normal (i.e., full-up system) to the secondary mode. The effects of latent failures must be considered in demonstrating compliance with this special condition.

(b) It must be demonstrated that uncommanded sustained oscillations, the result of coupling between electronic or electrical command signals, and the motion of the mechanical actuator drive system together with the interfacing structural components, do not occur over the spectrum of operating frequencies. The effects of minor instabilities may be acceptable provided they are thoroughly investigated, documented, and understood.

*3. Protection from Lightning and Unwanted Effects of High-Intensity Radiated Fields (HIRF)*

(a) Lightning Protection

(1) Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(2) Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

(b) Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

(c) The following definitions apply with respect to these special conditions:

*Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

*Essential Functions.* Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

*Discussion:* To provide a means of compliance with these proposed special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A) "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equation: $i(t)=I_o\,(e^{-at}-e^{-bt})$ where:

t=time in seconds,

i=current in amperes, and

| | | Severe strike (component A) | Restrike (component D) | Multiple stroke (½ component D) | Multiple burst (component H) |
|---|---|---|---|---|---|
| $I_o$, amp | = | 218,810 | 109,405 | 54,703 | 10,572 |
| a, $sec^{-1}$ | = | 11,354 | 22,708 | 22,708 | 187,191 |
| b, $sec^{-1}$ | = | 647,265 | 1,294,530 | 1,294,530 | 19,105,100 |
| This equation produces the following characteristics: | | | | | |
| $i_{peak}$ | = | 200 KA | 100 KA | 50 KA | 10 KA |
| and, | | | | | |
| $(di/dt)_{max}$(amp/sec) | = | $1.4\times10^{11}$ @t=0+sec | $1.4\times10^{11}$ @t=0+sec | $0.7\times10^{11}$ @t=0+sec | $2.0\times10^{11}$ @t=0+sec |
| di/dt, (amp/sec) | = | $1.0\times10^{11}$ @t=.5μs | $1.0\times10^{11}$ @t=.25μs | $0.5\times10^{11}$ @t=.25μs | ..... |
| Action Integral ($amp^2$ sec) | = | $2.0\times10^{6}$ | $0.25\times10^{6}$ | $0.625\times10^{6}$ | ..... |

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems (such as the EFIS, ADC, and AHRS) to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

| Frequency | Peak (V/M) | Average (V/M) |
|---|---|---|
| 10 –100 KHz | 50 | 50 |
| 100–500 | 60 | 60 |
| 500–2000 | 70 | 70 |
| 2 –30 MHz | 200 | 200 |
| 30 –70 | 30 | 30 |
| 70 –100 | 30 | 30 |
| 100–200 | 150 | 33 |
| 200–400 | 70 | 70 |
| 400–700 | 4020 | 935 |
| 700–1000 | 1700 | 170 |
| 1 –2 GHz | 5000 | 990 |
| 2 –4 | 6680 | 840 |
| 4 –6 | 6850 | 310 |
| 6 –8 | 3600 | 670 |
| 8 –12 | 3500 | 1270 |
| 12 –18 | 3500 | 360 |
| 18 –40 | 2100 | 750 |

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

*4. Effect of Flight Control Systems on Structures*

(a) General

For airplanes equipped with flight control systems, autopilots, stability augmentation systems, and load alleviation systems that directly, or as a result of a failure, affect its structural performance, the influence of these systems and their failure conditions shall be taken into account in showing compliance with subparts C and D of part 25 of the Federal Aviation Regulations (FAR).

(b) System fully operative

With the system fully operative, the following apply:

(1) Limit loads must be derived for all normal operating configurations of the systems from all the deterministic limit conditions specified in subpart C of part 25, taking into account any special behavior of such systems, associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant non linearity (rate of displacement of control surface, thresholds, or any other system non-linearities) must be accounted for in a realistic and conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (Static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the systems present no anomalies compared to the system behavior below limit conditions.

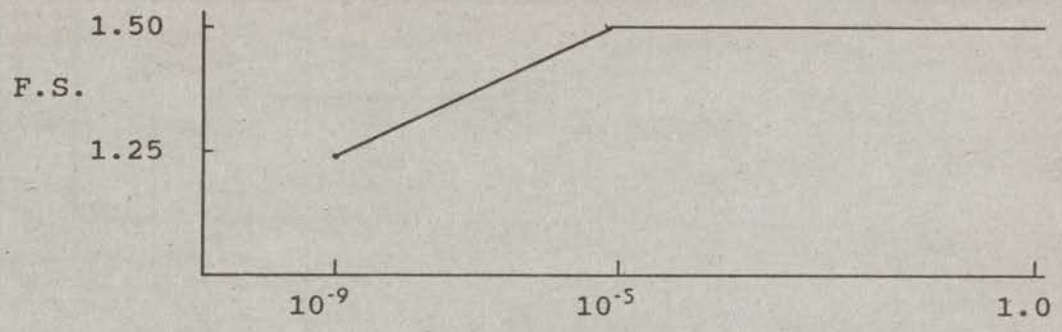
(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) System in a Failure Condition

For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from lg level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure, and immediately after failure, until the airplane is stabilized. The airplane must be able to withstand these loads, multiplied by an appropriate factor of safety, related to the probability of occurrence of the failure. These loads should be considered ultimate loads for this evaluation. The factor of safety is defined as follows:

Factor of Safety at Time of Occurrence




(i) The loads must also be used in the damage tolerance evaluation required by § 25.571(b), if the failure condition is probable. The loads should be considered as ultimate loads for the damage tolerant evaluation.

(ii) Freedom from flutter and divergence must be shown at speeds up to $V_D$, or 1.15 $V_C$, whichever is greater. However, at altitudes where the speed is limited by Mach number, compliance need be shown only up to $M_D$, as defined by § 25.335(b). For failure conditions that result in speed increases beyond $V_C/M_C$, freedom from flutter and divergence must be shown to increased speeds so that the above margins are maintained.

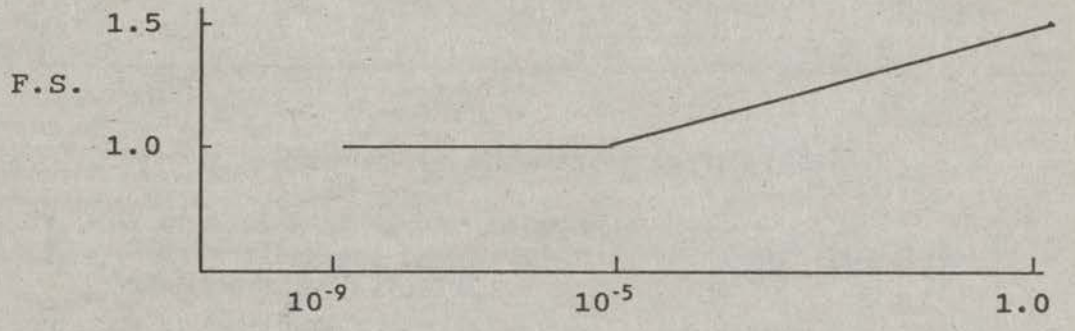
(iii) Notwithstanding subparagraph (1) of this paragraph, failures of the system that result in forced structural vibrations (oscillatory failures) must not produce peak loads that could result in permanent deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane in the failed configuration and considering any appropriate flight limitations, the following apply:

(i) Static and residual strength must be determined for loads induced by the failure condition if the loads could continue to the end of the flight. These loads must be combined with the deterministic limit load conditions specified in subpart C of part 25.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety (F.S.) is defined as follows:

Factor Of Safety for Continuation of Flight



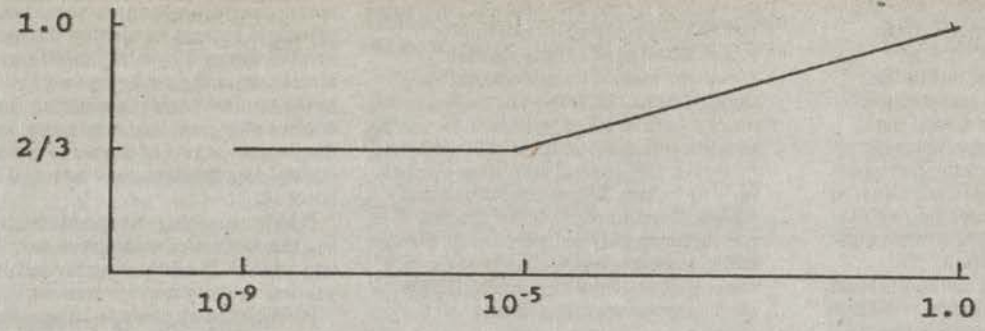

$Q_j = T_j * P_j$ where:
$T_j$ = Average time spent in failure condition
$P_j$ = Probability of occurrence of failure mode

Note: If $P_j$ is greater than $10^{-3}$ per flight hour, then a safety factor of 1.5 must be used.

(iii) For residual strength substantiation as defined in § 25.571(b), structures affected by failure of the system, and with damage in combination with the system failure, a reduction factor may be applied to the residual strength loads of § 25.571(b). However, the residual strength level must not be less than the 1-g flight load combined with the loads introduced by the failure condition, plus two-thirds of the load increments of the conditions specified in § 25.571(b) applied in both positive and negative directions (if appropriate). The reduction factor (R.F.) is defined as follows:

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Residual Strength Reduction Factor

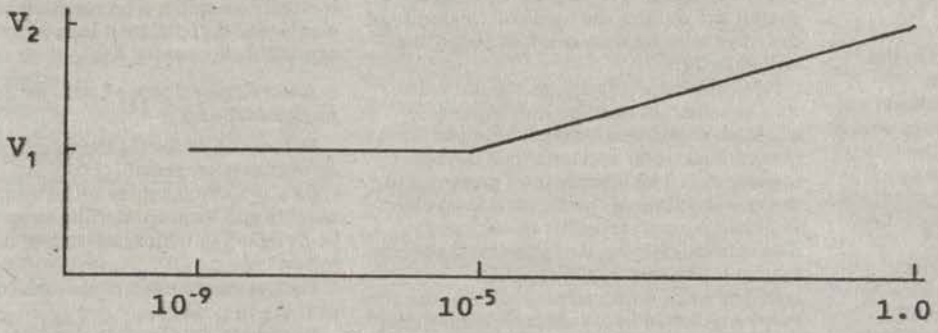



$Q_j$ - Probability of being in failure state j
$Q_j = T_j * P_j$ where:
$T_j$ = Average time spent in failure condition
$P_j$ = Probability of occurrence of failure mode

Note: If $P_j$ is greater than $10^{-3}$, per flight hour then a safety factor of 1.0 must be used.

(iv) Freedom from flutter and divergence must be shown up to a speed determined by the following figure:

Flutter Clearance Speed




$Q_j$ - Probability of being in failure state j

$V_1 = V_0$ or 1.15 $V_c$ whichever is greater.
$V_2$ = Flutter clearance speed required for normal (unfailed) conditions by § 25.629.
$Q_j = T_j * P_j$ where:
$T_j$ = Average time spent in failure condition
$P_j$ = Probability of occurrence of failure mode

Note: If $P_j$ is greater than $10^{-3}$, then the flutter clearance speed must not be less than $V_2$.



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(v) Freedom from flutter and divergence must also be shown up to $V_1$, as depicted in the above figure, for any probable system failure condition, combined with any damage required or selected for investigation by § 25.571(b).

(vi) If the time likely to be spent in the failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(vii) If the mission analysis method is used to account for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the prescribed value of the current requirement.

(d) Warning considerations

For system failure detection and warning, the following apply:

(1) Before flight, the system must be checked for failure conditions, not shown to be extremely improbable, that would degrade the structural capability below the level specified in paragraph (b) of this special condition. The crew must be made aware of these failures, if they exist, before flight.

(2) The existence of any failure condition during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the crew in accordance with § 25.1322.

(3) During flight, any failure condition not shown to be extremely improbable, in which the safety factor existing between the airplane strength capability and loads induced by the deterministic limit conditions of subpart C of part 25 is reduced to 1.3 or less, must be signaled to the crew if appropriate procedures and limitations can be provided so that the crew can take action to minimize the associated reduction in airworthiness during the remainder of the flight.

(e) Dispatch with failure conditions

If the airplane is to be dispatched with a failed system that would reduce the structural performance, then operational limitations must be provided whose effects combined with those of the failure condition allow the airplane to meet the structural requirements as described in paragraph (b) of this special condition. Subsequent system failures must also be considered.

The following definitions are applicable to this special condition.

*Structural performance:* Capability of the airplane to meet the requirements of part 25.

*Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight failure and that are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

*Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

*Probabilistic terms:* The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1A.

*Failure condition:* The term failure condition is defined in AC 25.1309–1A; however, this special condition applies only to system failure conditions that have a direct impact on the structural performance of the airplane (e.g., failure conditions that induce loads or change the response of the airplane to inputs such as gusts or pilot actions).

*5. Design Maneuver Requirements*

(a) Pitch maneuvering loads

In addition to the requirements of § 25.331(c), it must be established that pitch maneuver loads induced by the system itself (e.g., abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(b) Roll maneuver loads

In lieu of compliance with § 25.349(a), the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero, and two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

(1) Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. The investigation must include the maximum possible aileron and spoiler deflections commanded by the electronic flight control system, using the most adverse system tolerances. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(2) At $V_A$, sudden full deflection of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(3) At $V_C$, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than that obtained in paragraph (2), above.

(4) At $V_D$, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than one third of that obtained in paragraph (2), above.

(5) It must be established that roll maneuver loads induced by the system itself (e.g. abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(c) Yaw maneuver loads

In lieu of compliance with § 25.351(a), the airplane must be designed for loads resulting from the conditions specified in subparagraphs (a) and (b) of this paragraph. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational and conservative manner considering the principal masses furnishing the reacting inertial forces. Physical limitations of the aircraft from the cockpit yaw control device to the control surface deflection, such as control stop position, maximum power and displacement rate of the servo controls, or control law limiters, may be taken into account.

(1) Maneuvering. At speeds from $V_{MC}$ to $V_D$, the following maneuvers must be considered. In computing the tail loads, the yawing velocity may be assumed to be zero.

(i) With the airplane in unaccelerated flight at zero yaw, it is assumed that the cockpit yaw control device (pedal) is suddenly displaced to the maximum deflection, up to the limit, or by a 300 pound rudder pedal force, whichever is less.

(ii) With the cockpit yaw control device (pedal) deflected as specified in subparagraph (i) of this paragraph, it is assumed that the airplane yaws to the resulting side slip angle (beyond the static side slip angle).

(iii) With the airplane yawed to the static sideslip angle with the cockpit yaw control deflected as in subparagraph (i) of this paragraph, it is assumed that the cockpit yaw control device is returned to neutral.

(iv) It must be established that yaw maneuver loads induced by the system itself (e.g., abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

*6. Limit Engine Torque Loads for Sudden Engine Stoppage*

In lieu of § 25.361(b) the following special condition is proposed:

(b) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by;

(i) sudden deceleration due to a malfunction which could result in a temporary loss of power or thrust capability, and could cause a shut down due to vibrations, and

(ii) the maximum acceleration of the engine.

(2) The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure including fan blade failure.

(3) The load condition defined in paragraph (b)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the wing and fuselage structure.

*7. Flight Characteristics Compliance via Handling Qualities Rating Method*

In lieu of compliance with § 25.672(c), a handling qualities rating system will be used for evaluation of electronic flight control system (EFCS) configurations resulting from single and multiple failures not shown to be

extremely improbable. The handling qualities ratings are:

Satisfactory: Full performance criteria can be met with routine pilot effort and attention.

Adequate: Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

Controllable: Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration so that the handling qualities are at least Adequate.

Handling qualities will be allowed to progressively degrade with failure state, atmospheric disturbance level, and flight envelope. Specifically within the normal flight envelope, the pilot-rated handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

*8. Electronic Flight Control System: Control Surface Awareness*

In addition to compliance with §§ 25.143, 25.671, and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

Issued in Renton, Washington, on February 26, 1993.

**Darrell M. Pederson,**

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

[FR Doc. 93–5453 Filed 3–9–93; 8:45 am]

BILLING CODE 4910–13–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 266

[RIN 3220–AA83]

### Representative Payment

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to revise part 266 in order to provide more detailed guidelines regarding the selection, payment, responsibilities, and monitoring of representative payees. The title of part 266 is also proposed to be changed from "Incompetence" to "Representative Payment" which better describes the contents of part 266. This proposal is being made to improve the administration of the Board's representative payee program.

**DATES:** Comments must be received by April 9, 1993.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 (312) 751–4513; TDD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** The Railroad Retirement Act of 1974 (45 U.S.C. 231 *et seq.*) provides a system of retirement and disability benefits for railroad employees, their spouses, children, and survivors who meet certain eligibility requirements under that Act. Section 12 of the Act (45 U.S.C. 231k) contains the same provisions as section 19 of the Railroad Retirement Act of 1937, the predecessor of the present Act, regarding the competence of an annuitant and the Board's authority in cases where an annuitant is incompetent. Under these provisions, any claimant or annuitant is presumed to be competent until the Board receives written notice to the contrary. If a claimant or annuitant is incompetent, the Board may make payments to, or conduct transactions with, any legally appointed guardian on behalf of the claimant or annuitant. Furthermore, section 12(a) expressly authorizes the Board to make payments, or conduct transactions, directly with the claimant or annuitant, or with any other person on his or her behalf, even though he or she is an incompetent for whom a guardian is acting. The provisions of section 12 are applicable to benefits claimed or paid under any Act administered in whole or in part by the Board, including any claim for or payment of social security benefits administered by the Board pursuant to section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)).

There has been growing concern in the Congress to assure that surrogate decision making services, including representative payee services, are provided in a uniform, high quality manner which maximizes the potential of every individual for self-reliance and independence.

Since the Board is currently in the process of a comprehensive review, revision, and amendment of its regulations, part 266 is proposed to be revised at this time to address concerns that adequate safeguards be provided where payment of an annuity under the Railroad Retirement Act is made to a representative payee rather than directly to the annuitant. Thus, the proposed new part 266 expands, as well as revises, the present regulation.

A brief summary of the disposition of the various sections of the present part 266 under the proposed regulation is set forth below.

The present § 266.1 simply sets forth the statutory provisions of section 12 of the Railroad Retirement Act (RRA) (45 U.S.C. 231k), and because of this redundancy, is proposed to be removed.

The present § 266.2 has been incorporated into § 266.1(b) of the proposed regulation. The proposed § 266.1 sets forth an introduction, consisting of an explanation of representative payment and the law and policy used to determine whether to make representative payment.

The present § 266.3 has been incorporated into § 266.3(a) of the proposed regulation. The proposed § 266.3 sets forth information which the Board will consider in determining whether to make representative payment.

The present § 266.4 has been redesignated as § 266.12. Proposed § 266.4 sets forth what information the Board will use in selecting a representative payee.

Paragraphs (a) and (b) of the present § 266.5 have been redesignated as § 266.2, and the term "beneficiary" has been removed and the term "annuitant" has been added in its place throughout the proposed part 266. Proposed § 266.5 describes the order of preference the Board will generally use in selecting representative payees.

The present § 266.6 has been incorporated into the proposed § 266.9(a). The proposed § 266.9 sets forth general responsibilities of a representative payee.

The present §§ 266.7, 266.9, 266.10, and 266.11 have been revised and incorporated into a single section, § 266.10, which details how a representative payee is to use benefit payments.

The present § 266.8, "Conservation and investment of benefit payments," has been revised and incorporated into the proposed § 266.11.

Proposed §§ 266.6, 266.7, and 266.8 are new. Section 266.6 provides that a representative payee applicant must provide the Board with the information listed in proposed § 266.4 and will generally be required to undergo a face-to-face interview with a field representative of the Board.

Proposed § 266.7 provides that the representative payee make an accounting to the Board for the use of benefits he or she receives as payee and

sets forth what information will satisfy the requirement of an accounting.

Proposed § 266.8 provides that an annuitant may challenge the appointment or selection of a representative payee. However, an individual who requests to be made a representative payee for an annuitant has no standing to challenge the Board's refusal to make the appointment.

The present § 266.12 has been revised and incorporated into the new § 266.7(c) described above. Proposed § 266.12, as noted earlier, is the redesignated § 266.4.

The present § 266.13 has been redesignated as the proposed § 266.15. Proposed §§ 266.13 and 266.14 are new. The former section describes when the Board will terminate an individual's status as a representative payee and appoint a new one. The latter section describes what evidence an annuitant must provide to the Board to terminate representative payments and thereby receive benefits directly.

The Board has determined that this is not a major rule under Executive Order 12291; therefore, no regulatory impact analysis is required. Information collection has been approved by the Office of Management and Budget under control numbers 3220–0151 and 3220–0052.

A distribution table is provided to show the distribution of the old part 266.

| Old section | New section |
|---|---|
| 266.1 | Removed |
| 266.2 | 266.1(b) |
| 266.3 | 266.3(a) |
| 266.4 | 266.12 |
| 266.5 | 266.2 and 266.5 |
| 266.6 | 266.9(a) |
| 266.7 | 266.10 (a) and (b) |
| 266.8 | 266.11 |
| 266.9 | 266.10(b) |
| 266.10 | 266.10(c) |
| 266.11 | 266.10(d) |
| 266.12 | 266.7 |
| 266.13 | 266.15 |

A derivation table is provided to show the sources of the revised part 266.

| New section | Old section |
|---|---|
| 266.1 | 266.2 |
| 266.2 | 266.5 |
| 266.3 | 266.3 |
| 266.4 | none |
| 266.5 | 266.5 |
| 266.6 | none |
| 266.7 | 266.12 |
| 266.8 | none |
| 266.9 | 266.6 |
| 266.10 | 266.7, 266.9, 266.10, 266.11 |
| 266.11 | 266.8 |
| 266.12 | 266.4 |
| 266.13 | none |
| 266.14 | none |
| 266.15 | 266.13 |

**List of Subjects in 20 CFR Part 266**

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, chapter II Part 266 of the Code of Federal Regulations is proposed to be revised as follows:

## PART 266—REPRESENTATIVE PAYMENT

Sec.

266.1 Introduction.
266.2 Recognition by the Board of a person to act in behalf of another.
266.3 Information considered in determining whether to make representative payments.
266.4 Information considered in selecting a representative payee.
266.5 Order of preference in selecting a representative payee.
266.6 Information to be submitted by a representative payee applicant; face-to-face interview.
266.7 Accountability of a representative payee.
266.8 Advance notice of the determination to make representative payment.
266.9 Responsibilities of a representative payee.
266.10 Use of benefit payments.
266.11 Conservation and investment of benefit payments.
266.12 Effect of matters or actions submitted or taken by legal guardian, etc.
266.13 When a new representative payee will be selected.
266.14 When representative payment will be stopped.
266.15 Transfer of accumulated benefit payments.

**Authority:** 45 U.S.C. 231k and 231f.

### § 266.1 Introduction.

(a) *Explanation of representative payment.* This subpart explains the principles and procedures that the Board follows in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds which he or she receives on behalf of an annuitant. A representative payee may be either a person or an organization selected by the Board to receive benefits on behalf of an annuitant. A representative payee will be selected if the Board believes that the interest of an annuitant will be served by representative payment rather than direct payment of benefits. Generally, the Board will appoint a representative payee if it determines that the annuitant is not able to manage or direct the management of benefit payments in his or her interest.

(b) *Statutory authority.* Section 12 of the Railroad Retirement Act provides that every annuitant and claimant shall be conclusively presumed to have been competent until the date on which the Board receives a notice in writing that a legal guardian or other person legally vested with the care of the person or estate of an incompetent or a minor has been appointed: *Provided, however,* That despite receiving such notice, the Board may, if it finds the interests of such annuitant or claimant to be served thereby, recognize actions by, conduct transactions with, and make payments to such annuitant or claimant.

(c) *Policy used to determine whether to make representative payment.* (1) In accordance with section 12 of the Railroad Retirement Act, the Board's policy is that every annuitant has the right to manage his or her own benefits. However, some annuitants due to mental or physical condition or due to their youth may be unable to do so. If the Board determines that the interests of an annuitant would be better served if benefit payments were certified to another person as representative payee, the Board will appoint a representative payee in accordance with the procedures set forth in this subpart. The Board may appoint a representative payee even if the annuitant is a legally competent individual. If the annuitant is a legally incompetent individual, the Board may appoint the legal guardian or some other person as a representative payee.

(2) If payment is being made directly to an annuitant and a question arises concerning his or her ability to manage or direct the management of benefit payments, the Board may, if the annuitant is 18 years old or older and has not been adjudged legally incompetent, continue to pay the annuitant until the Board makes a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

### § 266.2 Recognition by the Board of a person to act in behalf of another.

(a) Regardless of the receipt of written notice of the appointment of a guardian or other person legally vested with the care of the person or estate of an incompetent or a minor who is receiving or claiming benefits or to whom any right or privilege is extended under the law, the Board may, in its discretion, validly recognize actions by and conduct transactions with others acting on behalf of the individual found by the

Board to be a minor or to be unable to manage his or her affairs, if the Board finds such actions or transactions to be in the best interest of such individual.

(b) In the absence of a written notice of the appointment of a guardian or other person legally vested with the care of the person or estate of an incompetent or minor, the Board shall, except where special circumstances appear, recognize a person to act on behalf of an individual under the following circumstances:

(1) When the individual has been adjudged mentally incompetent by a court having jurisdiction to do so;

(2) When the individual has been committed to a mental institution by a court having jurisdiction to do so;

(3) When the individual is an inmate of a mental institution;

(4) When the individual is less than 16 years of age; or

(5) When the individual is between 16 and 18 years of age and is in the care of another person and does not have the capacity to act on his or her own behalf.

**§ 266.3 Information considered in determining whether to make representative payments.**

In determining whether to make representative payment, the Board may consider the following information:

(a) *Evidence of legal guardianship.* Evidence of the appointment of a legal guardian or other person legally vested with the care of the person or estate of an incompetent or a minor shall be a certified copy of the court's determination.

(b) *Medical evidence.* The Board may use medical evidence, when such is available, to help determine whether an annuitant is capable of managing or directing the management of benefit payments. For example, a statement by a physician or other medical professional based upon his or her recent examination of the annuitant and his or her knowledge of the annuitant's present condition will be used in the Board's determination, if it includes information concerning the nature of the annuitant's illness, the annuitant's chances for recovery and the opinion of the physician or other medical professional as to whether the annuitant is able to manage or direct the management of benefit payments.

(c) *Other evidence.* The Board may also consider statements of relatives, friends, and other people in a position to know and observe the annuitant, which contain information helpful to the Board in deciding whether the annuitant is able to manage or direct the management of benefit payments.

**§ 266.4 Information considered in selecting a representative payee.**

In selecting a representative payee, the Board tries to select the person, agency, organization or institution that will best serve the interest of the annuitant. In making this selection, the Board may consider such factors as the following:

(a) The relationship of the person to the annuitant, including the type of relationship, e.g., family or legal guardianship; degree of relationship, if the person is a family member; and the length of association, if a non-family member;

(b) The amount of interest that the person shows in the annuitant, including the contributions the person makes to the welfare of the annuitant and the contacts and frequency of such contacts with the annuitant;

(c) Any legal authority the person, agency, organization or institution has to act on behalf of the annuitant;

(d) Whether the potential payee has custody of the annuitant;

(e) Whether the potential payee is in a position to know of and look after the needs of the annuitant;

(f) Verification of the social security account number, name, address, telephone number, place of employment, and main source of income if applicable, accepted as part of any person's application for designation as a representative payee, unless such person's identification has already been established to the satisfaction of the Board;

(g) Whether an applicant for designation as a representative payee has ever been convicted of a felony or misdemeanor under the statutes administered by the Board or the Social Security Act, or convicted of a felony under any other Federal or State law; and

(h) Whether the services of such person as representative payee have previously been terminated, suspended, or declined by the Board or the Social Security Administration for:

(1) Misuse of the benefits of the annuitant for whom they were intended;

(2) Failure to comply with any provision of or regulation under the Railroad Retirement Act or the Social Security Act; or

(3) Failure to meet the requirements of this part.

**§ 266.5 Order of preference in selecting a representative payee.**

As a guide in selecting a representative payee, categories of preferred payees have been established. These preferences are flexible. The primary concern of the Board is to select the payee who will best serve the annuitant's interest. The preferences are:

(a) For annuitants 18 years old or older, the preference is:

(1) A legal guardian, spouse, or other relative who has custody of the annuitant or who demonstrates strong concern for the personal welfare of the annuitant;

(2) A friend who has custody of the annuitant or demonstrates strong concern for the personal welfare of the annuitant;

(3) A public or nonprofit agency or institution having custody of the annuitant;

(4) A private institution operated for profit and licensed under State law, which has custody of the annuitant; and

(5) Persons other than those listed above who are qualified to carry out the responsibilities of a representative payee and who are able and willing to serve as a payee for an annuitant; *e.g.*, members of community groups or organizations who volunteer to serve as representative payee for an annuitant.

(b) For annuitants under age 18, the preference is:

(1) A natural or adoptive parent who has custody of the annuitant, or a legal guardian;

(2) A natural or adoptive parent who does not have custody of the annuitant, but is contributing toward the annuitant's support and is demonstrating strong concern for the annuitant's well-being;

(3) A relative or stepparent who has custody of the annuitant;

(4) A natural or adoptive parent who does not have custody of the annuitant and is not contributing toward his or her support but is demonstrating strong concern for the annuitant's well-being;

(5) A relative who does not have custody of the annuitant but is contributing toward the annuitant's support and is demonstrating concern for the annuitant's well-being;

(6) A relative or close friend who does not have custody of the annuitant but is demonstrating concern for the annuitant's well-being; and

(7) An authorized social agency or custodial institution.

**§ 266.6 Information to be submitted by a representative payee applicant; face-to-face interview.**

Before the Board selects a representative payee, the Board may request the payee applicant to provide information concerning the factors listed in § 266.4 of this part. An employee of the Board may also conduct a face-to-face interview with the payee applicant.

(Approved by the Office of Management and Budget under control number 3220–0052.)

**§ 266.7 Accountability of a representative payee.**

(a) A representative payee is accountable for the use of benefits. The Board will require periodic written reports from representative payees. The Board may also, at the Board's option, verify how a representative payee used benefit payments. A representative payee must keep records of what was done with all benefit payments in order to make accounting reports. The Board may ask the following questions:

(1) The amount of benefit payments on hand at the beginning of the accounting period;

(2) How the benefit payments were used;

(3) How much of the benefit payments were saved and how the savings were invested;

(4) Where the annuitant lived during the accounting period;

(5) The amount of the annuitant's income from other sources during the accounting period. The Board may ask for information about other funds to enable the Board to evaluate the use of benefit payments; and

(6) Whether the representative payee has been convicted of a felony or misdemeanor offense under the statutes administered by the Board or by the Social Security Administration within the past 15 years or whether any such charges are pending.

(b) An individual to whom payments are certified as representative payee on behalf of an annuitant shall submit a written report in such form and at such times as the Board may require, accounting for the payments certified to him or her on behalf of the annuitant. If, however, such payee is a court-appointed fiduciary and, as such, is required to make an annual accounting to the court, a true copy of each such account filed with the court may be submitted in lieu of the accounting form prescribed by the Board. If any representative payee fails to submit the required accounting within a reasonable period of time after it is requested, no further payments shall be made to him or her on behalf of the annuitant unless for good cause shown, the default of the representative payee is excused by the Board, and the required accounting is thereafter submitted.

(c) At any time after the Board has selected a representative payee, the Board may ask such payee to submit information showing a continuing relationship to the annuitant and a continuing responsibility for the care of the annuitant. If the representative payee does not give the Board the requested information within a reasonable period of time, the Board may stop paying such payee unless the Board determines that the payee had a good reason for not complying with the Board's request, and the Board receives the information requested.

(Approved by the Office of Management and Budget under control numbers 3220–0052 and 3220–0151.)

**§ 266.8 Advance notice of the determination to make representative payment.**

(a) As a general rule, whenever the Board intends to make representative payment and to name a representative payee, the Board will notify the annuitant or, in the case of an unemancipated minor under age 18, or an individual who is legally incompetent, the individual acting on his or her behalf of the Board's proposed actions. Such notice will tell the person that the Board plans to name a representative payee and who that payee will be. The notice will also ask the person to contact the Board within 15 days of the date of the notice if he or she objects to either proposed action. If he or she objects to either proposed action, the objecting party may—

(1) Review the evidence upon which the proposed actions will be based; and

(2) Submit any additional evidence regarding the proposed actions.

(b) If the objecting party objects to the proposed actions, the Board will review its proposed determinations and consider any additional information provided. The Board will then issue a decision on whether to appoint a representative payee and who that payee will be. If the objecting party is dissatisfied with either determination, he or she may request a reconsideration under part 260 of this chapter.

(c) If the objecting party does not file a timely objection to the proposed actions, the Board will issue a decision on whether to appoint a representative payee and who that payee will be. If the objecting party is dissatisfied with either determination, he or she may request a reconsideration as authorized by § 260.3 of this chapter.

(d) A request for reconsideration or an appeal from a determination under this section under part 260 of this chapter shall not prevent the Board from making payments to a representative payee during the pendency of such reconsideration or appeal.

(e) The Board's failure or refusal to select an individual as representative payee or the Board's termination of representative payee status with respect to an individual is not subject to a request for reconsideration or an appeal under part 260 of this chapter by such individual.

**§ 266.9 Responsibilities of a representative payee.**

(a) A representative payee shall, subject to review by the Board and to such requirements as it may from time to time prescribe, apply the payments made to him or her on behalf of the annuitant only for the use and benefit of such annuitant, and in a manner and for purposes which are in the annuitant's best interests.

(b) A representative payee shall notify the Board of any event that will affect the amount of benefits the annuitant receives or the right of the annuitant to receive benefits.

(c) A representative payee shall notify the Board of any change in his or her circumstances that would affect performance of the payee responsibilities.

**§ 266.10 Use of benefit payments.**

(a) *Current maintenance.* Payments made to an individual as representative payee on behalf of an annuitant shall be considered as having been applied for the use and benefit of the annuitant when they are used for the annuitant's current maintenance. Current maintenance includes costs incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.

*Example:* An aged annuitant is entitled to a monthly railroad retirement benefit of $800. His son, who is his representative payee, disburses his benefits in the following manner:

| | |
|---|---|
| Rent and utilities | $500 |
| Medical | 50 |
| Food | 80 |
| Clothing (coat) | 90 |
| Savings | 60 |
| Miscellaneous | 20 |

The above expenditures would represent proper disbursements on behalf of the beneficiary.

(b) *Institutional care.* If an annuitant is receiving care in a Federal, state, or private institution because of mental or physical incapacity, current maintenance includes the customary charges made by the institution in providing care and maintenance, as well as expenditures for those items which will aid in the annuitant's recovery or release from the institution or expenses for personal needs which will improve the annuitant's conditions while in the institution.

(c) *Support of legal dependents.* If the current maintenance needs of the annuitant are met, the representative payee may use part of the payments for

the support of the annuitant's legally dependent spouse, child, and/or parent.

(d) *Claims of creditors.* Where a debt arose prior to the first month for which benefits are certified to a representative payee, the representative payee may satisfy such debt out of present benefit payments only if the current and reasonably foreseeable needs of the annuitant are met.

*Example:* A retroactive railroad retirement annuity check in the amount of $2,100, representing benefits due for November 1989 through January 1990, was issued on behalf of the annuitant to the annuitant's daughter, who is the representative payee. The check was certified in February 1990. The nursing home, where the annuitant resides, is owed money for maintenance expenses the annuitant incurred prior to February 1990.

If the accrual is not required for the annuitant's current maintenance and the annuitant had no foreseeable needs which would require large disbursements, the expenditure of the accrual or part thereof for the past due maintenance charges would be consistent with the Board's guidelines.

**§ 266.11 Conservation and investment of benefit payments.**

(a) *General.* If benefit payments made to a representative payee are not needed for the annuitant's current maintenance or reasonably foreseeable needs or the support of legal dependents or to pay creditors in accordance with § 266.10, they shall be conserved or invested on behalf of the annuitant. Such funds must be invested in accordance with the rules applicable to investment of trust estates by trustees. Any investment must show clearly that the representative payee holds the property in trust for the annuitant.

(b) *Preferred investments.* Preferred investments for excess funds are deposits in an interest or dividend paying account in a bank, trust company, credit union, or savings and loan association which is insured under either Federal or State law, direct obligations of the United States Government or obligations for which both principal and interest are guaranteed unconditionally by the United States Government. The account must be in a form which shows clearly that the representative payee has only a fiduciary, and not a personal, interest in the funds. If the payee is the legally appointed guardian or fiduciary of the annuitant, the account may be established to indicate this relationship. If the payee is not the legally appointed guardian or fiduciary, the accounts may be established as follows:

(1) For U.S. Savings Bonds—

_____(Name of annuitant)
_____(Social Security Number),
for whom _____(Name of payee)
is representative payee for Railroad Retirement benefits;

(2) For interest or dividend paying accounts—

_____(Name of annuitant) by
_____(Name of payee),
representative payee.

(c) *Interest and dividend payments.* The interest and dividends which result from an investment are the property of the annuitant and may not be considered to be the property of the representative payee.

(d) *Prohibition against commingling.* The representative payee shall not commingle his or her personal funds with the representative payments. A representative payee may consolidate and maintain an annuitant's funds in an account with other annuitants if he or she maintains a separate, accurate and complete accounting of each annuitant's funds under his or her control.

**§ 266.12 Effect of matters or actions submitted or taken by legal guardian, etc.**

All matters and actions in connection with an annuity submitted or taken by the guardian or other person legally vested with the care of the person or estate of an incompetent or a minor shall be considered by the Board in the same manner and with the same effect as though such matters or actions had been submitted or taken by the ward, if the ward had capacity to act in his or her own behalf; *Provided, however,* That the Board may, if it deems it necessary, require the guardian or other person legally vested with the care of the person or estate of an incompetent or a minor to submit a certified copy of an order from the court of appointment authorizing some particular action which the guardian or other person legally vested with the care of the person or estate desires to take in connection with the application.

**§ 266.13 When a new representative payee will be selected.**

When the Board learns that the interests of the annuitant are not served by continuing payment to the present representative payee or that the present representative payee is no longer able to carry out the payee responsibilities, the Board will undertake to find a new representative payee. The Board will select a new representative payee if the Board finds a preferred payee or if the present payee—

(a) Has not used the benefit payments on the annuitant's behalf in accordance with the guidelines in this subpart;

(b) Has not carried out the other responsibilities described in this part;

(c) Dies;

(d) No longer wishes to be representative payee;

(e) Is unable to manage the benefit payments; or

(f) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information which the Board requests.

**§ 266.14 When representative payment will be stopped.**

If an annuitant receiving representative payment shows the Board that he or she is mentally and physically able to manage or direct the management of benefit payments, the Board will make direct payment to the annuitant. Information which the annuitant may give to the Board to support his or her request for direct payment include the following:

(a) A physician's statement regarding the annuitant's condition, or a statement by a medical officer of the institution where the annuitant is or was confined, showing that the annuitant is able to manage or direct the management of his or her funds;

(b) A certified copy of a court order restoring the annuitant's rights in a case where an annuitant was adjudged legally incompetent; or

(c) Other evidence which establishes the annuitant's ability to manage or direct the management of benefits.

**§ 266.15 Transfer of accumulated benefit payments.**

A representative payee who has conserved or invested funds from railroad retirement payments made to him or her on behalf of an annuitant shall, upon direction of the Board, transfer any such funds (including interest or dividends earned from investment of such funds) to a successor representative payee appointed by the Board, or, at the option of the Board, shall transfer such funds, including interest, to the Board for payment to a successor payee or to the annuitant.

Dated: March 2, 1993.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 93–5414 Filed 3–9–93; 8:45 am]

BILLING CODE 7905–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 878

[Docket No. 91N–0281]

### General and Plastic Surgery Devices; Effective Date of Requirement for Premarket Approval of Silicone Inflatable Breast Prosthesis; Extension of Comment Period

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to April 8, 1993, the comment period on the proposed rule to amend its regulations to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the silicone inflatable breast prosthesis, a medical device. The proposed rule was published in the **Federal Register** of January 8, 1993 (58 FR 3436). FDA is taking this action in response to a request for an extension of the comment period.

**DATES:** Written comments by April 8, 1993.

**ADDRESSES:** Submit written comments to the Docket Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Callahan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 8, 1993 (58 FR 3436), FDA issued a proposed rule to amend its regulations to require the filing of a PMA or a notice of completion of a PDP for the silicone inflatable breast prosthesis, a medical device. Interested persons were given until March 9, 1993, to respond to the proposed rule. FDA received one request for an extension of the comment period for 120 days. The request stated that additional time was needed to review all of the clinical issues, medical literature, clinical endpoint, and safety criteria in order to adequately address them.

FDA agrees with the request in part and is granting a 30-day extension. Accordingly, the comment period is extended to April 8, 1993.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 4, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–5437 Filed 3–9–93; 8:45 am]

BILLING CODE 4160–01–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OR12–1–5464; AD–FRL–4603–1]

### Approval and Promulgation of State Implementation Plans: Oregon

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The EPA proposes approval of the state implementation plan (SIP) submitted by the State of Oregon for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain Federal Clean Air Act requirements for an approvable moderate PM–10 nonattainment area SIP for Grants Pass, Oregon. The rationale for the approval is set out both in this notice and in supporting technical information which is available at the address indicated below. The final action to approve this plan would have the effect of making requirements adopted by the State of Oregon, federally enforceable by EPA.

**DATES:** Comments on this proposed action must be received in writing by April 9, 1993.

**ADDRESSES:** Comments should be addressed to: Rindy Ramos, Environmental Protection Agency, Air and Radiation Branch, Docket No. OR12–1–5464, 1200 Sixth Avenue, AT–082 Seattle, Washington, 98101.

Copies of the State's submittal and other information are available for inspection during the following business hours at the following location: Environmental Protection Agency, Air and Radiation Branch (OR12–1–5464), 1200 Sixth Avenue, AT–082, Seattle, Washington, 98101.

State of Oregon Department of Environmental Quality, 811 SW., Sixth Avenue, Portland, Oregon, 97204.

**FOR FURTHER INFORMATION CONTACT:** Rindy Ramos, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington, 98101. Telephone (206) 553–6510.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Grants Pass, Oregon, area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the State of Oregon's moderate PM–10 SIP for the Grants Pass nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely submitted comments before taking final action on today's proposal.

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

Those States containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–44).

## II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565–66). In today's action, EPA is proposing to approve the plan submitted to EPA on November 21, 1990, as revised by addenda submitted on November 15, 1991 (examined together herein as a comprehensive submittal for the area). EPA has determined that the submittal meets all of the applicable requirements of the Act.

### *A. Analysis of State Submission*

#### 1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of Oregon Department of Environmental Quality (ODEQ) adopted a Grants Pass PM–10 plan at a public hearing held on November 2, 1990, and submitted the plan to EPA for approval on November 21, 1990. ODEQ subsequently adopted an addendum to the plan on November 8, 1991, and submitted the addendum to EPA for approval on November 15, 1991. ODEQ held a public hearing on September 27, 1991, to entertain public comment on the plan.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness the criteria set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). A letter dated February 24, 1991, was forwarded to the Director of the ODEQ indicating the completeness of the submittal and the next steps to be taken in the review process. In today's action EPA proposes to approve the State of Oregon Department of Environmental Quality's PM–10 SIP submittal for the Grants Pass PM–10 nonattainment area and invites public comment on the action.

[3] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

#### 2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the submission of the emissions inventory is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventory must be received with the demonstration submission (see 57 FR 13539).

The emission inventory developed for the Grants Pass Urban Growth Boundary (UGB) identified that the sources of PM–10 concentrations during 24-hour worst case winter periods are the following: residential wood combustion (54%), industrial emissions (25%), fugitive dust (13%), and transportation (7%). The emission inventory was qualitatively confirmed through receptor modeling techniques apportioning source contributions on the basis of their chemical "fingerprints."

ODEQ made an assumption in determining residential wood combustion emissions in Grants Pass. ODEQ assumed that wood heating characteristics in the Medford-Ashland nonattainment area were representative of Grants Pass and therefore could be substituted for an actual residential wood combustion emissions inventory for the Grants Pass nonattainment area. Data from a 1987 wood users survey conducted in Medford-Ashland was used to estimate wood smoke emissions. This assumption was used because: (1) A wood users survey for Grants Pass did not exist, (2) Grants Pass is located only twenty-nine miles to the west of Medford and (3) Oregon Department of Environment Quality (ODEQ) believed that the woodstove mix, percent of homes that burned wood, number of cords of wood burned per year, and percent of homes that used wood as their main source of heat would be very similar between the two areas.

To assess this assumption, ODEQ received funding from EPA to conduct a survey specific to Grants Pass during the 1991/1992 wood heating season. This study has been conducted. Preliminary results from the study indicate that the wood user characteristics, wood consumption, and stove mix are very similar between the two areas once the change in wood heating habits (due to public education and awareness) between 1987 and 1992 are taken into consideration.

EPA is proposing to approve the emissions inventory because it appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area.[4] For further details the reader is referred to the Technical Support Document (TSD) corresponding with this action, which is available at the address indicated above.

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61). Attainment of the PM–10 standard in Grants Pass, Oregon is based on three control strategies: industrial controls, woodstove certification, and a voluntary wood-burning curtailment program. The available control measures to be implemented in the Grants Pass nonattainment area will include the following:

a. Industrial Controls

On September 7, 1989, the Environmental Quality Commission adopted changes to the Industrial Rules (OAR 340–30–005 through 111), for, among other areas, Grants Pass. These rules became effective upon adoption and were submitted to EPA for approval on October 13, 1989. On November 13, 1989, EPA determined that the SIP revision was not approvable due to enforceability issues. In response to EPA's concerns, ODEQ corrected the deficiencies, added new provisions and the EQC adopted the revised rules on November 8, 1991. The corrected rules were submitted to EPA on November 15, 1991. Among other limits, these rules impose new emission limits for existing veneer dryers and existing large, wood-fired boilers (heat-input capacity of greater than 35 million BTU/Hr). EPA proposed to approve these rules in a separate notice published on November 9, 1992 (57 FR 53394) and plans to take final action in the near future.

ODEQ projects a 55 percent reduction in PM–10 emissions between 1986 and 1992 due to implementation of its industrial control limitations. However, since the state's rules became effective, one of the two large wood-fired boilers in the area permanently shut down and did not bank its emissions (July 28, 1989). In addition, another source has switched from hog fuel for its boiler and veneer drier to natural gas. The operating permit for this source will be modified to reflect the usage of natural gas. These additional reductions will further reduce PM–10 emissions in the nonattainment area to a projected 64 percent reduction in total point source emissions between 1986 and 1992.

EPA believes that the emission limits imposed on the board products industries, supported by their enforceability, will achieve the estimated emission reductions of 1,147 lbs/day. Therefore, EPA proposes to accept the 55 percent credit requested by the ODEQ.

b. Woodstove Certification

In 1983, the Oregon Legislature directed ODEQ to require that all new woodstoves sold in the state be certified through laboratory testing. As a result, stoves sold after July 1986, were required to emit particles at a rate of 50 percent less than conventional woodstoves. After July 1988, new woodstoves were required to emit 70 percent less.

The EQC adopted on March 2, 1990, and submitted to EPA on March 15, 1990, revisions to Oregon's Woodstove Certification Program making it consistent with EPA's New Source Performance Standard 40 CFR part 60, subpart AAA. Currently, all woodstoves sold in the State of Oregon must be both ODEQ and EPA certified. This SIP revision was approved by EPA as part of the Oregon SIP on June 9, 1992 (57 FR 24373).

ODEQ estimates that the woodstove certification program provides a 10.2 percent credit against baseline 1986 woodstove emissions by 1992.[5] The 10.2 percent emission reduction credit requested equals 506 pounds per day by 1994. The projected emission reductions, in conjunction with a statewide ban (OAR 340–20–010(2)) on the sale of used uncertified stoves, and a ban on the installation of used uncertified stoves, supports EPA's proposed acceptance of Oregon's woodstove certification credit claim.

c. Voluntary Woodburning Curtailment Program

The Grants Pass voluntary curtailment program includes a public education program that describes the need for the public's cooperation, the health, safety, energy, economic benefits to individuals and the community, and steps individuals can take to help reduce emissions.

Key elements of the voluntary program and public information program include: home weatherization, firewood seasoning, cleaner burning practices, proper stove installation and sizing, maintenance of woodburning systems, and curtailment of woodburning during poor ventilation episodes.

Woodburning forecasts are made after 9 a.m. but before 11 a.m. The forecasts are made before 11 a.m. so that a curtailment announcement can appear in the local daily newspaper. The advisory level is based upon expected meteorological conditions and the prior 24-hour ambient levels.

Woodburning curtailment advisories are issued at three levels: (1) a green advisory is made when the ambient concentration is expected to be 80 $\mu g/m^3$ or less, (2) a yellow advisory is made when the concentration is expected to be between 80 $\mu g/m^3$ and 120 $\mu g/m^3$, (3) a red advisory is made when the ambient concentration is expected to be greater than 120 $\mu g/m^3$.

Compliance with the advisories will be determined through surveys of woodburning activity. Data from the surveys are used to direct the public education program, evaluate progress toward achieving program goals, and in evaluating trends in PM–10 concentrations.

ODEQ requests a 25 percent emission reduction credit for its voluntary woodburning curtailment program. The 25 percent credit is greater than the 10 percent generally suggested by EPA. The recommended 10 percent credit is viewed by EPA as a "starting point in assessing the effectiveness of residential wood combustion control programs". However, final judgment of the amount of credit to be granted, is determined by EPA's regional offices, based on the program elements outlined in EPA's *Guidance Document for Residential Wood Combustion Emission Control Measures*. EPA has reviewed the ODEQ curtailment program elements, considering public education and participation, and ODEQ's experience in developing and managing curtailment programs. EPA proposes to accept the

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document appears to be consistent with the Act.

[5] This estimate uses a 1986 baseline inventory and assumes or relies on: (1) a 1% annual growth in firewood consumed by woodstoves, (2) a 2% annual decline in firewood consumed by fireplaces, (3) a useful stove life of 20 years, (4) a building permit survey conducted in Klamath Falls, Oregon indicating that 90% of permitted installations are certified stoves, (5) an annual growth in population of 1.7%, and (6) the fact that the typical certified woodstove emits 50% less than a conventional stove.

25 percent credit claimed for this control measure. Further description of this program and justification for EPA's proposed action is set out in the TSD.

d. Other Sources

Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that it would be unreasonable (and would not constitute RACM) to require the sources to implement potentially available control measures. (57 FR 13540)

ODEQ has determined that fugitive dust is not a significant source of PM–10 emissions in the area. Nevertheless, various control measures addressing sources of fugitive dust are currently required by ODEQ. While the implementation of all available fugitive dust measures would not expedite attainment in the area, these measures currently required by ODEQ should help to ensure on-going maintenance of the PM–10 NAAQS in the area. These rules are enforced under OAR 340–21–060 and are currently a part of Oregon's state adopted, federally approved SIP. EPA views these rules as strengthening the PM–10 SIP.

A similar situation exists for sources of prescribed burning. Therefore, EPA is proposing to approve a year-round ban on open burning within the city limits of Grants Pass as strengthening the SIP. A ban on open burning within the Rogue Basin Open Burning Special Control Area when the ventilation index is less than 400, was approved by EPA on June 6, 1992 (57 FR 24373) as a SIP strengthening measure.

A more detailed discussion of the control measures (including available control technology) contained in the SIP and an explanation as to why certain available control measures were not implemented, can be found in ODEQ's submittals and in the TSD. EPA has reviewed ODEQ's submittals and associated documentation and concluded that they adequately justify the control measures to be implemented. The implementation of Grants Pass, Oregon's PM–10 nonattainment plan control strategy will result in the attainment of the PM–10 NAAQS as expeditiously as practicable—by December 31, 1994. By this notice, EPA is proposing to approve ODEQ's control strategy as satisfying the RACM (including RACT) requirement.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, the state must show that attainment by December 31, 1994, is impracticable.

ODEQ conducted an attainment demonstration based upon a roll-forward and roll-back modeling analysis in the Grants Pass nonattainment area. In addition, a roll-back approach was applied to the results of a receptor modeling analysis (Chemical Mass Balance version 7.0). Both approaches were in very close agreement as to the amount of reductions needed to attain the standard (e.g. 17 percent vs 20 percent).

This demonstration indicates that the NAAQS for PM–10 will be attained by December 31, 1994, in Grants Pass, with an ambient concentration of 150 micrograms/cubic meter ($\mu g/m^3$), and will be maintained in future years. The 24-hour PM–10 NAAQS is 150 $\mu g/m^3$, and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR section 50.6). The annual PM–10 NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$(id.).

The demonstration predicted that the 24-hour design concentration in the attainment year of 1994 will be 150 $\mu g/m^3$, thus demonstrating attainment of the 24-hour PM–10 NAAQS.[6] The demonstration also showed that the PM–10 NAAQS will be maintained in future years by predicting a 24-hour "worst day" design concentration of 135 $\mu g/m^3$ for the year 2000. The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)." More detailed description of the attainment demonstration is contained in the TSD accompanying this notice.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–40 and 13541–42).

The filter analyses (chemical mass balance) indicated that on average, only 3 percent of the mass was comprised of secondary particulate. EPA believes that this is an insignificant portion and is therefore proposing to grant the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM–10 precursors.

6. Enforceability Issues

All measures and other elements in the SIP must be enforceable by ODEQ and EPA (see sections 172(c)(6) and 110(a)(2)(A), and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion including, for example, veneer dryers; existing large, wood-fired boilers with a heat input capacity of greater than 35 million BTU/Hr; and woodstoves and other woodburning activities. The SIP provides that the control measures for the affected activities apply throughout the entire nonattainment area.

Consistent with the attainment demonstration described above, the SIP requires that all affected activities must be in full compliance with the applicable SIP provisions by December 10, 1993. In addition to the applicable control measures, this includes the applicable recordkeeping requirements which are addressed in supporting technical information.

ODEQ's submittals and TSD contain further information on enforceability requirements including enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules; averaging times for compliance test methods; correctly cited references of

[6] EPA believes that an attainment demonstration for the annual PM–10 NAAQS is unnecessary. Ambient data for the four years between December 1985 and November 1989 yields an annual average of 42 $\mu g/m^3$, which is below the 50 $\mu g/m^3$ annual standard. Note also that because the implementation of RACM (including RACT) will reduce the worst case 24-hour design value below the 24-hour NAAQS, this should also serve to further maintain air quality below the annual NAAQS.

incorporated methods/rules; and reporting and recordkeeping requirements.

ODEQ also has a program that will ensure that the control measures contained in the Grants Pass PM–10 SIP are adequately enforced. The TSD contains a discussion of the personnel and funding intended to support effective implementation of the control measures.

7. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–13544). These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve reasonable further progress (RFP) or attain the PM–10 NAAQS by the applicable statutory deadline. The Grants Pass nonattainment area SIP contains the following contingency measures:

a. A mandatory woodsmoke curtailment program that is to take effect if the EPA determines that the area fails to achieve RFP or to attain the NAAQS by December 31, 1994. ODEQ has the authority to implement and enforce a mandatory curtailment program, upon notification by EPA that the area has failed to attain the NAAQS, should the City of Grants Pass or the County of Josephine fail to implement one. EPA approved these rules (OAR 340–34–150 through 175) as part of the Oregon SIP on June 9, 1992 (57 FR 24373).

b. Removal of uncertified woodstoves upon home sale for any area that fails to meet the PM–10 attainment date of December 31, 1994. These stoves would have to be removed and destroyed prior to sale of the home. EPA approved these rules (OAR 340–34–200 through 215) as part of the Oregon SIP on June 9, 1992 (57 FR 24373).

c. Reduction in industrial emissions (including source-specific emission limits) should the area fail to attain by December 31, 1994. EPA approved these rules (OAR 340–21–200 through 245) as part of the SIP on August 19, 1992 (57 FR 37468).

d. The banning of all open burning in the Rogue Basin Open Burning Control Area during November, December, January, and February of each year, should the area fail to attain by December 31, 1994. EPA approved this rule (OAR 340–23–090) as part of the SIP on June 9, 1992 (57 FR 24373).

The expected emission reductions to be achieved by implementation of the contingency measures is estimated at more than 82 tons per year. This represents at least a 30 percent reduction when compared with the 275 tons per year emission reduction in the attainment plan.

The SIP provides that each of these measures can take affect without further action by the state or EPA, should EPA determine that the Grants Pass nonattainment area has failed to achieve RFP or to attain the PM–10 standard by the statutory attainment date of December 31, 1994.

EPA is proposing to approve the Grants Pass nonattainment area contingency measures.

## III. Implications of Today's Action

EPA is proposing to approve the plan revision submitted to EPA for the Grants Pass, Oregon nonattainment area on November 21, 1990, as revised by addenda submitted on November 15, 1991. Among other things, ODEQ has demonstrated that the Grants Pass moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994. Note that EPA's proposed action includes proposed approval of the contingency measures for the Grants Pass nonattainment area.

## IV. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by April 9, 1993.

## V. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 the 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.

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

Air pollution control, hydrocarbons, intergovernmental relations, nitrogen dioxide, particulate matter, reporting and recordkeeping requirements, sulfur dioxide, and volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: February 9, 1993.

**Dana A. Rasmussen,**

*Regional Administrator.*

[FR Doc. 93–5468 Filed 3–9–93; 8:45 am]

BILLING CODE 6560–50–P

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**40 CFR Part 180**

**[PP 2E4056/P554; FRL–4188–3]**
**RIN No. 2070–AB78**

## Pesticide Tolerance for Paraquat

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for residues of the pesticide paraquat in or on the raw agricultural commodity cacao beans. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATES:** Comments, identified by the document control number [PP 2E4056/P554], must be received on or before April 9, 1993.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resource Branch, Field Operations Division (H7506C), Office of

Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5310.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 2E4056 to EPA on behalf of the Agricultural Experiment Station of Hawaii. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for residues of the herbicide paraquat (1,1'-dimethyl-4,4'bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity cacao beans at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year feeding study in dogs fed diets containing 0, 0.45, 0.93, and 1.51 milligrams/kilogram (mg/kg) of body weight (bwt) day with a no-observed-effect level (NOEL) of 0.45 mg/kg/day based on increased severity and extent of chronic pneumonitis in both sexes, especially males, at 0.93 mg/kg/day.

2. A 23-month chronic feeding/carcinogenicity study in mice fed diets containing 12.5, 37.5, and 100/125 ppm paraquat ion (the highest dose tested (HDT) was increased from 100 to 125 ppm at week 36) with a systemic NOEL of 12.5 ppm (equivalent to 1.87 mg/kg/day) based on renal tubular degeneration in the male, and weight loss and decreased food intake in female mice. There were no carcinogenic effects observed under the conditions of the study.

3. A 2-year chronic feeding/carcinogenicity study in Fischer rats fed diets containing 0, 1.25, 3.75, and 7.5 mg/kg/day with equivocal (uncertain) evidence of carcinogenicity (squamous cell carcinomas) in the head region (ear, nasal cavity, oral cavity, and skin) of male rats of the highest dose level group, and an approximate systemic NOEL of 1.25 mg/kg/day based on incidence of opacities, cataracts, and nonneoplastic lung lesions (alveolar macrophages and epithelialization and slight peribronchiolar lymphoid hyperplasia). The squamous cell carcinomas were not associated with oral exposure; they were the result of topical exposure (through powdered diet).

4. A 2-year chronic feeding/carcinogenicity study in Wistar rats fed diets containing 6, 30, 100 and 300 ppm (paraquat dichloride) with a systemic NOEL of 100 ppm (equivalent to 5 mg/kg/day) based on increased mortality in males and females; decreased erythrocytes, hemoglobin, and serum protein in males and females; decreased hematocrit, glucose and corpuscular cholinesterase activity in males; decreased leukocytes, albumin to globulin ration and alkaline phosphatase; increased polymorphonucleocytes in males; increased potassium and glucose in females; decreased absolute and/or relative weights of heart (males and females), liver and brain (females); and increased absolute weights of kidneys (males and females) at the highest dose tested (HDT) (equivalent to 15 mg/kg/day). There was no evidence of carcinogenicity observed under the conditions of the study.

5. A developmental toxicity study in rats given gavage dosages of 1, 5, and 10 mg paraquat ion/kg bwt from day 6 through day 15 of pregnancy with a NOEL for fetotoxic effects of 1.0 mg/kg/day based on weight reduction and slight retardation in ossification at 5.0 mg/kg/day, and a maternal NOEL of 1.0 mg/kg/day based on piloerection, hunched appearance, and weight loss at 5.0 mg/kg/day. There was no evidence of developmental toxicity observed under the conditions of the study.

6. A developmental toxicity study in mice given gavage dosages of 1, 5, and 10 mg/kg/day with no developmental toxicity observed under the conditions of the study at any dosage level tested.

7. A three-generation reproduction study with rats fed diets containing 25, 75, and 150 ppm with a systemic NOEL of 25 ppm (equivalent to 1.25 mg/kg/day) based on an increased incidence of alveolar histiocytosis in the lungs of male and female parents. There were no reproductive effects observed under the conditions of the study.

8. Paraquat was negative in 10 mutagenicity studies (mostly gene mutation and chromosome aberration studies and one DNA damage/repair assay); weakly positive in four studies (two gene mutation, one chromosome aberration, and one DNA damage/repair assay); and positive in four studies (all DNA damage/repair assays).

The Agency (Peer Review Committee) initially classified paraquat as a category "C" carcinogen based on the significant increase of squamous cell carcinomas in the head region of the high-dose males in the Fisher rat chronic feeding/carcinogenicity study. Review of the study by an independent laboratory concluded that those tumor sites should not be combined; without the combination, there were no statistically significant tumor increases for any particular tumor type. Discussion and review by the Agency (Peer Review Committee) concluded that these tumor sites normally should not be combined when the exposure to the chemical is by the oral route and that these tumors are likely the result of topical exposure to paraquat contained in the powdered diet (paraquat is a topical irritant), not the result of exposure through the gastrointestinal tract.

The Agency considered two additional studies (rat and mouse carcinogenicity studies done by the Japanese) and further evaluated the tumors in the male rats.

Based on all the information, the Agency concluded that there is no evidence of carcinogenicity in male Wistar rats at 12 mg/kg/day (HDT) and female Wistar rats at 15 mg/kg/day. The Agency concluded that there was at best equivocal evidence of carcinogenicity in male Fisher rats at 7.5 mg/kg/day and that this equivocal evidence was associated with irritation due to topical exposure, and not with oral exposure. Paraquat was, therefore, placed in Category E (not a human carcinogen). Because paraquat is a restricted-use pesticide and precautionary measures are required to protect applicators from

the acute toxicity of the chemical, the potential for carcinogenic effects by excessive (irritating) topical exposure is not a concern for applicators.

The reference dose (RfD) is established at 0.0045 mg/kg bwt/day based on a NOEL of 0.45 mg/kg/day from the 1-year dog study and an uncertainity factor of 100. The theoretical maximum residue contribution (TMRC) from existing uses of paraquat is estimated at 42 percent of the RfD for the general U.S. population. Existing uses and the proposed use of paraquat utilize less than 100 percent of the RfD for all population subgroups. The proposed tolerance for cocoa beans would utilize a maximum of 0.13 percent of the RfD.

The nature of the residue is adequately understood and an adequate analytical method, colorimetry, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II.

No secondary residues in meat, milk, poultry, or eggs are expected since cacao beans are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.205 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4056/P554]. All written comments filed in response to this petition will be available in the Public Response and Program Resource Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1993.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.205, by amending paragraph (a) in the table therein by adding and alphabetically inserting the commodity, to read as follows:

**§ 180.205 Paraquat; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Cacao beans | 0.05 |
| * * * * * | |

* * * * *

[FR Doc. 93-5102 Filed 3-9-93; 8:45 am]

BILLING CODE 6560-50-F

## 40 CFR Part 180

**[PP 8E3574/P552; FRL-4175-2]**
**RIN 2070-AC18**

## Pesticide Tolerance for Terbufos

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish a 2-year time-limited import tolerance for the combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) coffee beans. This proposal to establish a maximum permissible level for residues of the insecticide/nematicide was requested by the American Cyanamid Co.

**DATES:** Comments, identified by the document control number [PP 8E3574/P552], must be received on or before April 9, 1993.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-6600.

**SUPPLEMENTARY INFORMATION:** The American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, has submitted pesticide petition (PP) 8E3574 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for the combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a lowest-observable-effect level (LOEL) of 0.015 milligram/kilogram/day (mg/kg/day) based on the inhibition of plasma cholinesterase activity.

2. A 4-week dog plasma cholinesterase study with a no-observable-effect level (NOEL) of 0.0013 mg/kg/day based on the inhibition of plasma cholinesterase activity.

3. A 1-year rat feeding study with a no-observable-effect level (NOEL) of 0.5 ppm (0.025 mg/kg) based on the inhibition of plasma and brain cholinesterase activity.

4. An 18-month mouse carcinogenicity study with no carcinogenic effects observed at dosage levels up to and including 12.0 ppm (1.7 mg/kg/day), which was the highest level tested.

5. A 2-year rat carcinogenicity study with no carcinogenic effects observed at doses up to and including 2.0 ppm (0.10 mg/kg/day).

6. A three-generation rat reproduction study with a NOEL of 0.25 ppm (0.0125 mg/kg) for reproductive effects.

7. A rat teratology study with a NOEL of 0.1 mg/kg/day for developmental toxicity.

8. A rabbit teratology study with a NOEL of 0.25 mg/kg/day for developmental toxicity.

9. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tested was 40 mg/kg).

10. Several mutagenicity tests which were all negative. These include a dominant lethal study in rats; an acute *in vivo* cytogenetic assay in rats; an Ames test including metabolic activation; a DNA repair chromosomal aberration (CHO cells); CHO/HGPRT mutation assay; and a rat hepatocyte primary culture/DNA repair test.

The reference dose (RfD), based on the plasma cholinesterase inhibition (ChE) NOEL as defined in a 4-week dog study (0.0013 mg/kg/day) and using a safety factor of 10, is calculated to be 0.00013 mg/kg of body weight (bwt)/day. The theoretical maximum residue contribution (TMRC) is 0.000052 mg/kg/bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by 0.000003 mg/kg/bwt/day (2 percent of the RfD). These tolerances and previously established tolerances utilize a total of 42.1 percent of the RfD for the overall U.S. population.

The nature of the residues is adequately understood for the use of terbufos on coffee beans imported from Central America. The nature of the residues in plants is adequately defined, and there are no animal feed items involved with this use. Therefore, it is expected that no secondary residues in meat, milk, poultry, and eggs will result from the use of the pesticide on coffee beans.

An adequate analytical method, gas chromatography with a flame photometric detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

The available rat metabolism study was found to only partially satisfy current guideline requirements (85-1). Because of the lack of an acceptable guideline rat metabolism study, the Agency is limiting the period of time that the proposed regulation is to be in effect. A new rat metabolism study has been received and is currently under evaluation. Should the Agency find that the new metabolism study is acceptable, it will reassess the tolerance for coffee beans and, if appropriate, will establish a permanent tolerance for this commodity. There are currently no actions pending against the continued registration of this chemical.

Residues not in excess of 0.05 part per million in or on coffee beans after expiration of the tolerance will not be considered actionable if the insecticide-nematicide is legally applied during the term of, and in accordance with, provisions of the time-limited tolerance.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.352 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3574/P552]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1993.

**Frank Sanders,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.352, by adding new paragraph (b), to read as follows:

**§ 180.352 Terbufos; tolerances for residues.**

* * * * *

(b) A time-limited tolerance to expire (*insert date 24 months after effective date of final rule*) is established for combined residues of the insecticide/nematicide terbufos (*S*-[[1,1-dimethyl)thio]methyl] *0,0*-diethyl phosphorodithioate and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodity:

| Commodity | Parts per million |
|---|---|
| Coffee beans | 0.05 |

There are no U.S. registrations as of March 10, 1993 for coffee beans.

[FR Doc. 93-5103 Filed 3-9-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300278; FRL-4572-8]

## Fumaric Acid-Isophthalic Acid Styrene-Ethylene/Propylene Glycol Copolymer; Tolerance Exemption

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that an exemption from the requirement of a tolerance be established for residues of fumaric acid-isophthalic acid styrene-ethylene/propylene glycol copolymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Sandoz Agro, Inc.

**DATES:** Comments, identified by the document control number [OPP-300278], must be received on or before April 9, 1993.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7252.

**SUPPLEMENTARY INFORMATION:** At the request of DowElanco, P.O. Box 1706, Midland, MI 48641-1706, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum average molecular weight of the above-mentioned copolymer is $1 \times 10^{18}$. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking

proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300278]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: February 23, 1993.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * * * | | |
| Fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer (minimum average molecular weight 1 X $10^{18}$). | | Encapsulating agent |
| * * * * * * * | | |

* * * * *

[FR Doc. 93-5101 Filed 3-9-93; 8:45 am]

BILLING CODE 6560-50-F

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**40 CFR Part 180**

**[OPP-300279; FRL-4574-6]**

**RIN 2070-AC18**

## 2-[Methyl [(Perfluoroalkyl) Sulfonyl] Amino]alkyl ($C_2$-$C_8$) Acrylate-Alkyl ($C_2$-$C_8$) Methacrylates-N-Methylolacrylamide Copolymer and Titanium Dioxide; Tolerance Exemptions

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that exemptions from the requirement of a tolerance be established for residues of 2-[methyl[(perfluoroalkyl) sulfonyl]amino]alkyl ($C_2$-$C_8$) acrylate-alkyl ($C_2$-$C_8$) methacrylates-*N*-methylolacrylamide copolymer when used as an inert ingredient (water repellant agent) in pesticide formulations applied to animals and for residues of titanium dioxide (CAS Reg. No. 13463-67-7) when used as an inert ingredient (colorant on seed) in pesticide formulations applied to seeds for planting. These proposed regulations were requested by SmithKline Beecham Animal Health and Becker-Underwood, Inc., respectively.

**DATES:** Comments, identified by the document control number [OPP-300279], must be received on or before April 9, 1993.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Rosalind L. Gross, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5971.

**SUPPLEMENTARY INFORMATION:** SmithKline Beecham Animal Health, 1600 Paoli Pike, P.O. Box 2650, West Chester, PA, 19380-6014, submitted pesticide petition (PP) 2E4147 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for residues of 2-[methyl [(perfluoroalkyl)sulfonyl]amino]alkyl ($C_2$-$C_8$) acrylate-alkyl ($C_2$-$C_8$) methacrylates-*N*-methylolacrylamide copolymer when used as an inert ingredient (water repellant agent) in pesticide formulations applied to animals.

Becker-Underwood, Inc., 801 Dayton Ave., Ames, IA 50010, submitted pesticide petition (PP) 2E4128 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) to expand an existing exemption from the requirement of a

tolerance for residues of titanium dioxide (CAS Reg. No. 13463-67-7) when used as an inert ingredient (pigment/coloring agent in plastic bags used to wrap growing bananas (preharvest)) to include the additional use as a colorant on seeds for planting.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemptions for the above-mentioned copolymer and titanium dioxide will not need to be submitted. The rationale for this decision is described below.

**Copolymer Exemption Data**

2-[Methyl[(perfluoroalkyl)sulfonyl] amino]alkyl ($C_2$-$C_8$) acrylate-alkyl ($C_2$-$C_8$) methacrylates-*N*-methylolacrylamide copolymer does not meet all the criteria (described in 40 CFR 723.250) established by the Agency to identify categories of polymers that present low risk and that are, therefore, exempt from certain premanufacture notice requirements (PMNR) of the Toxic Substances Control Act. Nonetheless, the Agency recognizes that several characteristics of this polymer would limit the risks to human health and the environment. These characteristics, some of which are similar to the PMNR exemption criteria for polymers, are as follows:

1. 2-[Methyl[(perfluoroalkyl)sulfonyl] amino]alkyl ($C_2$-$C_8$) acrylate-alkyl ($C_2$-$C_8$) methacrylates-*N*-methylolacrylamide copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11).

2. The average molecular weight of the copolymer is 50,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

3. The copolymer is not cationic, nor is it reasonably anticipated to become such.

4. The copolymer contains more than 32.0 percent by weight of the atomic element carbon.

5. The copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, oxygen, and sulfur.

6. The copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or derivative or modification of a biopolymer that is substantially intact.

7. The copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

2-[Methyl[(perfluoroalkyl)sulfonyl] amino]alkyl ($C_2$-$C_8$) acrylate-alkyl ($C_2$-$C_8$) methacrylates-*N*-methylolacrylamide copolymer deviates in two areas from the set of criteria described in 40 CFR 723.250 to identify low-risk categories of polymers that are exempt from some PMNR requirements. A description of these deviations follows, along with an explanation of why the Agency does not consider them to be obstacles to an exemption from data in this case:

A. The copolymer is manufactured from reactants containing halogen atoms. However, the Agency's concern is minimal with larger fluorinated polymer molecules such as this one, which are considered unreactive.

B. The copolymer may contain a potentially reactive functional group that is intended or reasonably anticipated to undergo further reaction. However, the weight of the copolymer that is equivalent to 1 gram-formula weight of potentially reactive functional group is greater than 5,000 grams. Therefore, the potentially reactive functional group is less than 2.0 weight percent of the copolymer and as such is of minimal concern.

**Titanium Dioxide Exemption Data**

1. Titanium dioxide is exempt from the requirement of a tolerance under 40 CFR 180.1001(d) when used as an inert ingredient (pigment/coloring agent in plastic bags used to wrap growing bananas (preharvest)) in pesticide formulations applied to growing crops only.

2. Titanium dioxide is exempt from the requirement of a tolerance under 40 CFR 180.1001(e) when used as an inert ingredient (pigment/colorant agent in pesticide formulations for animal tags) in pesticide formulations applied to animals.

3. Titanium dioxide is considered safe for use in coloring drugs under 21 CFR 73.575.

4. Titanium dioxide is considered safe for use in coloring drugs under 21 CFR 73.1575.

5. Titanium dioxide is considered safe for use as a color additive in cosmetics under 21 CFR 73.2575.

6. Titanium dioxide is considered safe for use as a color additive in contact lenses under 21 CFR 73.3126.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and tolerances are not needed to protect the public health. Therefore, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [OPP-300279]. All written comments filed in response to these petitions will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial

number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: March 2, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. In § 180.1001, paragraph (d) table is amended by revising the entry for titanium dioxide and paragraph (e) table is amended by adding and alphabetically inserting the following inert ingredient, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * * * | | |
| Titanium dioxide (CAS Reg. No. 13463-67-7) | | Pigment/coloring agent in plastic bags used to wrap growing bananas (preharvest), colorant on seeds for planting |
| * * * * * * * | | |

(e) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * * * | | |
| 2-[Methyl[(perfluoroalkyl)sulfonyl]amino]alkyl ($C_2$-$C_8$) acrylate-alkyl ($C_2$-$C_8$) methacrylates-*N*-methylolacrylamide copolymer, average molecular weight 50,000.. | | Water repellant agent |
| * * * * * * * | | |

[FR Doc. 93-5364 Filed 3-9-93; 8:45 am]

BILLING CODE 6560-50-F

## 40 CFR Parts 180, 185, and 186

[PP 6F3362, FAP 6H5493/P556; FRL-4573-4]

RIN 2070-AC18

## Pesticide Tolerances for Metalaxyl

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish a tolerance for residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethyl-aniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl) alanine methyl ester in or on grapes at 2.0 parts per million (ppm), wet and dry grape pomace at 10.0 ppm, raisins at 6.0 ppm and raisin waste at 10.0 ppm. This regulation to establish the maximum permissible levels for residues of metalaxyl in or on the commodities was requested in petitions submitted by the Ciba-Geigy Corp.

**DATES:** Comments, identified by the document control number, [PP 6F3362 and FAP 6H5493/P556], must be received on or before April 9, 1993.

**ADDRESSES:** By mail, submit written comments to: Public Document and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128C at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7382.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of March 19, 1986 (51 FR 9513), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide tolerance petition, PP 6F3362, and a food/feed additive petition, FAP 6H5493, to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)), propose the establishment of tolerances for the fungicide metalaxyl [*N*-(2,6-dimethyl-phenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxymethyl-6-methyl)-*N*-(methoxyacetyl) alanine methyl ester in or on grapes at 2.0 ppm, and in or on the processed commodities wet grape pomace at 3.0 ppm, dry grape pomace at 6.0 ppm, grape juice at 2.0 ppm, grape wine at 2.0 ppm, raisins at 6.0 ppm, and raisin waste at 9.0 ppm. Since then Ciba-Geigy Corp. has petitioned the Agency to amend the proposed tolerances for use in or on

grapes at 2.0 ppm, wet and dry grape pomace at 10.0 ppm, raisins at 6.0 ppm, and raisin waste at 10.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in support of the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances and food additive regulation are being sought and capable of achieving the intended physical or technical effect.

The toxicological data considered in support of the tolerance include the following:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 parts per million (ppm)).

2. A developmental toxicity study in rats with a NOEL of 400 mg/kg bwt (highest dose tested [HDT]). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl did not induce gene mutations in bacteria, yeast, and lymphoma cells *in vitro* with or without metabolic activation. The fungicide also caused no structural or numerical chromosomal aberrations in yeast, hamsters (*in vivo* nucleus anomaly assay), or mice (a dominant lethal assay). No DNA damage was observed in bacteria, and no unscheduled DNA synthesis was noted in rat primary hepatocytes or human fibroblasts *in vitro* as the result of exposure to metalaxyl. These results suggest that metalaxyl is not genotoxic.

5. A mouse dominant-lethal study that was negative for mutagenicity.

6. A three-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1,250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.25 mg/kg bwt/day (250 ppm). Effects found at 25 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

8. A 2-year rat chronic feeding/carcinogenicity study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 6.25 mg/kg bwt/day (250 ppm). The LOEL is 1,250 ppm based upon slight increases in liver weight to body weight ratios and periacinar vacuolation of hepatocytes.

9. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 1,250 ppm.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum-tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects was noted at any of the treatment doses, sexes, or species.

The reference dose (RfD) based on the 6-month dog feeding (NOEL 6.25 mg/kg bwt/day), and using a hundredfold safety factor, is calculated to be 0.060 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerances and food additive regulations and the tolerances and food additive regulations established here are 0.011815 mg/kg bwt/day and utilize 19.69 percent of the RfD.

The nature of the residue is adequately understood, and adequate analytical methods (capillary N/P GLC) are available for enforcement purposes. Because of the long lead time from establishing these tolerances and food/feed additive regulations to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purpose for which the tolerances and food/feed additive regulations are sought, and the pesticide is capable of achieving the intended physical or technical effect. Existing meat and milk tolerances are adequate to cover any secondary residues from the feed use of metalaxyl in conjunction with proposed tolerances. Based on the information and data considered, the Agency concludes that the establishment of the tolerance for grapes, wet and dry grape pomace, raisins and raisin waste will protect the public health, and use of the pesticide in accordance with the terms of the prepared food additive regulation will be safe. Therefore, the tolerance and food/feed additive regulations are established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that the rulemaking proposal for a tolerance on grapes be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [PP 6F3362 and FAP 6H5493]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (40 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Parts 180, 185, and 186**

Administrative practice and procedures, Agriculture commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements

Dated: March 3, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

## PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. Section 180.408(a) is amended in the table therein by adding and alphabetically inserting a new entry for grapes, to read as follows:

**§ 180.408 Metalaxyl; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| . . . . . | |
| Grapes | 2.0 |
| . . . . . | |

* * * * *

## PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. Section 185.4000(a) is amended in the table therein by adding and alphabetically inserting the food additive raisins, to read as follows:

**§ 185.4000 Metalaxyl.**

(a) * * *

| Food | Parts per million |
|---|---|
| . . . . . | |
| Raisins | 6.0 |
| . . . . . | |

* * * * *

## PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. Section 186.4000(a) is amended in the table therein by adding and alphabetically inserting the feed commodities grape pomace (dry and wet) and raisin waste, to read as follows:

**§ 186.4000 Metalaxyl.**

(a) * * *

| Food | Parts per million |
|---|---|
| . . . . . | |
| Grape pomace (dry) | 10.0 |
| Grape pomace (wet) | 10.0 |
| . . . . . | |
| Raisin waste | 10.0 |
| . . . . . | |

* * * * *

[FR Doc. 93-5498 Filed 3-9-93; 8:45 am]

BILLING CODE 6560-60-F

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket 92-35; Notice 2 and Docket 93-11; Notice 1]**

### Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA); DOT.

**ACTION:** Termination of rulemaking; notice of designation of docket.

**SUMMARY:** This notice terminates rulemaking to amend Standard No. 108 to adopt the European H7 replaceable light source, which NHTSA proposed as Type HB6 in July 1992. With the adoption of 49 CFR part 564 in January 1993 establishing a replaceable light source informational docket, rulemaking is no longer required in order for new light sources to be used in motor vehicles subject to the Federal motor vehicle safety standards. It is now permissible for manufacturers to use new light sources after submitting all required information to the agency for inclusion in the docket. Since the agency has placed information on the H7 light source in the docket, further rulemaking regarding it is unnecessary. This notice also designates the replaceable light source informational docket as Docket No. 93-08.

**FOR FURTHER INFORMATION CONTACT:** Kenneth O. Hardie, Office of Rulemaking, NHTSA, 202-366-6987.

**ADDRESSES:** Docket No. 93-08, Replaceable Light Source Dimensional

Information is located in the Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** On July 24, 1992, NHTSA issued a proposal to amend 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment (57 FR 32942). The notice granted a petition for rulemaking submitted by the G.T.B. Brussels Working Party, and proposed an additional type of replaceable light source to be used in replaceable bulb headlighting systems on motor vehicles. The light source, which incorporates a single filament, is known in Europe as H7, and, under NHTSA's proposal, would be called Type HB6.

Six comments were received on the petition. Five of the six commenters supported the petition. They were Robert Bosch GmbH, Ford Motor Company, Chrysler Corporation, Mercedes Benz of North America, Inc., and BMW of North America, Inc. The sixth commenter, Advocates for Highway and Auto Safety (Advocates), expressed concern because it believes that the H7 can be used for lower beam headlamps that produce virtually no illumination above the horizontal. Advocates stated that this would be at odds with NHTSA's concurrent rulemaking proposal (Docket No. 85–15; Notice 10) to ensure that the photometry of lower beam headlamps provide sufficient illumination of high-mounted signs. However, NHTSA points out that the rulemaking to which Advocates refer is addressed to the performance of headlighting systems, and not Types of replaceable light sources. Notice 10 would require compliance of headlamps with its requirements without respect to the type of bulb employed. Thus, NHTSA concluded that the concern of Advocates is unfounded.

NHTSA was prepared, therefore, to amend Standard No. 108 as proposed to add the H7. However, the completion of another rulemaking proceeding has made it possible to allow the H7 without amending the standard. NHTSA had noted in the proposal regarding H7 (p. 32943) that there was a pending rulemaking proceeding which, if carried forward to a final rule, would obviate the need for the amendment requested by the petitioner. The agency stated that if part 564, Replaceable Light Source Dimensional Information, were adopted as proposed, placing the information presented in the G.T.B. petition in an informational docket and publishing a notice in the **Federal Register** announcing that action would be sufficient to permit use of the H7 in a headlamp. No amendment of Standard No. 108 would be required.

NHTSA has recently completed the rulemaking proceeding on part 564. On January 12, 1993, NHTSA published a final rule adopting part 564 (58 FR 3856), effective February 11, 1993. The information submitted by the petitioner has been placed in the new docket, which, by this notice, is designated Docket No. 93–08 Replaceable Light Source Dimensional Information. Future submissions by interested persons should identify the docket by number and be sent to the address indicated above, where they will be available for inspection by the public. No further action is required by either the petitioner or the agency in order for the H7 replaceable light source to be used in motor vehicles subject to the Federal motor vehicle safety standards.

Since this action moots the petition by G.T.B., the agency is therefore terminating the rulemaking proceeding to amend Standard No. 108.

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 4, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–5418 Filed 3–9–93; 8:45 am]

**BILLING CODE 4910–59–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AB66**

## Endangered and Threatened Wildlife and Plants; Proposed Rule To Reclassify the Plant Pediocactus sileri From Endangered to Threatened

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to reclassify *Pediocactus sileri* (Siler pincushion cactus) from endangered to threatened. This rule is proposed under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and is based on a thorough review of all information currently available for the species. The proposed change in classification reflects an improved understanding of the species' status and the fulfillment of reclassification criteria stated in the Siler Pincushion Cactus Recovery Plan (U.S. Fish and Wildlife Service 1986). The action will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by May 10, 1993. Public hearing requests must be received by April 26, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Sue Rutman, at the above address (Telephone 602/379–4720).

**SUPPLEMENTARY INFORMATION:**

### Background

*Pediocactus sileri* (Siler pincushion cactus) grows on gypsum soils in a scenic area of southwestern Utah and northwestern Arizona. When mature, this globose or cylindrical cactus is about 4–5 inches (10–13 centimeters) tall and has spines that almost match the gray soil where it commonly occurs. The central spines, which are usually less than 1.25 inches (3.18 centimeters) long, have a purplish or black tip when young, and point upwards. The flowers are yellow and appear in the spring. Plants may be single stemmed or clustered.

*Pediocactus sileri* is found on gypsiferous clay to sandy soils apparently high in soluble salts (Hughes 1991). Plants occur on soils derived from the Moenkopi Formation. About 90 percent of known plants occur on the Shnabkaib Member of the formation (Gierisch 1989). The grayish Shnabkaib Member is composed of 65 percent siltstone, 25 percent gypsum, and 10 percent limestone and dolomite (Stewart, et al. 1972). Most of the remaining plants are found on the Middle Red Member of the formation, which is a reddish siltstone with thin to thick layers of gypsum. Plants can be found growing on soil that ranges from shallow to 22 inches (56 centimeters) deep (Gierisch 1981).

*Pediocactus sileri* populations occur in a variety of plant communities. Most commonly, the species is found in the Great Basin Desert Shrub Biotic Community. At one low elevation site, the surrounding vegetation is Mohave Desert Scrub. The higher elevation sites are located within the Great Basin

Conifer Woodland and Plains, and the Great Basin Grassland (Hughes 1991). The species is found at elevations of 2,800–5,400 feet (850–1,650 meters).

When the species was listed as endangered in 1979 (44 FR 61786), the amount of habitat was unknown but presumed to be small. The total amount of occupied habitat remains unknown but extensive surveys conducted by the Bureau of Land Management (BLM), Arizona Strip District (Hughes 1991) have documented the species on 42,100 acres (17,000 hectares) of habitat. The species will likely be found outside this area. The Moenkopi Formation covers approximately 330,000 acres (134,000 hectares) in this area of the Arizona Strip; some unknown fraction of this substrate type is potential habitat for *P. sileri*.

At the time the plant was proposed for listing, fewer than 1,000 individuals were thought to exist (Phillips, *et al.* 1979). Since that time many more plants have been discovered. *Pediocactus sileri* has a distribution typical of many plant species, a high density in some areas (Hughes 1991, Gierisch 1981) and a low density in others (Gierisch 1981, L. Hughes, BLM, St. George, Utah, pers. comm., 1988). Low density areas may support approximately 10–30 *P. sileri* plants per square mile (26–78 plants per square kilometer) (L. Hughes, pers. comm., 1992). By contrast, the high density population at Warner Ridge contains 15–23 plants per acre (4–12 plants per hectare) (Gierisch 1989). A map prepared by BLM in 1988 shows three high-density areas, widely scattered across the Arizona Strip. These areas ranged in number of plants from 2,691 to 3,775, an underestimate because all plants were not counted. The three dense populations occupy an area of about 4,100 acres (1,700 hectares).

The majority of *P. sileri* habitat is managed by the Arizona Strip and Cedar City Districts of BLM. Some habitat occurs on the Kaibab-Paiute Indian Reservation, but no surveys have occurred there. A small amount of habitat is privately owned.

The 1979 final rule to list *Pediocactus sileri* as endangered identified gypsum mining, off-road vehicle use, road construction, illegal collection, livestock grazing, construction of the proposed Warner Valley Power Plant and associated structures, and the inadequacy of regulatory mechanisms as threats to the species. The Service believed that the specialized soil type, small numbers of individuals, population disjunction, and possibly a restricted gene pool could have intensified adverse effects to *P. sileri* and its habitat. Since the species was listed, a number of recovery activities have occurred, including the completion of some management documents.

In 1985, the BLM established permanent *P. sileri* monitoring plots to collect demographic and phenologic data and determine the status of the monitored populations. The BLM has reported these data annually to the Service and has most recently summarized them in Hughes (1991). Some data analysis has occurred, but more sophisticated methods should be employed to determine the long term viability of the monitored populations.

The Siler Pincushion Cactus Recovery Plan was finalized in 1986 (U.S. Fish and Wildlife Service 1986). The plan set forth the following five reclassification criteria: (1) Known populations should be censused and mapped; (2) the BLM should establish monitoring plots that can be relocated and census these at least annually; (3) the BLM should develop an approved Habitat Management Plan (HMP), which includes steps to ensure the protection of the species; (4) the BLM should develop a Mineral Feasibility Report assessing the present and potential value of the habitat for mining of gypsum, selenites, and uranium; and, (5) the BLM should administer mining claims within known populations, mitigate adverse effects, and initiate section 7 consultations when necessary. The necessary criteria for delisting are: (1) Demonstration of long-term population stability; (2) demonstration that reclassification criteria are suitable; (3) continued assurance of no mining or new claims in known habitat; and, (4) implementation of actions identified in the HMP.

The Arizona Strip and Cedar City Districts of the BLM finalized the *P. sileri* Habitat Management Plan (HMP) in 1987. Planned actions of the HMP included continuation of monitoring studies, closing and signing the Warner Ridge/Beehive Dome area to off-highway vehicles (OHVs), building an exclosure fence around a specific dense population, evaluating all surface disturbing activities through the NEPA process, and placing raptor roost poles where small mammal herbivory is a problem.

In 1990, the Arizona Strip District and the Dixie Resource Area of the BLM completed their Resource Management Plans (RMPs) and Final Environmental Impact Statements (U.S. Department of the Interior 1990a and 1990b). The RMPs guide the management of *P. sileri* habitat at a programmatic level. Both documents designate Areas of Critical Environmental Concern (ACECs), which have management prescriptions designed for conservation of *P. sileri* and other resource values. Other resource management decisions made in the RMPs include OHV management areas, livestock management goals, and locatable and mineral materials management. The specific management direction given by the RMPs and its affect on *P. sileri* is discussed below where appropriate.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set for the procedures for reclassifying species on the Federal lists. A species may be listed or reclassified as threatened or endangered due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pediocactus sileri* (Engelm. ex Coult.) L. Benson (Siler pincushion cactus) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The habitat of *Pediocactus sileri* occurs in an area called the Arizona Strip, a remote and essentially uninhabited area. Commercial uses of *P. sileri* habitat include recreation, livestock grazing, and mining. Habitat loss and degradation due to road building, housing and commercial development, off-highway traffic, and other sources is likely to increase as human populations in the nearby towns of St. George and Kanab, Utah, and Fredonia, Arizona, increase.

Off-highway traffic is adversely affecting *P. sileri* and its habitat at a few localities, including Atkin Well, the Warner Ridge/Fort Pierce area near St. George, Utah, and the area near Fredonia, Arizona, and Kanab, Utah. The convenient location of the latter two areas, the gently rolling hills, and sparse vegetation make these localities attractive sites for OHV users. Observations and data from monitoring plots indicate that few *P. sileri* deaths were directly caused by OHVs, but that the OHV traffic is fairly frequent. Gierisch (1980) found that 8 out of 1,153 cacti were killed by OHV activity on Warner Ridge. In 1985, one plant was killed and six plants were run over by OHVs out of 7,000 plants counted (Bureau of Land Management 1985). Although Gierisch (1989) found no *P. sileri* mortality due to OHVs in plots on Warner Ridge, he observed 5–10 injured

or destroyed plants outside the plots. He also noted that 33 of 60 plots contained single tracks of OHVs, and five of the 60 plots contained OHV trails that had been used repeatedly. A site near Kanab/Fredonia is heavily impacted by OHVs and other recreational uses but no data are available on their direct or indirect effects on the cactus.

The BLM Arizona Strip District Resource Management Plan and Final Environmental Impact Statement (U.S. Department of the Interior 1990a) and the Dixie Resource Management Plan and Environmental Impact Statement (U.S. Department of Interior the 1990b) contain OHV designations for the District and Resource Area. Off-highway traffic is permitted to varying levels throughout the range of *P. sileri*. The Warner Ridge area is closed to OHV traffic. The area, which also contains another endangered plant, is not fenced to exclude OHVs, but signs have been placed every 0.25 miles. Nearby, in the Fort Pierce area, where a dense population of *P. sileri* occurs, the BLM permits OHV traffic on designated roads and trails. On 800 acres (320 hectares) east of Kanab and Fredonia, in a dense population of *P. sileri*, off-road vehicle traffic is unrestricted. The Rhino Rally, an OHV event, takes place within the central habitat of *P. sileri*, in an area designated as an "OHV event area" in the Arizona Strip District RMP. The BLM limits the Rhino Rally to 300 entrants and restricts the event primarily to roads and washes.

Livestock grazing occurs throughout the habitat of Siler pincushion cactus. The Service presumes that the BLM has not changed term permits, stocking rates, or grazing systems since the species was listed, because no formal or informal section 7 consultations regarding existing range management or a change in management have occurred. In addition, livestock waters have not been moved away from dense *P. sileri* populations. The Service can not assess the affects of livestock on *P. sileri* on the Kaibab-Paiute Indian Reservation due to a lack of information.

Livestock use appears to be light or moderate in areas relatively distant from water sources because forage is very sparse on the soils preferred by *P. sileri*. In these areas, little trampling occurs and *P. sileri* plants can be found in open, unprotected microsites (Gierisch and Anderson 1980). Gierisch (1989) states that no *Pediocactus sileri* plants were destroyed due to livestock trampling on Warner Ridge. In earlier studies, he found 6 plants out of 1,153 were killed by livestock (Gierisch 1980). Gierisch (1989) found livestock tracks in 90 percent of the plots on Warner Ridge, indicating that cattle do travel through the area.

Hughes (1991) also found that livestock rarely trampled mature plants in monitoring plots. He speculated (pers. comm., 1992) that mature cacti are large enough that cattle walk around them rather than step on them. However, seedlings and juvenile plants may be too small to be seen and avoided.

At watering areas where livestock concentrate, damage or destruction of *P. sileri* is "undoubtedly severe" (Gierisch and Anderson 1980). At Atkin Well, where livestock are severely affecting the habitat, *P. sileri* plants grow in the shrub understory or along drainage slopes, areas protected from the trampling of cattle moving to and from this water source (Gierisch and Anderson 1980). Several years later, Atkin Well and Lytle Spring populations showed a size class distribution with a small number of short cacti and a large number of tall cacti, which was judged to be of "special concern" (Bureau of Land Management 1985).

Erosion has been identified as a source of mortality for *Pediocactus sileri* (Gierisch 1981, Hughes 1991). Because the substrate is erodible, a low rate of mortality due to erosion is not unexpected and probably natural. However, OHV traffic, roads, overgrazed habitat, or livestock concentration areas may cause increased erosion, resulting in increased cactus mortality rates and loss of habitat.

In 1989, the Arizona Department of Agriculture, U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS), and local ranchers proposed a large-scale (approximately 125 square miles, or 323 square kilometers) application of a general pesticide to control a grasshopper infestation. Although the BLM did not approve the project, the Service anticipates that rangeland pesticide applications will be proposed in the future.

Through funding from the APHIS, the U.S. Department of Agriculture Bee Biology Lab in Logan, Utah, has conducted research to understand the potential effects of rangeland pesticides on endangered and threatened plants. This research has improved our understanding of the pollination and reproductive ecology of *P. sileri*. Tepedino (1990) reported that the species is pollinated by small native bees, two of them undescribed and one very rare in collections.

Mineral exploration and development, and oil and gas leasing may contribute to Siler pinchusion cactus habitat loss and degradation. Currently, adverse effects appear to be occurring at a slow rate and affecting small amounts of habitat or number of plants. One Mineral Feasibility Report (Swapp 1985) addressed the threat of uranium mining within high density *P. sileri* habitat and concluded that uranium exploration was extremely unlikely there. Another Mineral Feasibility Report (Cormier 1985) for the Warner Ridge area did not specifically address uranium mining feasibility. However, in a survey of 246 Mining Plans of Operation (MPO) for uranium mining filed between 1980 and 1985, the BLM found that 165 occurred outside potential habitat of *P. sileri* (Bureau of Land Management 1985). Of the remaining 81 MPOs occurring within potential habitat, 51 were surveyed and did not contain *P. sileri*. The remaining 30 sites within potential habitat were surveyed, contained *P. sileri*, and projects were modified to avoid directly affecting the plants. About 5 acres were disturbed at each of the 30 sites within potential habitat. Activity has taken place within low density *P. sileri* habitat, except for one core drilling in high density habitat. Wenrich and Sutphin (1988) identify low density *P. sileri* habitat as having potential for economically important uranium deposits.

Gypsum mining or exploration is unlikely to occur in the Warner Ridge or the Lost Spring Mountain habitats of *P. sileri* (Swapp 1985, Cormier 1985). The BLM believes mining gypsum is economically feasible if the gypsum (calcium sulfate) content exceeds 90 percent (Swapp 1985, Cormier 1985). The gypsum content of the Shnabkaib and Middle Red Members of the Moenkopi Formation has been variously estimated at 3–5 percent (Swapp 1985) or up to 25 percent (Stewart *et al.* 1972). Either estimate is well below the 90 percent level needed to sustain an economically viable operation.

Mineral exploration and development is permitted to occur within the five ACECs designated to provide special management prescriptions for *P. sileri* (U.S. Department of the Interior 1990a and 1990b). If mineral exploration and development is proposed within ACECs, the BLM requires a plan of operation and special mitigation. These requirements do not necessarily apply outside of ACECs. Therefore, not all habitat or populations are covered by this protection.

Oil and gas exploration or drilling is another potential threat to *Pediocactus sileri*, although currently the threat is minor. Essentially all areas within the Moenkopi Formation are under oil and

gas leases (Bureau of Land Management 1985). As recently as 1990, the BLM offered at least one tract containing *P. sileri* for a competitive oil and gas lease sale (BLM Minerals Staff, Arizona Strip District, St. George, Utah, pers. comm., 1990). However, there are no producing oil wells nor any history of wells in the Arizona Strip District or southwestern Utah (Bureau of Land Management 1985).

In summary, mining and mineral exploration and oil and gas leases are currently a minor threat to *P. sileri*. The probability of gypsum mining and active oil and gas pumping appears to be small. Uranium exploration is occurring and has already taken some habitat. Although the current economic situation seems to have slowed uranium exploration, the future is uncertain.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Despite the legal protections offered by the Act and the Arizona Native Plant Law (Arizona Revised Statutes Chapter 7, Title 3, Article 1), *P. sileri* is collected by cactus enthusiasts for commercial purposes and private interest. Steve Brack, who is familiar with the worldwide cactus trade, believes cultivated and wild-collected plants are rare in the cactus trade because the species has a reputation for being hard to grow (S. Brack, Mesa Gardens, Belen, New Mexico, pers. comm., 1992). He estimates that 99 percent of transplanted plants will die within two years. Seeds germinate readily, but, due to a narrow tolerance for soil type and environmental conditions, the plants mature only with great effort and skillful technique. Grafting, a technique commonly used to commercially propagate the endangered *Pediocactus bradyi*, is not commonly used with *P. sileri* because the latter species is too large and slow-growing.

Brack (pers. comm., 1992) noted that the seeds of *P. sileri* are readily available in the commercial trade and he assumed the seeds are taken from wild populations. He estimated that a collector could take 5,000 seeds from a dense population in one afternoon. The Service does not have the information needed to assess the degree to which seed collecting is affecting populations.

Although serious hobbyists and professional collectors apparently avoid taking living plants from the wild, other collectors, such as the occasional tourist, resident, or unscrupulous seller could be collecting some plants. The effects of this are very difficult to quantify but are probably minor.

*C. Disease or Predation*

Various botanists have noted mortality of *P. sileri* due to disease, insects, and rodents. Within study plots, Gierisch (1989) noted that 28–32 percent of all stems were dead and he believed mortality was due to disease and predation. Hughes (1991) reported that the most common source of *P. sileri* mortality was herbivory. Rodents and rabbits apparently find the plants palatable, particularly during years of below-average rainfall when other food and water sources are scarce. Small mammals may attack from the top or from underground and consume the whole plant (Gierisch 1981).

In at least one case, data indicate that *P. sileri* mortality from small mammal populations may be affected by management practices. Plants inside a fenced area excluding cattle were more likely to die from small mammal herbivory than plants outside the exclosure (Hughes 1991). Hughes (pers. comm., 1988) speculated that small mammals preferred the habitat inside the exclosure because it had greater plant cover and food.

Brack (1983) noted heavy insect damage to a *P. sileri* population. Insects had eaten the cortical tissues and roots of about 80 percent of the plants. He believed that the damaged plants would die.

Although insects, disease, and small mammal herbivory may appear to be natural causes of mortality, we do not know if the current disease or predation rates are at natural levels or are imbalanced for some reason. Analysis of data from long-term monitoring should be able to determine if recruitment rates in populations with disease or predation are sufficient to maintain viable populations.

*D. The Inadequacy of Existing Regulatory Mechanisms*

*Pediocactus sileri* is currently protected by the Act and is contained in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (16 U.S.A. § 1538(c)). It is also protected from commercial use by the Arizona Native Plant Law (A.R.S. §§ 3–901 *et seq.*). If the proposed reclassification to threatened status becomes final, there will be no substantive change in the protection afforded this species under these regulatory mechanisms. Existing regulatory mechanisms determined necessary to protect this species and its habitat will remain in effect.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The long-term viability of populations of this species is still uncertain. Since 1985, the BLM Arizona Strip District has been collecting demographic data in four dense population areas across the range of this species. A population viability analysis could probably determine if the dense population areas are reproducing sufficiently to maintain population size.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to reclassify *Pediocactus sileri* from endangered to threatened. New information gathered by the BLM, as well as recovery efforts for the species have changed our understanding of the range, abundance, and magnitude and relative importance of threats to *P. sileri*. Although the species is more abundant than originally believed in 1979, only three large populations are known. We do not know if the species is able to maintain stable populations given current habitat conditions, but the BLM is accumulating data that will assist in that determination. The remaining manageable threats to the species include livestock grazing and associated developments, off-highway vehicle traffic, pesticide applications, and mineral exploration. With more plants known to exist, we now believe the magnitude of threats to be less important than when the species was listed.

Critical habitat for Siler pincushion cactus was not designated in 1979 when the species was listed because the Service believed the action was not prudent. The Service continues to believe that designating critical habitat is not prudent. As discussed under Factor B in the Summary of Factors Affecting the Species, Siler pincushion cactus is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make Siler pincushion cactus more vulnerable and increase

enforcement problems. Therefore, it remains not prudent to determine critical habitat for Siler pincushion cactus.

**Effects of Rule**

This rule, if made final, would change the status of *Pediocactus sileri* from endangered to threatened. The final rule would formally recognize that *P. sileri* is no longer considered to be in danger of extinction throughout all or a significant portion of its range. Reclassifying the species will have little effect on regulations regarding protection and recovery of the species. Protection given to threatened species under sections 7 and 9 of the Act is essentially the same as that given to endangered species, except seeds from cultivated specimens of threatened plants are exempt from the trade prohibitions of section 9(a)(2) of the Act, provided that a statement of "cultivated origin" appears on their containers. Recovery provisions are the same for threatened species as for endangered species.

This action will not be an irreversible commitment on the part of the Service. The action is reversible and reclassifying *P. sileri* to endangered would be possible should changes occur in management, habitat, or other factors that alter the present threats to the species' survival and recovery.

**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 any aspect of 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 this species;

(2) The location of any additional populations of this species;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species 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 Field Supervisor (see **ADDRESSES**).

**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).

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U.S. Department of the Interior. 1990b. Dixie Resource Management Plan and Environmental Impact Statement. Bureau of Land Management, Cedar City District, Cedar City, Utah. 242 pp.

U.S. Fish and Wildlife Service. 1986. Siler Pincushion Cactus Recovery Plan. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 57 pp.

Wenrich, K.J., and H.B. Sutphin. 1988. Recognition of breccia pipes in northern Arizona. Arizona Bureau of Geology and Mineral Technology 18:1–5.


**Author**

The primary author of this proposed rule is Sue Rutman (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, 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. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by revising the entry for *Pediocactus sileri* under the family Cactaceae to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • | • | • | • | • | • | • |
| Cactaceae—Cactus family: | | | | | | |
| • | • | • | • | • | • | • |
| *Pediocactus sileri* (=*Echinocactus s.*, *Utahia s.*). | Siler pincushion cactus | U.S.A. (AZ, UT) | T | 64,_____ | NA | NA |
| • | • | • | • | • | • | • |

Dated: February 25, 1993.

**Richard N. Smith,**

*Acting Deputy Director, Fish and Wildlife Service.*

[FR Doc. 93–5494 Filed 3–9–93; 8:45 am]

BILLING CODE 4310–55–M

# Notices

Federal Register
Vol. 58, No. 45
Wednesday, March 10, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Continental Divide National Scenic Trail (CDNST) Formal Designation and Construction; Medicine Bow National Forest (NF), Wyoming; Routt, Arapaho/Roosevelt, White River, Pike/San Isabel, Grand Mesa/Uncompahgre/Gunnison, San Juan, and Rio Grande National Forests, Colorado

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare environmental impact statement (EIS).

**SUMMARY:** The Forest Service will analyze and disclose the environmental impacts of a proposal to designate approximately 805 miles of trail corridor adjacent to the Continental Divide from southern Wyoming to southern Colorado as part of the National Scenic Trail System, and to construct up to 64 miles of new trail within the trail corridor. An EIS will be prepared which will document the analysis. This EIS will tier to the Medicine Bow, Routt, Arapaho/Roosevelt, White River, Pike/San Isabel, Grand Mesa/Uncompahgre/Gunnison, San Juan, and Rio Grande National Forests' Land and Resource Management Plan Final EIS's. This EIS will also tier to the National Scenic Trail System Act of 1968 as amended and the USDI Bureau of Outdoor Recreation (BOR) Study Report and Legislative FEIS, May 3, 1977, and the National Parks and Recreation Act of 1978 (Pub. L. 95–625). The purpose of this proposal is to formally designate and construct the Continental Divide National Scenic Trail within Region 2 of the Forest Service. A decision based on this EIS will identify the selected route for the CDNST on Federal lands along the geographic Continental Divide from Wyoming's Medicine Bow NF (Hayden Ranger District) to the Colorado/New Mexico border on the Rio Grande NF (Conejos Peak Ranger District).

The CDNST project area is located in the proximity of the Continental Divide and extends from the Medicine Bow NF west of Saratoga, Wyoming to the Colorado/New Mexico border west of Antonito, Colorado. Principle populations centers within the Project Area include: Saratoga and Hayden, Wyoming; and Steamboat Springs, Dillon/Silverthorne, Breckenridge, Leadville, Buena Vista, Gunnison, and Pagosa Springs, Colorado.

The project area covers a distance of 805 linear miles and averages 1 mile in width. The Trail is located primarily on National Forest System Lands with segments proposed to cross parcels of private property. Rights-of-way will have to be acquired for segments crossing private property. The project area includes nine wilderness areas and two proposed wilderness areas. Trail mileage within these areas varies from 149 miles to 200 miles depending upon alternative.

**DATES:** The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency in May, 1993. The Final EIS and Record of Decision (ROD) are expected to be completed in July, 1993.

**ADDRESSES:** Send written comments to James B. Webb, Forest Supervisor, Rio Grande NF, 1803 West Highway 160, Monte Vista, CO 81144.

**FOR FURTHER INFORMATION CONTACT:** Specific questions about the proposed action, analysis, and EIS should be directed to Gary D. Snell, Environmental Coordinator, Rio Grande NF, 1803 West Highway 160, Monte Vista, CO 81144. Phone (719) 852–5941.

**SUPPLEMENTARY INFORMATION:** In most cases the management activities are consistent with the Forest Land and Resource Management Plans (LRMP) for the involved National Forests. Some of the alternatives are not consistent with the LRMP's. The FEIS and ROD for the CDNST Planning Area will be used to amend, if necessary, the individual forest plans of the following National Forests—Routt, White River, Arapaho/Roosevelt and Grand Mesa/Uncompahgre, and Gunnison.

The designation of the CDNST, will not change current management of National Forest lands along the Trail corridor. In order to maintain the Trail's character, individual Forests will be required to address the Trail in all future management decisions.

The initial public scoping to this analysis has been completed. Comments were requested during a public comment period and open houses which ended in July of 1992. All comments received to date will be considered. The next opportunity for public comment on this analysis will be the formal review period of the DEIS. Preliminary issues and concerns identified as a result of internal and external scoping include:

1. The effects of the Trail and its users on native wildlife and plants within the Trail corridor.
2. The effects of the Trail and its users on Threatened, Endangered and Sensitive plant and animal species within the Trail corridor.
3. Cultural Resources.
4. Impacts of motorized/nonmotorized vehicles on wetlands riparian areas and tundra.
5. Water quality along the Trail route.
6. Trail user safety.
7. The need to utilize existing trails where possible and to use minimum trail standards.
8. Proximity to the Geographic Continental Divide. The information gathered during public scoping is being used to prepare a DEIS. This process includes:
   1. Determination of significant issues.
   2. Determination of cooperating agencies.
   3. Identification and elimination from detailed study nonsignificant issues or issues that have been covered by previous environmental review.
   4. Identification of reasonable alternatives to the proposed action.
   5. Identification of potential environmental effects of the alternatives.

A range of alternatives is being developed from the key issues. One of these in the "No-Action Alternative", in which designation and construction will be deferred. Other alternatives consider various trail locations in response to issues raised during the scoping process.

The FEIS is expected to be released in July, 1993. The Regional Forester for Region 2, who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, and

environmental consequences discussed in the FEIS, and applicable laws, regulations and policies. The reasons for the decision will be documented in a Record of Decision.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Services believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 25, 1993.

**Tom L. Thompson,**

*Deputy Regional Forester.*

[FR Doc. 93–5438 Filed 3–9–93; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Florida 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 Florida Advisory Committee to the Commission will convene at 12 pm and adjourn at 5 p.m. on Tuesday, March 23, 1993, at the City Council Chambers, 175 Fifth Street, North, Second Floor, in St. Petersburg. The purpose of the meeting is to discuss the status of the Commission and SAC; discuss problems and progress in civil rights throughout the State; and to update and discuss the current project. In addition, the committee will receive information from the community on racial and ethnic tensions in Florida (St. Petersburg).

Persons desiring additional information, or planning a presentation to the Committee should contact Florida Chairperson Bradford Brown 305/361–4991 or Bobby D. Doctor, Regional Director, Southern Regional Office of the U.S. Commission on Civil Rights at (404/730–2476, TDD 404/730–2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 1, 1993.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93–5439 Filed 3–9–93; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Business and Professional Classification Report.

*Form Number(s):* B–625.

*Agency Approval Number:* 0607–0189.

*Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Burden:* 12,000 hours.

*Number of Respondents:* 48,000.

*Avg Hours Per Response:* 15 minutes.

*Needs and Uses:* The Bureau of the Census uses the quarterly Business and Professional Classification Report to collect sales and other information from a sample of retail, wholesale, service, and unclassified businesses recently assigned Federal Employer Identification numbers. We get information that these new businesses exist from lists provided by the Internal Revenue Service and the Social Security Administration. From the information we collect in this survey, we determine an appropriate measure of size, company organization and establishment information, taxable or tax–exempt status, wholesale inventories, type of operation, and assign a new or more refined kind–of–business classification. We use this information to include these businesses in our retail, wholesale, and service surveys. This keeps the sampling frames for our current business surveys up–to–date with the business universe.

*Affected Public:* Businesses or other for–profit organizations, Small businesses or organizations.

*Frequency:* One–time per respondent.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 4, 1993.

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93–5383 Filed 3–9–93; 8:45 am]

BILLING CODE 3510–07–F

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Living Situation Survey.

*Form Number(s):* LSS–1 through LSS–10.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 2,475 hours.

*Number of Respondents:* 2,450.

*Avg Hours Per Response:* 1 hour.

*Needs and Uses:* The Census Bureau will sponsor the Living Situation Survey as part of a research program designed to examine the concerns of undercoverage. This research is intended to improve coverage, particularly for minority and renter households in future censuses and surveys. The Living Situation Survey examines patterns of movement, multiple attachments to households, and conceptualizations of household membership primarily in populations at high risk of undercounting, including Blacks, Hispanics, Asians, renters, and others.

In each household sampled in this survey, a knowledgeable household respondent will provide a roster of persons who have been present at that address during the past three months. The roster will be built using both traditional census probes and new ones which are based on other forms of attachment, such as having space or a room reserved, contributing money to a household, receiving mail or phone messages, having a key, and eating frequently in the household. Additionally, we will collect individual information from the persons rostered concerning their places of residence for the past three months and their assessment of which place, if any, they consider to be their primary place of attachment.

We will use data gathered in this survey to construct a topology of residence categories for measurement purposes, develop national estimates (given sample limitations) of the frequency of various residence patterns, simulate (through data analysis) the effects of alternative residence rules, and recommend changes in procedures to improve the application of residence rules, as well as new roster questions and methods for future research.

*Affected Public:* Individuals or households.

*Frequency:* One–time only.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 4, 1993.

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93–5384 Filed 3–9–93; 8:45 am]

BILLING CODE 3510–07–F

## Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Monthly Retail and Services Area Survey (Current Business Report––Interviewer Record).

*Form Number(s):* B–645, B–646, B–647.

*Agency Approval Number:* 0607–0067.

*Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Burden:* 6,324 hours.

*Number of Respondents:* 39,054.

*Avg Hours Per Response:* 10 minutes.

*Needs and Uses:* The Bureau of the Census publishes monthly and annual estimates of current retail sales and annual estimates of selected service trade statistics. We get a large portion of the data for deriving these estimates from our "list–" based surveys; these are surveys that have their samples drawn from the Census Bureau's Standard Statistical Establishment List. However, firms without paid employees, newly established firms, and firms erroneously omitted from the list–based surveys are not represented and must be surveyed through other means. We use the Monthly Retail and Services Area Survey to gather sales and inventory data from an "area" sample of retail and service firms. In the area sampling strategy, we have field representatives cover defined geographic areas each month to gather sales and inventory data from owners at each retail and service establishment in that area. We then determine which are not included in the list–based surveys and incorporate data from these firms into our monthly retail and service estimates.

*Affected Public:* Businesses or other for–profit organizations, Small businesses or organizations.

*Frequency:* Monthly.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 4, 1993.

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93–5385 Filed 3–9–93; 8:45 am]

BILLING CODE 3510–07–F

## DEPARTMENT OF DEFENSE

## General Services Administration

## National Aeronautics and Space Administration

**[OMB Control No. 9000–0090]**

## Clearance Request for Rights in Data and Copyrights

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0090).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

Rights in Data is a regulation which concerns the rights of the Government and organizations with which the Government contracts to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into four categories.

(a) A provision which is to be included in the solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software, and given, that the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and complies with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data, for which the Government paid.

Paragraph (d) of the Rights in Data—General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

Under the procedures established for development of the FAR, agency and public comments were solicited and each comment was addressed before finalization of the text. The comments which were received were for the most part from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unreasonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that the Additional Data Requirements clause would not be placed in contracts for basic or applied research with educational institutions—where the value was $500,000 or less. The $500,000 threshold was adopted after surveying the major civilian R&D agencies, whose data suggested that an average R&D contract was $250,000 to $300,000; in order to be commensurate with other clause thresholds (*e.g.*, small business subcontracting), the $500,000 threshold was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows:

*Respondents*, 1,100; *responses per respondent*, 1; *total annual responses*, 1,100; *preparation hours per response*, 2.7; and *total response burden hours*, 2,970.

**C. Annual Recordkeeping Burden**

The annual recordkeeping burden is estimated as follows:

*Recordkeepers*, 9,000; *hours per recordkeeper*, 3; and *total recordkeeping burden hours*, 27,000.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: March 3, 1993.

**Beverly Fayson,**

*FAR Secretariat.*

[FR Doc. 93–5442 Filed 3–9–93; 8:45 am]

BILLING CODE 6820–34–M

## Office of the Secretary

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Corrections to the CHAMPUS Diagnosis Related Group (DRG) Payment System Rates and Weights

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Corrections to notice of revised rates.

**SUMMARY:** This document corrects an error that appeared in the notice of revised rates which was published on January 27, 1993, (58 FR 6254) and which revised the rates and weights to be used in the CHAMPUS DRG-based payment system effective for admissions occurring on or after October 1, 1992. It also clarifies the rates and weights to be used for two DRGs for which no rates and weights were calculated.

**FOR FURTHER INFORMATION CONTACT:** Stephen E. Isaacson, Program Development Branch, OCHAMPUS, Aurora, Colorado 80045, telephone (303) 361–1172.

**SUPPLEMENTARY INFORMATION:** The following corrections are to be made to the notice of revised rates published on January 27, 1993 (58 FR 6254):

1. The labor portion of the national large urban adjusted standardized amount is corrected to be $2,354.67.
2. DRGs 610 and 633 have zeroes, because there were no claims for these two DRGs in the database used to calculate the FY 1993 rates and weights. For these two DRGs we will use last year's weights, lengths-of-stay, and outlier thresholds.

Dated: March 4, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–5397 Filed 3–9–93; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Army

### Preparation of a Draft Environmental Impact Statement for Proposed Expansion of the Western Army National Guard Aviation Training Site (WAATS) Complex

**AGENCY:** Department of Defense, National Guard Bureau.

**ACTION:** Notice of intent.

**SUMMARY:** This Notice of Intent is for the preparation of a Draft Environmental Impact Statement (DEIS) for the WAATS proposed expansion. The proposed action covers three main areas: An aerial gunnery range and restricted airspace, development of training areas, and continuation of the projects covered in the WAATS Master Construction Plan (MCP). A summary of impact analysis of previously completed Environmental Assessments (EAs) will be incorporated into the DEIS.

Lead Agencies are: The Arizona Army National Guard (ARNG), the Western ARNG Aviation Training Site (WAATS), and the National Guard Bureau (NGB).

Cooperating Agencies are: Bureau of Land Management (BLM) and the U.S. Air Force (Luke AFB).

Alternatives to these Proposed Actions to be analyzed:

Aerial Gunnery Range and Restricted Airspace.

* Restricted airspace and gunnery range development on a 90,000-acre portion of the USAF Barry M. Goldwater Range Complex (BMGRC).
* Increasing the size of the Florence Military Reservation (FMR) and Restricted Airspace R–2310 to between 50,000 and 90,000 acres.
* Selection of a 50,000 to 90,000-acre site closer to the WAATS to establish a helicopter aerial gunnery range and Restricted Airspace.
* No Action: Continued use of existing BMGRC ranges which do not meet present WAATS requirements.

Training Area Development Plans:

* Expanison to approximately 3,600 square miles of low level flight training area north of Tucson, Arizona.
* Adjustment to size and location of the proposed low level flight training area.
* No Action: Continued use of aerial corridors described in the WAATS 1982 Environmental Assessment.

Master Construction Plan Projects:

* Completion of all MCP projects at the WAATS.
* MCP construction at the WAATS with some MCP construction offsite.
* No Action: No additional construction beyond present National Environmental Policy Act (NEPA) approved projects. (Only construction which has been identified in currently prepared EAs will be accomplished; beyond that no additional construction will take place.)

**SCOPING:** The ARNG and WAATS will conduct public scoping meetings to discuss public concerns and identify issues relating to the proposed actions. Resource categories that will be analyzed include: physical environment, water quality, groundwater, air quality, biological resources, land use (agriculture, recreation, other), socioeconomic, noise, health and safety, airspace, cultural resources. Public participation in the EIS process is essential to assist the decision maker in defining the scope of analysis considered in the EIS. Participation by Native Americans, concerned interest groups, individuals, and Federal, State and local resource agencies are sought and encouraged in the public scoping process.

Pubic scoping meetings will be held at several sites adjacent to the proposed project areas. These locations include Marana, Tucson, Florence, Gila Bend, and Phoenix, AZ. Dates, times, and locations for the meetings will be announced through letters, public notices, display advertisements, legal advertisements and released to newspapers of general circulation a minimum of 15 days prior to the meeting. Those wishing to provide information or data relevant to the environmental analysis of the proposed actions or alternatives are encouraged to do so at the actions or alternatives are encouraged to do so at the public scoping meetings.

**ADDRESSES:** Interested parties can also furnish written comments or materials to the Project Officer, Lieutenant Colonel Richard O. Murphy, Western ARNG Aviation Training Site, Silver Bell Army Heliport, Marana, Arizona 85653–9598.

Dated: March 5, 1993.

**Lewis D. Walker,**

*Deputy Assistant Secretary of the Army; (Environment, Safety and Occupational Health OASA (I, L&E).*

[FR Doc. 93–5503 Filed 3–9–93; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Army, Army Corps of Engineers

### Notice of Termination of the Preparation of a Draft Environmental Impact Statement for the Proposed Water Supply Improvement Project in Alameda, Contra Costa, Sacramento, Solano, San Joaquin, Amador, Calaveras, Alpine, and Yolo Counties, CA (East Bay Municipal Utilities District Water Supply Management Plan)

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of termination to prepare a Draft Environmental Impact Statement.

**SUMMARY:** In 1989, the Corps of Engineers (San Francisco District) initiated preparation of a Draft EIS for the proposed water supply improvement project. In accordance with the Council on Environmental Quality's Final Regulations for the Implementation of Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), a Notice of Intent was published in the **Federal Register**, 54 FR 46712. Due to project modifications, the San Francisco District transferred preparation of the above referenced EIS to the Sacramento District. Further examination of the modified alternatives led to the determination by the Sacramento District that the preparation of an EIS with the Corps as the lead agency is no longer required pursuant to the National Environmental Policy Act. The preparation of this EIS, therefore, has been terminated.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this project or termination of the EIS should be directed to Larry Vinzant at the Corps of Engineers, 211 Main Street, San Francisco, CA 94105–1905, telephone 916–557–5263.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–5440 Filed 3–9–93; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

### CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Emerging Technology Task Force will meet March 17-18, 1993, from 8 a.m. to 4:30 p.m., at 4401 Ford Avenue, Alexandria,

Virginia. This session will be closed to the public.

The purpose of this meeting is to address naval technological response to changes in military warfare. The entire agenda for the meeting will consist of discussion of key issues regarding direction of technology and technologies necessary for Naval Forces in the role envisioned for them by ... From the Sea. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Kevin Mattonen, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: March 1, 1993.

**Michael P. Rummel,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93-5441 Filed 3-9-93; 8:45 am]

BILLING CODE 3810-AE-F

## DEPARTMENT OF EDUCATION

### National Education Commission on Time and Learning; Meeting

**AGENCY:** National Education Commission on Time and Learning, Education.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATES AND TIMES:** March 25, 1993 from 3:30 p.m. to 4:30 p.m.

**ADDRESSES:** Santa Monica Malibu Unified School District, Board Room, 1651 16th Street, Santa Monica, California, Telephone: Barbara Campitelli, (310) 576-1400.

**FOR FURTHER INFORMATION CONTACT:** Julia Anna Anderson, Deputy Executive Director, 1255 22nd Street NW., suite 502, Washington, DC 20202-7591. Telephone: (202) 653-5063.

**SUPPLEMENTARY INFORMATION:** The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221-1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, a model for adopting a longer day or year (if appropriate), suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

On March 25, from 3:30 p.m. to 4:30 p.m. the Commission meeting will be closed to the general public. The Commissioners will examine personnel needs and discuss current staff levels. This closed session is authorized by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and under exemptions (2) and (6) of Section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b). This discussion of personnel matters relates solely to the internal personnel rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b(c) will be available to the public within fourteen days of the meeting.

Records are kept of all Commission proceedings at the Office of the National Education Commission on Time and Learning, 1255 22nd Street NW., suite 502, Washington, DC 20202-7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: March 5, 1993.

**John Hodge Jones,**

*Chairman, National Education Commission on Time and Learning.*

[FR Doc. 93-5497 Filed 3-9-93; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award: South Carolina Research Authority

**AGENCY:** Department of Energy, Albuquerque Field Office.

**ACTION:** Notice of intent to award financial assistance based on unsolicited application from South Carolina Research Authority.

**SUMMARY:** The Department of Energy (DOE), Albuquerque Field Office, in accordance with 10 CFR 600.14(f) gives notice of its plans to award a cooperative agreement to the South Carolina Research Authority (SCRA), North Charleston, South Carolina, for the research and development (R&D), at about a 1.5 MW scale of the feasibility and commercial viability of an open-furnace operating with a single, hollow electrode, direct current, submerged arc for smelting silicon and silicon alloys. The R&D will be under the direction of SCRA in cooperation with member firms of The Ferroalloys Association, and with active participation of the Massachusetts Institute of Technology, The EPRI Center for Materials Production, and the Carnegie Mellon Research Institute. DOE and SCRA have agreed to a fifteen month period of performance.

**FOR FURTHER INFORMATION CONTACT:** Susan L. Connor, U.S. Department of Energy, Albuquerque Field Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87185-5400, Telephone: (505) 845-4345.

**SUPPLEMENTARY INFORMATION:** The determination to make this award is based on the following information:

A general evaluation of the proposal was performed pursuant to 10 CFR 600.14. It was determined that the proposed project was meritorious and that the probability of achieving the anticipated objectives was high. The facilities and capabilities that will be made available are appropriate, and the qualifications of the key personnel are exceptional.

R&D activities are being pursued by SCRA using its own resources and those of key industry third parties. SCRA is joined in this undertaking by the Massachusetts Institute of Technology, The EPRI Center for Materials Production, Carnegie Mellon Research Institute and by key industry parties, Applied Industrial Materials Corporation, American Alloys, Inc., Elkem Metals Company, Globe Metallurgical Inc., Macalloy Corporation, SKW Alloys, Inc., and SiMETCO, Inc. DOE support of this

activity will enhance the public benefit by increased energy savings, increased product yield, reduced thermal losses, and reduced emissions. The technology will be used to retrofit existing furnaces in the U. S. and enhance the market share for silicon metal products by domestic firms.

The proposed open-furnace configuration has not been demonstrated before and is not being developed elsewhere. The configuration proposed has the potential to advance the process technology of ferrosilicon and silicon. This strategically important ferroalloy industry would be maintained and competition would be enhanced with the infusion of this new technology. The proposal represents an innovative approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and, as determined by DOE, a competitive solicitation would be inappropriate.

The total estimated cost of the project for this fifteen month award is $1,999,947, of which the anticipated cost to the Government is $999,947. The cost share for SCRA, EPRI, and The Ferroalloys Association is estimated at $1 million. The distribution and availability of government funds are subject to budget limitations and the results of research under the cooperative agreement, and may deviate from the above projection.

Issued in Albuquerque, NM, March 1, 1993.

**Richard A. Marquez,**

*Assistant Manager for Management and Administration.*

[FR Doc. 93–5426 Filed 3–9–93; 8:45 am]

BILLING CODE 6450–01–P

## Bonneville Power Administration

### Notice of Date Change for Public Comment on Tenaska Washington II, Generation Competitive Acquisition

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Change of date for submitting Participant Comments. BPA File No. TEN–6(c).

**SUMMARY:** On December 8, 1992, BPA published a Notice of Hearing and Opportunity for Public Review and Comment with respect to the proposed acquisition of firm energy from Tenaska Washington II, Generation Competitive Acquisition. 57 FR 58017. The Notice provided that persons need not petition for party status or attend the hearing in order to have their views included in the record. Participants' comments would become a part of the hearing record and their issues addressed in the Record of Decision if received by March 25, 1993.

The date for participants' comments has been changed to March 17, 1993. Written comments should be submitted to the Public Involvement Manager—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Comments should be submitted to the Public Involvement Office at the following numbers, 1–800–622–4519 toll-free nationwide, or 503–230–3478 in Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Ms. Julie Pipher, BPA Public Involvement Office—ALP, P.O. Box 12999, Portland, Oregon 97212, 503–230–5039. Telephone numbers, voice/TTY, for the Public Involvement Office are 503–230–3478 in Portland, or toll-free 800–622–4519.

Issued in Portland, Oregon, on March 2, 1993.

**Randall W. Hardy,**

*Administrator.*

[FR Doc. 93–5492 Filed 3–9–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket No. JD93–05064T Texas–117]**

### State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 4, 1993.

Take notice that on March 1, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Strawn Sand Formation, underlying a portion of Schleicher County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area contains approximately 1,496 acres in Railroad Commission District No. 7C and consists of portions of the following tracts:

1. 968 acres in the Tom Green County School Land Survey No. 3, A–540.

2. 528 acres in the Tom Green County School Land Survey No. 5, A–541.

The notice of determination also contains Texas' findings that the referenced portions of the Strawn Sand Formation, meet 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 determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date of this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5477 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. JD93–05063T Texas–116]**

### State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 4, 1993.

Take notice that on March 1, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Travis Peak Formation (Black Fork Creek) underlying portions of Smith County, Texas, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 6 and is more fully described on the attached appendix.

The notice of determination also contain Texas' findings that the referenced portions of the Travis Peak Formation (Black Fork Creek) meet 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 determination 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.

**Lois D. Cashell,**

*Secretary.*

### Appendix

JD93–05063T
Texas–116

The designated area lies within Railroad Commission District No. 6 and consists of all or part of the following surveys:

| | | |
|---|---|---|
| Lewis Jones | A–501 | Portion. |
| Geo. A. Bass | A–66 | Portion. |
| J.F. McClure | A–659 | Portion. |
| W.M. Schofield | A–916 | Portion. |
| L.E. Verner | A–1164 | All. |
| Thos. Lowrey | A–1102 | Portion. |
| I. Matthews | A–703 | Portion. |
| B. Kuykendall | A–532 | All. |

| | | |
|---|---|---|
| S.A. & M.G. R.R. | A–964 | Portion. |
| Phillip Lively | A–578 | All. |
| W.H. Adams | A–28 | All. |
| W.H. Adams | A–29 | Portion. |
| J. Adams | A–65 | All. |
| M.A. Love | A–595 | All. |
| Joseph Del | A–297 | Portion. |
| Abraham Boothe | A–148 | Portion. |
| Benj. Kuykendall | A–531 | Portion. |

[FR Doc. 93–5476 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RS92–3–000]

## Arkla Energy Resources; Notice of Conference

March 4, 1993.

Take notice that on Thursday, March 11 and, if necessary, Friday, March 12, 1993, a conference will be convened in the above-captioned restructuring docket. The conference will be held at the Entex Building, room 423, 1600 Smith Street, Houston, Texas. The conference will begin at 10 a.m. on March 11, 1993.

The purpose of the conference is to address restructuring issues with the Staff of the Federal Energy Regulatory Commission and the intervenors in this proceeding in order to facilitate AERCo's revised compliance filing.

All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Richard White at (202) 208–0491 or Robert Steinberg at (202) 208–1032.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5478 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TA93–1–21–000 and TM93–9–21–000]

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 1, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective May 1, 1993.

Thirty-fifth Revised Sheet No. 26
Twenty-eighth Revised Sheet No. 26.1
Thirty-third Revised Sheet No. 26A
Twenty-eighth Revised Sheet No. 26A.1
Twenty-seventh Revised Sheet No. 26B
Twenty-third Revised Sheet No. 26B.1
Twenty-ninth Revised Sheet No. 26C
Seventeenth Revised Sheet No. 26C.1
Twenty-fourth Revised Sheet No. 26D
Thirty-first Revised Sheet No. 163.

Columbia states that the sale rates set forth on Twenty-Eighth Revised Sheet No. 26.1 reflect an overall decrease of 27.82¢ per Dth in the commodity rate and an increase of $0.037 per Dth in the demand rate. In addition, the transportation rates set forth on Seventeenth Revised Sheet No. 26C.1 and Twenty-Fourth Revised Sheet No. 26D reflect a increase in the Fuel Charge component of 0.48¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment applicable to Sales Rate Schedules;

(2) Unrecovered Purchase Gas Cost Surcharges to be effective during the 12-month period commencing May 1, 1993;

(3) Current Transportation Cost Rate Adjustments;

(4) Unrecovered Transportation Fuel Charge Adjustments;

(5) A surcharge adjustment to provide for the recovery, over the 12-month period commencing May 1, 1993, of carrying charges related to take-or-pay reimbursements paid by Columbia to Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the terms of a Commission approved settlement in Docket No. RP83–5–000; and

(6) A Transportation Fuel Charge Adjustment.

Columbia states that copies of the filing have been served upon Columbia's jurisdictional 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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 19, 1993. 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 Columbia's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5479 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP93–90–000]

## CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 4, 1993.

Take notice that CNG Transmission Corporation ("CNG") on March 1, 1993, filed the following revised tariff sheets to the First Revised Volume No. 1 of its FERC Gas Tariff:

First Revised Sheet No. 233
First Revised Sheet No. 234
Original Sheet No. 235
Original Sheet No. 236

CNG requests an April 1, 1993, effective date.

CNG states that the purpose of its filing is to permit CNG to flow through transition costs from its upstream pipeline suppliers. The proposed language is substantively identical to GT&C § 18.4 of the *pro forma* tariff filed as part of CNG's November 2, 1992, compliance filing in Docket No. RS92–14–000.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before March 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5480 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP93–89–000]

## MIGC, Inc.; Proposed Changes in FERC Gas Tariff

March 4, 1993

Take notice that MIGC, Inc. (MIGC), on March 1, 1993, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes are designed to increase MIGC's jurisdictional revenues by $3.391.358 based on the twelve months ending December 31, 1992, as adjusted for known and measurable changes for the period ending September 30, 1993. MIGC has proposed that the increased rates and tariff sheets become effective April 1, 1993.

MIGC states that the requested change in rates is to recover deficiencies experienced in its annual jurisdictional cost of service. MIGC notes that the principal reasons for the proposed rate changes are increased costs of labor, operation and maintenance expenses, working capital requirements, and taxes as well as the decline in volumes connected to the MIGC system.

MIGC states that copies of this filing were served upon all of MIGC's jurisdictional customers, as well as interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition 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 petitions or protests should be filed on or before March 11, 1993. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5481 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP91–229–018]**

## Panhandle Eastern Pipe Line Co.; Compliance Filing

March 4, 1993.

Take notice that on March 1, 1993 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets in the above-mentioned proceeding.

Panhandle requests an effective date of April 1, 1993.

On October 30, 1992, the Commission issued an Order Issuing Certificates, Approving Abandonments, Approving Settlement and Accepting Tariff Sheets for Filing in the above-referenced proceeding (October 30, 1992 Order). The October 30, 1992 Order approved a Stipulation and Agreement (Settlement) dated October 2, 1992 which reflected rate reductions associated with Panhandle Eastern Pipe Line Company's (Panhandle) Canadian supplies and related transportation agreements.

Pursuant to Article IV, section 3(a) of the Settlement, Panhandle was permitted to include a Canadian-related service component in its base rates which became effective November 1, 1992 in Docket No. RP92–166–000. The Canadian-related service component would remain in effect for the period November 1, 1992 until March 31, 1993. Effective April 1, 1993, the Settlement provides for the implementation of surcharges which will remain in effect for a 65 month period. Article IV, Sections 3 (b) and (c) of the October 2, 1992 Settlement provides for the implementation of the Canadian Resolution surcharges and the revised tariff sheets included in Appendix B of the Settlement. The purpose of this filing is to implement the above-referenced surcharge and to remove the Canadian-related service component from base rates.

Panhandle states that copies of the revised tariff sheets are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5483 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP92–166–009]**

## Panhandle Eastern Pipe Line Co.; Compliance Filing

March 4, 1993.

Take notice that on March 1, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets in the above-mentioned proceeding.

Panhandle requests effective dates of November 1, 1992, December 1, 1992, January 1, 1993 and March 1, 1993.

Panhandle states that the filing is necessary to comply with Ordering Paragraph (D) of the Commission's February 17, 1993 Order Accepting and Rejecting Tariff Sheets. The rates in Panhandle's filing reflect the functionalization of facilities as originally filed in this docket.

In its February 17, 1993 Order, the Commission accepted all of the components of Panhandle's December 8, 1992 revised motion rate and compliance filing, except for Panhandle's treatment of the functionalization of facilities. In Ordering Paragraph (D) of that order, the Commission rejected that portion of Panhandle's December 8, 1992 filing which reflected the functionalization of facilities which was set forth in the November 18, 1992 amendment to Docket No. CP90–1050 and directed Panhandle to refile its rates to reflect the functionalization of facilities originally filed in these proceedings.

Panhandle further states that the revised tariff sheets submitted herewith also reflect changes associated with Panhandle's PGA filing in Docket No. TQ93–1–28–000, Panhandle's GRI filings in Docket No. TM93–2–28–000 and –001, and Panhandle's Annual PGA filing in Docket Nos. TA93–1–28–000 and TM93–3–28–000. These latter filings became effective December 1, 1992, January 1, 1993 and March 1, 1993, respectively.

This filing is without prejudice to Panhandle's rights on rehearing or judicial review in connection with the various Commission orders affecting this filing.

Panhandle states that copies of the revised tariff sheets are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5482 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM93–2–6–000]**

## Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 4, 1993.

Take notice that on February 26, 1993, Sea Robin Pipeline Company (Sea

Robin), tendered for filing the following proposed tariff sheets to Original Volume No. 1 of its FERC Gas Tariff, with proposed effective date of April 1, 1993:

Third Revised Sheet No. 4D

Sea Robin states that its filing has been made pursuant to the Commission's orders dated April 28, 1989 and October 7, 1991 in Docket No. RP89–141–000 in which Sea Robin is required to make an Annual Reconciliation Filing, effective April 1 of each year for unused transportation credits given to settling producers. Sea Robin's tariff sheet reflects a reconciliation of the transportation credits allocated to Southern Natural Gas Company and United Gas Pipe Line Company by Sea Robin under its direct bill and the customer's share of the credits actually utilized at the time in which they expired. Said adjustment also reconciles interest payable annually on its transportation credit balance in accordance with § 154.67 of the Commission's Regulations to account for the actual balance of utilized transportation credits as of March 31, 1993.

Sea Robin states that it has filed the supporting data to this filing under the terms of the privileged provisions of § 388.112 of the Commission's Regulations and the Protective Order issued in this proceeding on October 23, 1989. Sea Robin states that nonprivileged copies of the filing have been served on all parties to this proceeding and that upon request, it will send complete copies to reviewing parties eligible under the terms of the Protective Order.

Any person desiring to protest this 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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protest should be filed on or before March 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5484 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RS92–86–000, et al.**

## Transcontinental Gas Pipe Line Corp.; Revised Order No. 636 Compliance Filing

March 4, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) filed on March 3, 1993, a revised Order No. 636 compliance filing in the captioned dockets.[1] Parties should file comments on TGPL's revised Order No. 636 compliance on or before March 24, 1993.

In view of the comprehensive changes reflected in TGPL's revised Order No. 636 compliance filing, the Commission's review of parties' comments thereon will be facilitated if parties do not incorporate by reference their comments on TGPL's previous Order No. 636 compliance filing. Therefore, if a party does request incorporation by reference, the party should specifically identify those portions of its earlier comments that are material to TGPL's Order No. 636 compliance filing, as revised.

TGPL states that copies of its revised Order No. 636 compliance filing are being mailed to customers, state commissions, and all parties listed on the official service list for Docket No. RS92–86–000, et al. Also, copies of TGPL's revised Order No. 636 compliance filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5485 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TM93–2–82–001]**

## Viking Gas Transmission Co.; Compliance Filing

March 4, 1993.

Take notice that on March 1, 1993, Viking Gas Transmission Company ("Viking") submitted a filing in compliance with an order issued by the Commission on December 31, 1992 in the referenced docket.

The Commission's December 31, 1992 order directed Viking to file no later than March 1, 1993 a plan for the disposition of its outstanding Account No. 191 balance. Viking states that this filing is submitted in satisfaction of that requirement.

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 March 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5486 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TA93–1–43–000; TM93–3–43–000]**

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1993.

Take notice that Williams Natural Gas Company (WNG) on March 1, 1993 tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Fifteenth Revised Sheet No. 6
Sixteenth Revised Sheet No. 6A
Fifteenth Revised Sheet No. 9

WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes to increase its rates effective May 1, 1993 to reflect:

(1) An increase of $.0395 in the Cumulative Adjustment.

(2) A $.7026 per Dth increase in the Surcharge Adjustment (to a positive $.8803 per Dth from a positive $.1777 per Dth) to amortize the Deferred Purchased Gas Cost Subaccount Balance.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 19, 1993. 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

[1] TGPL previously filed an Order No. 636 compliance filing in these dockets on December 31, 1992.

file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–5487 Filed 3–9–93; 8:45 am]

BILLING CODE 6717–01–M

## Office of Conservation and Renewable Energy

### Financial Assistance Award; U.S. Export Council for Renewable Energy

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** Pursuant to 10 CFR 600.7, the Department of Energy, Chicago Operations, through the Boston Support Office intends to award a grant to the U.S. Export Council for Renewable Energy (ECRE). The grant will provide funding in the amount of $250,000 with additional funding possible for up to five years, for a specific portion of a larger program supporting renewable energy development and commercialization including both Sandia National Lab and Pacific Northwest Lab. $125,000 of this funding will be provided to support project facilitating technical assistance activities of the Mexico-U.S. Renewable Energy Cooperative Program (PROCER) by U.S. industry and to help develop local infrastructure. $125,000 will support costs for ECRE and U.S. industry participation in training and information outreach activities to assist in developing the local infrastructure necessary to support sustained renewable energy development.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This project is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The budget period of this grant shall be twelve (12) months from the effective date of award, and the project period will be for a term of five years from the effective date of award.

**FOR FURTHER INFORMATION CONTACT:**

U.S. Department of Energy, Boston, Office; Attn: Mr. Hugh Saussy, Jr.; One Congress Street, Boston, MA 02114–2021

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–5493 Filed 3–9–93; 8:45 am]

BILLING CODE 6450–01–M

## Office of Fossil Energy

### The Directory of U.S. Coal & Technology Export Resources

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of Upcoming Publication of The Directory of U.S. Coal & Technology Export Resources.

**SUMMARY:** The Department of Energy (DOE) is issuing a notice that an updated edition of The Directory of U.S. Coal & Technology Export Resources will be published in October 1993. Interested U.S. businesses are invited to participate in this directory by contacting DOE at the address listed below. The purpose of the directory is to provide a listing of available U.S. coal and coal related resources to potential purchasers of those resources. The directory lists business entities within the United States which offer coal related resources, products and services for sale on the international market. Each listing is intended to describe the product or services offered by a particular company in four areas: (1) Coal Resources; (2) Technology Resources; (3) Support Services; and (4) Financing and Resource Packaging.

**DATES:** Company information must be received on or before April 30, 1993.

**ADDRESSES/FOR FURTHER INFORMATION CONTACT:** Annette C. DuPont-Ewing, Office of Planning and Environment, Department of Energy, Mail Stop 4G–067, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–7735.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Opportunity for U.S. Businesses

### I. Background

The Department of Energy first published The Directory of U.S. Coal & Technology Export Resources in October 1989. The first directory profiled domestic U.S. corporations, associations and public entities nationwide, which offered products or services suitable for export, relating to coal and its utilization.

A second edition was published in 1990 and, in October 1991, DOE published the Biennial Supplement to the directory which updated and expanded the information in the earlier publications to include legal services, export insurance and banking. The Supplement provided corporate biographies and product/service listings for over 115 U.S. private sector entities offering coal and coal technology products available for export. When combined with those companies participating in the companion 1990 edition, the total number of entities listed in the two Directories totaled more than 425.

The Directory, currently funded at a level of $47K of federal funds, consists of one publication for which a Federal Register Notice is being used as the vehicle to select additional U.S. participants and update information on current participants. Over 5000 copies will be distributed to participants, industry representatives, US Embassies, FCS offices, foreign embassies, US consulates, Congress, Federal and international financing organizations, non-governmental organizations, potential customers abroad and others considered appropriate or as required by section 1331(e)(2) of the Energy Policy Act of 1992 (Pub. L. 102–486, October 24, 1992).

The goal of the upcoming publication is to continue ongoing government efforts to promote closer cooperation with U.S. coal and fossil energy technology industries in identifying international trade opportunities. DOE will continue to develop its list of firms and organizations as industry awareness increases within the U.S. and as new products and technologies come to market.

### II. Opportunity for U.S. Businesses

Interested U.S. businesses are invited to participate in this directory by contacting DOE at the address listed in the **ADDRESSES** section of this notice. Interested companies should provide the company name, logo, addresses, telephone numbers, telex/fax number, and the names of individuals within the company who will act as points of contact for international trade. Those companies already appearing in previous editions of the directory will be required to update information and will be contacted by DOE.

**Jack S. Siegel,**

*Acting Assistant Secretary for Fossil Energy.*

[FR Doc. 93–5489 Filed 3–9–93; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 92–161–NG]**

### Aquila Southwest Marketing Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Mexico

**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 Aquila Southwest Marketing Corporation (Aquila) blanket authorization to import and export a cumulative maximum of 360 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of the first import or export after March 1, 1993, the date that Aquila's current blanket authorization expires.

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, March 2, 1993.

**Clifford Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–5490 Filed 3–9–93; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 93–07–NG]**

## New York State Electric & Gas Corp.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting New York State Electric & Gas Corporation authorization to import near Grand Island, New York up to 10,000 Mcf of Canadian natural gas per day plus transportation fuel for a term of ten years beginning about November 1, 1993. The total volume to be imported over the term of the authorization shall not exceed 40 Bcf.

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, March 3, 1993.

**Clifford Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–5491 Filed 3–9–93; 8:45 am]

BILLING CODE 6450–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[PF–573; FRL–4574–5]**

## Ciba-Geigy Corp.; Amended Pesticide Petitions for Cyromazine

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

**ACTION:** Notice.

**SUMMARY:** EPA has received from the Ciba-Geigy Corp. the filing of amendments to pesticide petitions (PP) 6F3333 and 6F3342 proposing to establish regulations for combined residues of the insecticide cyromazine plus its major metabolite, melamine, in or on peppers and tomatoes.

**ADDRESSES:** By mail, submit written comments, identified by the document control number [PF-573], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Phillip O. Hutton, Product Manager (PM 18), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7690.

**SUPPLEMENTARY INFORMATION:** EPA has received from the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, amendments to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petitions (PP) 6F3333 and 6F3342, which appeared in the **Federal Register** of March 19, 1986 (51 FR 9511) and proposed to amend 40 CFR 180.414 for the insecticide cyromazine (*N*-cyclopropyl-1-3,5-triazine-2,4,6-triamine) plus its major metabolite melamine (1,3,5-triazine-2,4-6-triamine), calculated as cyromazine, in or on the raw agricultural commodity tomatoes at 1.0 part per million (ppm) (PP 6F3333) and in or on the raw agricultural commodity peppers at 2.0 ppm (PP 6F3342). Ciba-Geigy has submitted amendments to the petitions that would raise the tolerance for peppers from 2.0 ppm to 4.0 ppm and would lower the tolerance for tomatoes from 1.0 ppm to 0.5 ppm. The analytical method is high-pressure liquid chromatography using ultraviolet detection.

**Authority:** 7 U.S.C. 346a and 371.

Dated: March 3, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93–5469; Filed 3–9–93; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–34040; FRL 4570–1]**

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5761.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the

request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

**II. Intent to Delete Uses**

This notice announces receipt by the Agency of applications from registrants to delete uses in the four pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 8, 1993 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Registration No. | Product Name | Delete From Label |
|---|---|---|
| 002935–00363 | Methyl Parathion 5 Spray | Peppers, grapes, tomatoes |
| 003125–00283 | NEMACUR 3 | Non-bearing deciduous fruit and nut trees, commercial tree and vine nurseries |
| 062719–00019 | N-Serve 24E Nitrogen Stabilizer | Cotton, strawberries |
| 062719–00020 | N-Serve 24 Nitrogen Stabilizer | Cotton, strawberries |

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Company No. | Company Name and Address |
|---|---|
| 002935 | Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704. |
| 003125 | Miles Inc., P.O. Box 4913, 8400 Hawthorn Road, Kansas City, MO 64120. |
| 062719 | DowElanco, Quad IV 9002 Purdue Rd., Indianapolis, IN 46268. |

**III. Existing Stocks Provisions**

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: March 3, 1993.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 93–5470 Filed 3–9–93; 8:45 am]

BILLING CODE 6560–50–F

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**[PF–571; FRL–4185–6]**

## Pesticide Tolerance Petitions; Amendments

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

**ACTION:** Notice.

**SUMMARY:** This notice announces amendments to pesticide petitions (PP) and to food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

| Product Manager | Office location/telephone number | Address |
|---|---|---|
| George LaRocca (PM 15) | Rm. 204, CM #2, 703-557-2400 | 1921 Jefferson Davis Hwy., Arlington, VA. |
| Dennis Edwards (PM 19) | Rm. 207, CM #2, 703-305-6386 | Do. |
| Susan Lewis (PM 21) | Rm. 227, CM #2, 703-557-1900 | Do. |

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

**Pesticide Petition Amendments**

1. *PP 1F3949.* In a notice published in the **Federal Register** of December 9, 1992 (57 FR 58211), it was announced that Valent U.S.A. Corp., 1333 North

California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025, had submitted PP 1F3949 proposing that 40 CFR part 180 be amended to establish a tolerance for fenpropathrin (*alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on grapes at 5 parts per million (ppm) and in or on oranges at 2 ppm. Valent has submitted an amended petition proposing to establish tolerances for fenpropathrin in or on grapes at 5 ppm and in or on citrus fruits group (*Citrus* spp., *Fortunella* spp.) at 2 ppm. (PM 15)

2. *PP 4F3008.* DowElanco, Quad IV, 9002 Purdue Rd., Indianapolis, IN 46268-1189, has submitted an amendment to PP 4F3008 that proposes amending 40 CFR 180.342 by establishing a regulation permitting residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in or on the commodities tomatoes at 1 part per million (ppm), pea hay at 0.1 ppm, bean hay at 0.1 ppm, and soybean hay at 0.1 ppm. The initial notice of filing of PP 4F3008 appeared in the **Federal Register** of February 8, 1984 (49 FR 4838). (PM 19)

3. *PP 6F3372.* In a notice issued in the **Federal Register** of March 19, 1986 (51 FR 9514), it was announced that Uniroyal Chemical Co., Inc., 76 Amity Rd., Bethany, CT 06525, had proposed amending 40 CFR part 180 by establishing tolerances for the combined residues of the fungicide triflumizole (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole) and its aniline-containing metabolites 4-chloro-2-trifluoromethylaniline and *N*-(4-chloro-2-trifluoromethylphenyl)-propoxyacetamide in or on certain agricultural commodities as follows: apples at 0.1 part per million (ppm); cattle, fat, meat, and meat byproducts (mbyp) at 0.05 ppm; grapes at 0.3 ppm; hogs, fat, meat, and mbyp at 0.05 ppm; milk at 0.05 ppm; pears at 0.1 ppm; and poultry, eggs, fat, meat, and mbyp at 0.05 ppm. Uniroyal has submitted an amended notice of filing that proposes amending 40 CFR part 180 by establishing tolerances for triflumizole and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety (calculated as triflumizole) in or on apples at 0.5 ppm; grapes at 2.5 ppm; pears at 0.5 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk and eggs at 0.05 ppm; meat byproducts of poultry at 0.1 ppm; and meat byproducts and fats of cattle, goats, hogs, horses, and sheep at 0.5 ppm. The proposed analytical method for determining residues is chromatography and mass spectroscopy. (PM 21)

**Food/Feed Additive Petition Amendments**

4. *FAP 1H5295.* DowElanco, Quad IV, 9002 Purdue Rd., Indianapolis, IN 46268-1189, has submitted an amendment to feed additive petition (FAP) 1H5295 that proposes amending 40 CFR 186.1000 by establishing a regulation permitting residues of insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in or on the commodity tomatoe pomace at 65 parts per million. Previous notices regarding FAP 1H5295 have appeared in the **Federal Register** of June 10, 1981 (46 FR 30629) and February 8, 1984 (49 FR 4838). (PM 19)

5. *FAP 2H5639.* In a notice published in the **Federal Register** of December 9, 1992 (57 FR 58211), it was announced that Valent U.S.A. Corp. had submitted food additive petition (FAP) 2H5639 proposing that 40 CFR part 185 be amended to establish a tolerance of 15 ppm for raisins and 160 ppm for orange oil and to establish under 40 CFR part 186 a tolerance of 45 ppm for raisin waste, 35 ppm for grape pomace, wet and dry, and 8 ppm for orange pulp, dry. The notice of the petition superseded the notice of the petition that had appeared in the **Federal Register** of June 10, 1992 (57 FR 24647). Valent has submitted a further amendment to the petition, proposing to establish tolerances for fenpropathrin in or on the following food and feed commodities: in 40 CFR part 185 (food additives) by establishing a tolerance of 15 ppm for raisins and a tolerance of 160 ppm for citrus oil; and in 40 CFR part 186 (feed additives) by establishing a tolerance of 45 ppm for raisin waste; 35 ppm for grape pomace, wet and dried; and 8 ppm for citrus pulp, dried. (PM 15)

6. *FAP 6H5497.* In a notice issued in the **Federal Register** of March 19, 1986 (51 FR 9514), it was announced that Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT, 06524-3402, proposed amending 21 CFR part 193 (now 40 CFR part 185 after redesignation in the **Federal Register** of June 29, 1988 (53 FR 24666)) by establishing a regulation permitting the combined residues of the fungicide triflumizole and its metabolites in or on certain agricultural commodities as follows: apples, dried at 3.0 ppm; apple pomace, dry at 1.0 ppm; apple pomace, wet at 3.0 ppm; grape juice at 1.0 ppm; grape pomace, dry at 1.0 ppm; grape pomace, wet at 4.0 ppm; raisins at 1.0 ppm; and raisin waste at 2.0 ppm. Uniroyal has submitted an amended notice of filing that proposes amending 40 CFR part 185 by establishing tolerances for triflumizole and its metabolites in or on apple pomace at 2.0 ppm; grape pomace at 15.0 ppm; and raisin waste at 10.0 ppm. (PM 21)

**Authority:** 7 U.S.C. 136a.

Dated: March 2, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93-5365; Filed 3-9-93; 8:45 am]

BILLING CODE 6560-50-F

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**[PP 1G3964/T634; FRL 4571-1]**

## Consep Membranes Inc.; Extension of an Exemption from Requirement of a Tolerance

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

**ACTION:** Notice.

**SUMMARY:** EPA has extended the temporary exemption from the requirement of a tolerance for the combined residues of the pheromone codlure, (*E,E*)-8,10-Dodecadien-1-ol, in or on all raw agricultural commodities when applied to the branches of trees via a membrane-type dispenser.

**DATES:** This temporary exemption from the requirement of a tolerance expires December 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7690).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice that was published in the **Federal Register** of July 10, 1991 (56 FR 31402) that a temporary exemption from the requirement of a tolerance had been established for the combined residues of the pheromone codlure, (*E,E*)-8,10-Dodecadien-1-ol, in or on all raw agricultural commodities when applied to the branches of trees via membrane-type dispenser. This exemption from the requirement of a tolerance was established in response to a pesticide petition (PP) 1G3964, submitted by Consep Membranes, Inc., c/o Gary Clark, Manager of Regulatory Affairs, 213 SW., Columbia St., Bend, Oregon 97702-1013.

The company has requested a 1-year extension of the temporary tolerance to permit the continued marketing of the above raw agricultural commodities

when treated in accordance with the provisions of experimental use permit 56336–EUP–2, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been extended on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be use must not exceed the quantity authorized by the experimental use permit.

2. Consep Membranes, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires December 30, 1993. Residues remaining in or on all the raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use premit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use premit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**Authority:** 21 U.S.C. 346a(j).

Dated: February 24, 1993.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93–4929; Filed 3–9–93; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

March 3, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

*OMB Number:* 3060–0167.

*Title:* Section 43.42, Reports on Pensions and Benefits.

*Action:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Frequency of Response:* On occasion reporting.

*Estimated Annual Burden:* 23 responses; 80 hours average burden per response; 1,840 hours total annual burden.

*Needs and Uses:* Section 43.42 requires dominant common carriers with annual operating revenue of $100 million or more to file with the Commission the text of their pension and other employee benefit plan(s), and supporting data, as well as any subsequent changes that occur. The information filed is used by the FCC to ascertain the reasonableness of pension costs as far as they enter into the determination of rates. Benefit plans represent a sizeable investment by the companies. Without this information, the agency would have no way to determine the reasonableness of the annual accruals, and the accounting methods utilized and also, the adequacy of the funding levels maintained.

*OMB Number:* 3060–0388.

*Title:* Section 80.227, Special Requirements for Protection from RF Radiation.

*Action:* Extension of a currently approved collection.

*Respondents:* Individuals or households and businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting.

*Estimated Annual Burden:* 35 responses; 10 hours average burden per response; 350 hours total annual burden.

*Needs and Uses:* This information collection requirement is a result of responsibilities placed on the FCC by the National Environmental Policy Act (NEPA) of 1969. NEPA requires that each federal agency evaluate the impact of "major actions significantly affecting the quality of the human environment." It is the FCC's opinion that this is the most efficient and reasonable method of complying with NEPA with regard to the environmental issue of radio-frequency radiation from ship earth and radar stations. The data is supplied by manufacturers of ship earth and radar stations and is provided to users of these devices. The data supplied advises users how to avoid potentially environmentally significant RF levels, i.e., those in excess of the safety guidelines identified in Section 1.1307(b) of the Rules. If such data were not provided, it would be more difficult to ensure that environmental impact is avoided.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 93–5405 Filed 3–9–93; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 25. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's

responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

*Issues Related to the Community Reinvestment Act (CRA).* Discussion led by the Bank Regulation Committee of CRA issues, which may include the desirability of revising the current rating system, the possibility of different regulatory approaches to CRA (one for smaller banks and another for larger institutions), the idea of an exemption for the smallest institutions, and the concept of a "safe harbor" from protest-delays for satisfactorily rated institutions.

*Burdens and Benefits of Consumer Protection Rules.* Discussion led by the Bank Regulation Committee on the merits of possible actions that could be taken to reduce the regulatory burden associated with the Board's consumer protection rules.

*Impediments to the Availability of Small Business Credit.* Discussion led by the Consumer Credit Committee on possible reasons why small businesses experience difficulty in securing credit and suggestions for possible solutions.

*Electronic Benefit Transfer Programs.* Discussion led by the Depository and Delivery Systems Committee on a Board proposal that applies Regulation E (Electronic Fund Transfers) to electronic benefit transfer programs for recipients of government benefits.

*Members Forum.* Presentation of individual Council members' views on whether there are visible signs of an economic upturn present within their industries or local economies and whether it is getting easier to obtain a loan.

*Council Member Perspectives.* Remarks by Council members identifying special areas of importance and concern to their organizations in the provision of financial services to consumers and communities.

*Committee Reports.* Reports from Council committees on their work and plans for 1993.

*Governor's Report.* Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, March 19, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2412. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, (202) 452–3544.

Board of Governors of the Federal Reserve System, March 2, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93–5407 Filed 3–9–93; 8:45 am]

BILLING CODE 6210–01–M

## Bank of Boston Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 2, 1993.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

*1. Bank of Boston Corporation,* Boston, Massachusetts; to acquire Multibank Financial Corp., Dedham, Massachusetts, and thereby indirectly acquire South Shore Bank, Quincy, Massachusetts; Mechanics Bank, Worchester, Massachusetts; and Multibank West, Pittsfield, Massachusetts.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Community Bankshares, Inc.,* Orangeburg, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Orangeburg National Bank, Orangeburg, South Carolina.

**C. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Central Bankshares, Inc.,* Cordele, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Central Bank & Trust, Cordele, Georgia, a *de novo* bank.

**D. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Dearborn Bancorp, Inc.,* Dearborn, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Dearborn, Dearborn, Michigan, a *de novo* bank.

*2. Midlothian State Bank Employee Stock Ownership Trust,* Midlothian, Illinois; to acquire 12.0 percent of the voting shares of Midlothian State Bank, Midlothian, Illinois.

**E. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Union Planters Corporation,* Memphis, Tennessee; to acquire 100 percent of the voting shares of Garrett Bancshares, Inc., Goodlettsville, Tennessee, and thereby indirectly acquire Bank of Goodlettsville, Goodlettsville, Tennessee.

**F. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Community First Bankshares, Inc.,* Fargo, North Dakota; to merge with F&M Bank Holding Company, Coopertown, North Dakota, and thereby indirectly acquire Farmers and Merchants Bank in Coopertown, Coopertown, North Dakota.

**G. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers,* Kansas City, Kansas; to acquire 47.5

percent of the voting shares of Brotherhood Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire The Brotherhood Bank and Trust Co., Kansas City, Kansas.

*2. BOK Financial Corporation*, Tulsa, Oklahoma; to acquire 100 percent of the voting shares of Sand Springs Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Sand Springs State Bank, Sand Springs, Oklahoma; and to acquire Brookside Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Brookside State Bank, Tulsa, Oklahoma.

*3. Stuart Kansas City Limited Partnership*, Lincoln, Nebraska; to become a bank holding company by acquiring 33 percent of the voting shares of Standard Bancorporation, Inc., Independence, Missouri, and thereby indirectly acquire Standard Bank & Trust, Independence, Missouri.

Board of Governors of the Federal Reserve System, March 4, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–5424 Filed 3–9–93; 8:45 am]

BILLING CODE 6210–01–F

## T R Financial Corp.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous notice (FR Doc. 93–4733) published at page 12039 of the issue for Tuesday, March 2, 1993.

Under the Federal Reserve Bank of New York heading, the entry for T R Financial Corp. is revised to read as follows:

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. T R Financial Corp.*, Garden City, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Roosevelt Savings Bank, Garden City, New York. Roosevelt Savings Bank also offers Savings Bank Life Insurance.

Comments on this application must be received by March 25, 1993.

Board of Governors of the Federal Reserve System, March 4, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–5425 Filed 3–9–93; 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 acquisitions 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: 021693 AND 022693

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Kuhlman Corporation, Coltec Industries Inc., Central Moloney Transformer Division | 93–0332 | 02/16/93 |
| United Insurance Companies, Inc., Southern Educators Life Insurance Company, Southern Educators Life Insurance Company | 93–0618 | 02/18/93 |
| Sophus Berendsen A/S, Lucas Industries plc, Rucker Fluid Power Inc | 93–0628 | 02/18/93 |
| Dennis R. Washington, Kasler Corporation, Kasler Corporation | 93–0584 | 02/19/93 |
| Continental Cablevision, Inc., Cox Enterprises, Inc., Teleport Communications Group Inc | 93–0619 | 02/22/93 |
| Charles Schusterman, Exxon Corporation, Exxon Corporation | 93–0621 | 02/22/93 |
| Walbro Corporation, Cooper and Brass Sales, Inc., FitzSimons Manufacturing Company | 93–0624 | 02/22/93 |
| Morgan Stanley Leveraged Equity Fund II, L.P., Sullivan Holdings, Inc., Sullivan Holdings, Inc | 93–0625 | 02/22/93 |
| Code, Hennessy & Simmons Limited Partnership, Fiat S.p.A. (an Italian corporation), Woods Division of Fiatallis North America, Inc | 93–0630 | 02/22/93 |
| Masco Industries, Inc., Emco Limited, Emco Limited | 93–0634 | 02/22/93 |
| Interpool, Inc., Sequa Corporation, Sequa Capital Corporation; TRAC Lease, Inc | 93–0642 | 02/22/93 |
| Morgan Stanley Leveraged Equity Fund II, L.P., Newco, Newco | 93–0644 | 02/22/93 |
| Mercury Finance Company, Independent Insurance Group, Inc., Gulfco Investment, Inc | 93–0651 | 02/22/93 |
| Warburg, Pincus Investors, L.P., SHL Systemhouse Inc., SHL Systemhouse Inc | 93–0660 | 02/22/93 |
| General Motors Corp., National Auto/Truckstops Holdings Corporation, National Auto/Truckstops Holdings Corporation | 93–0595 | 02/23/93 |
| Ralph J. Roberts, Cox Enterprises, Inc., Teleport Communications Group Inc | 93–0620 | 02/23/93 |
| Sutter Health, Gould Medical Foundation, Gould Medical Foundation | 93–0632 | 02/23/93 |
| Wausau Paper Mills Company, James River Corporation of Virginia, Groveton NH Mill Facility | 93–0649 | 02/23/93 |
| Fincooper S.C.a.R.L., Allied-Lyons PLC, Frederick Wildman & Sons, Limited | 93–0655 | 02/23/93 |
| Marshall S. Cogan, John Rallis, Great Western Carpet Cushion Company, Inc | 93–0605 | 02/25/93 |
| Willcox & Gibbs, Inc., Harry Lebensfeld, Sacks Electric Supply Company | 93–0643 | 02/26/93 |
| Citicorp, New Cort Holdings Corporation, Cort Furniture Rental Corporation | 93–0663 | 02/26/93 |
| International Business Machines Corporation, General Growth Properties, Inc., General Growth Properties, Inc | 93–0669 | 02/26/93 |
| Honmachi Central Industry Corp., Midohsuji General Industrial Corporation, Summitpointe Golf Club Corp | 93–0676 | 02/26/93 |
| Arvin Industries, Inc., Space Industries International, Inc., Space Industries International, Inc | 93–0678 | 02/26/93 |
| Showa Manufacturing Co., Ltd., Honda Motor Co., Ltd., Seiki Giken Kogyo Co., Ltd | 93–0684 | 02/26/93 |

**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. 93–5433 Filed 3–9–93; 8:45 am]

BILLING CODE 6750–01–M

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**[File No. 882 3133]**

## Fleetwood Manufacturing, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Arizona-based company and its officer from representing that use, in a manner requiring little or no effort, of their continuous passive motion ("CPM") exercise tables would: Reduce or help reduce body fat; result in or contribute to weight-loss or inch loss; tone or firm human tissue; remove or eliminate cellulite; or provide health or physical fitness benefits similar or superior to those provided by rigorous exercise. In addition, respondents would be prohibited from making similar representations, with respect to any passive exercise machine, or fitness or diet program, unless they possess competent and reliable scientific evidence to substantiate such claims.

**DATES:** Comments must be received on or before May 10, 1993.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** C. Steven Baker or Theresa McGrew, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353–8156.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

File No. 882 3133

In the Matter of Fleetwood Manufacturing, Inc., a corporation, and Thomas A. Fleetwood, individually, and as an officer of the corporation.

### Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Fleetwood Manufacturing, Inc., and Thomas A. Fleetwood, individually and as an officer of Fleetwood Manufacturing, Inc., and it now appearing that Fleetwood Manufacturing, Inc., and Thomas A. Fleetwood, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

*It is hereby agreed* by and between Fleetwood Manufacturing, Inc., and Thomas A. Fleetwood, individually and as an officer of Fleetwood Manufacturing, Inc., and counsel for Federal Trade Commission that:

1. Proposed respondent Fleetwood Manufacturing, Inc., hereinafter referred to as the corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business at 1854 South McDonald Mesa, Arizona.

2. Proposed respondent Thomas A. Fleetwood is an officer of the corporate respondent named herein. He has formulated, directed and controlled the acts and practices of the corporation, including all the acts and practices set forth in the complaint accompanying this agreement. His address is the same as that of the corporation respondent.

3. Proposes respondents admit all the jurisdictional facts set forth in the draft of the complaint here attached.

4. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of the findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in deposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they fully complied with the order. Proposed

respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*Definition*

For the purpose of this Order, the following definition shall apply:

*Passive Exercise Machine* means any motorized table, equipment or device that supports body weight, and is capable of continuously moving isolated groups of muscles through a range of motion in a manner requiring little or no effort by the user. For purposes of this order a passive exercise machine shall include such devices known or referred to as toning tables, motorized calisthenics tables or any other device of substantially the same construction, design or operation.

I

*It is ordered* that respondents Fleetwood Manufacturing, Inc., a corporation, its successors and assigns, and Thomas A. Fleetwood, individually and as an officer and director of Fleetwood Manufacturing, Inc., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of any passive exercise machine in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that use of any such machine in a manner requiring little or no effort by the user:

a. Reduces or helps to reduce overall body fat or body fat in any particular areas of the human body.

b. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body.

c. Tones or firms human tissue including muscle in a normal healthy individual.

d. Removes or eliminates cellulite or any other form of subcutaneous body fat from the human body.

e. Provides health or physical fitness benefits similar or superior to those provided by rigorous forms of exercise for normal healthy individuals.

II

*It is further ordered* that respondents Fleetwood Manufacturing, Inc., a corporation, and Thomas A. Fleetwood, individually and as an officer of the corporation, their successors and assigns, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, selling or distributing of any passive exercise machine or any fitness or diet program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that use of any such machine or program:

1. Reduces or helps to reduce overall body fat or body fat in particular areas of the human body.

2. Results in or contributes to inch loss or weight loss or the reduction of any particular part of the human body.

3. Tones or firms human tissue including muscle.

4. Removes or eliminates cellulite or any other form of subcutaneous body fat.

5. Provides health or physical fitness benefits for normal healthy individuals similar or superior to those provided by rigorous forms of exercise.

unless at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of the Order, for any test, analysis, research, study or other evidence to be "competent and reliable," the test, analysis, research, study, or other evidence shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

B. Representing, directly or by implication, that any consumer endorsement or testimonial in favor of any such machine or program represents the typical or ordinary experience of members of the public who use the machine or program unless such is the case.

III

*It is further ordered* that respondents shall for at least three (3) years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order.

B. All tests, reports, studies, surveys, demonstrations or other evidence, including consumer complaints, in their possession or control that contradict, qualify or call into question any representation covered by this Order.

C. A copy of each non-identical form of promotional material disseminated by respondents.

IV

*It is further ordered* that respondents shall for at least three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor, purchaser or lessee for commercial use of respondent's passive exercise machine, along with a copy of any training manuals or other training material disseminated to such persons.

V

*It is further ordered that respondents shall:*

A. Within sixty (60) days after the date of service of this Order send via Certified mail with return receipt, a copy of this Order to each person or firm that is a current or former Fleetwood salon operator, or dealer, and to each distributor, purchaser, or lessee for commercial use of Fleetwood equipment, and that respondents shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying each such return mail receipt, as well as a list of the names, addresses and phone numbers of those parties to whom respondents distributed a copy of this Order.

B. Distribute a copy of this Order to each of respondent's current officers, agents, representatives or employees who are engaged in the preparation of advertisements or other promotional materials, or any training or instructional materials, for passive exercise machines.

VI

*It is further ordered* that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

VII

*It is further ordered* that the individual respondent named herein shall for a period of 5 years from the date of service of this Order, promptly

notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines and of his affiliation with any new business or employment in which his own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale or distribution of passive exercise machines, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

VIII

*It is further ordered* that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Fleetwood Manufacturing, Inc., and Thomas A. Fleetwood.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising for a passive exercise device commonly referred to as continuous passive motion (CPM) tables or toning tables. The Commission's complaint charges that the respondents' advertisements contained false, misleading, and unsubstantiated representations concerning the ability of CPM tables to provide normal healthy individuals with weight loss and physical fitness benefits similar or superior to those provided by rigorous forms of exercise. The complaint also alleges that the respondents represented that consumers could achieve weight loss, inch loss, cellulite removal, and physical fitness benefits with little or no physical exertion by the user or as a result of the passive exercise provided by CPM tables. In addition, the complaint alleges that the respondents represented that they possessed and relied upon a reasonable basis for the representations made in their advertisements. Finally, the complaint alleges that respondents represented that various consumer testimonials and endorsements reflected typical or ordinary experiences of consumers in terms of weight loss and inch loss after using the machines.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. The proposed order also extends to any other representations made by the respondents and to all passive exercise machines and devices, including CPM tables, and to any diet or fitness programs.

Part I of the proposed consent order prohibits the respondents from making certain false and misleading representations regarding the ability of passive exercise machines to provide weight loss and physical fitness benefits. Part II of the proposed order requires the respondents to have competent and reliable scientific evidence to substantiate any weight loss or physical fitness claims at the time they are disseminated. In addition, part II prohibits the respondents from using consumer endorsements and testimonials to represent that the experience characterized in an endorsement or testimonial is the typical or ordinary experience that members of the public would have when using any passive exercise machine or any fitness or diet program when such is not the case.

The remaining parts of the proposed consent order require the respondents to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees and to current or former salon operators, distributors, or purchasers, to notify the Commission of changes in corporate structure that might affect compliance with the order, and file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

**Public Statement of Commissioner Deborah K. Owen in the Matter of Fleetwood Manufacturing, Inc.**

Although I have reason to believe that the law was violated in this matter, I voted against accepting the consent agreement for public comment, for procedural reasons.

[FR Doc. 93–5434 Filed 3–9–93; 8:45 am]

BILLING CODE 6750–01–M

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board

**AGENCY:** General Accounting Office.

**ACTION:** March meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the monthly meeting the Federal Accounting Standards Advisory Board will be held on Thursday, March 25, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions of issues in the Exposure Draft on Accounting for Direct Loans and Loan Guarantees, and the projects on Accounting for Liabilities, and Investments.

Other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

**FOR FURTHER INFORMATION CONTACT:**

Ronald S. Young, Staff Director, 750 First St., NE., suite 1001, Washington, DC 20002, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: March 4, 1993.

**Jimmie D. Brown,**

*Deputy Director.*

[FR Doc. 93–5406 Filed 3–9–93; 8:45 am]

BILLING CODE 1610–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**MEETING:** The following advisory committee meeting is announced:

### Veterinary Medicine Advisory Committee

*Date, time, and place.* March 31, 1993, 8:30 a.m., Holiday Inn, Goshen conference room, Two Montgomery Village Ave., Gaithersburg, MD.

*Type of meeting and contact person.* Open committee discussion, 8:30 a.m. to 9:30 a.m; open public hearing, 9:30 a.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV–244), 7500 Standish Pl., Rockville, MD 20855, 301–295–8769.

*General function of the committee.* The committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

*Agenda–Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 24, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss whether the increased incidence of mastitis in dairy cows treated with Monsanto Co.'s bovine somatotropin product (Sometribove-zinc complex (Sometribove)) as an aid in increasing milk production, and the potential concomitant increase in antibiotic use, represents a risk to human health. Data in the new animal drug application for Sometribove and in the published literature show that the increase in mastitis for Sometribove-treated cows is much less than the normal variation in mastitis incidence related to physiological and environmental changes; nevertheless, any increase in mastitis could still result in an overall increase of antibiotic use that could pose a risk to human health if it raised beyond lawful levels the amount of antibiotics found in milk or meat. In this particular case, however, the Center for Veterinary Medicine has reached an initial conclusion that concern regarding potential additional risk to humans resulting from an increased incidence of mastitis due to Sometribove is not warranted. The basis for the Center's conclusion will be discussed with the advisory committee.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 2, 1993.

Jane E. Henney,

*Deputy Commissioner for Operations.*

[FR Doc. 93–5518 Filed 3–5–93; 3:45 pm]

BILLING CODE 4160–01–F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Community Planning and Development

[Docket No. N–93–3589]

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, Assistant Branch Chief, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, rm. 3001, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202) 708–0050. This is not a toll free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. chapter 35; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 12, 1993.

David M. Cohen,

*Director, Office of Affordable Housing Programs.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Comprehensive Housing Affordability Strategy (CHAS).

*Office:* Community Planning and Development.

*Description of the Need for the Proposed Information and its Proposed Use:* Title I of the National Affordable Housing Act (the Act) of 1990 requires that jurisdictions develop and implement a Comprehensive Housing Affordability Strategy as a condition for receiving funds under a variety of Federal housing assistance programs. The Act's conference language states that the CHAS will serve as a "working guide for each jurisdiction's use of Federal and other housing resources". They emphasized that the CHAS, as a single, action-oriented housing strategy, will serve as an efficient and productive management vehicle for States and units of general local government.

The Housing and Community Development Act (HCDA) of 1992 amends the Act of 1990, and produces an additional reporting burden. Changes contained herein are statutory based on the HCDA of 1992. This revised submittal accompanies a new CHAS final rule that reflects the HCDA of 1992 changes in CHAS requirements.

*Form Number:* HUD–40090–A REV. and HUD–40091–A REV.

*Respondents:* States, units of general local government, consortia and other "consolidated" jurisdictions.

*Frequency of Submission:* Year 1: Five-Year Strategy; Year 2: Annual Plan.

*Reporting Burden:* See next page.

*Total Estimated Burden Hours:* 665,050.

*Status:* Revision.

*Contact:* Mary Kolesar, HUD, (202) 708–2470; Angela Antonelli, OMB, (202) 395–6880.

*Date:* February 4, 1993.

*Reporting Burden:*

| | Number of respondents | Frequency of response | Base hours per response | Adjusted hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Five-year CHAS: | | | | | | |
| Localities | 800 | 1 (year 1) | 391 | 516 | | 412,800 |
| States | 50 | 1 (year 1) | 469 | 719 | | 35,950 |
| Annual plan:[1] | | | | | | |
| Localities | 800 | 1 (year 2) | 158 | 238 | | 190,400 |
| States | 50 | 1 (year 2) | 158 | 318 | | 15,900 |
| Abbreviated strategy | 100 | 1 | 100 | [4] | | 10,000 |
| Annual recordkeeping | [2] 850 | 1 | 12 | [4] | | [5] |
| | [3] 100 | 1 | 4.5 | [4] | | |
| Total burden | | | | | | 665,050 |

[1] Submitted in each of the four years following submission of the Five-Year Strategy.
[2] For full CHASs.
[3] For abbreviated strategies.
[4] No change.
[5] Included in above figures.

**Justification**

Under a previous submission (OMB approval #25060117), the burden of meeting the requirements of title I of the National Affordable Housing Act of 1990 were assessed. This submission amends that previous submission to account for addition burden resulting from the Housing and Community Development Act of 1992.

The additional burden lies in providing information in both the five-year strategy and the annual plan for States and localities. The additional burden pertains to providing information on: Homelessness, linkage to funding priorities, lead-based paint, anti-poverty plans, antidisplacement requirements and coordination efforts.

1. *The following circumstances make the collection of information necessary:*

Title I of the National Affordable Housing Act of 1990, as amended, requires that jurisdictions develop and implement a Comprehensive Housing Affordability Strategy (CHAS), containing 20 elements, as a condition for receiving funds made available under title II of this Act (HOME), specific programs under the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act. For the purposes of title I, a jurisdiction may be a State, including the District of Columbia and the Commonwealth of Puerto Rico, a unit of general local government or an authorized consortium of geographically contiguous units of general local governments.

This submittal revises a previous submission (OMB approval #25060117) to reflect the changes made by the HCDA of 1992. For example, in the list of 20 elements below, items 8, 17, 18, and 20 are additional requirements; and item 15 has been revised to reflect statutory intent. The impact of these changes is an increase in the total annual cost and burden hours to respondents. Such increases are illustrated in the cost estimate tables provided for sections 12a, 12b, 13a, and 13b; and in the changes in burden section (14).

In meeting this title I requirement, the jurisdiction must provide in its CHAS the following information for review by HUD:

1. Housing needs projected over a five year period and the jurisdiction's need for assistance for various income groups and categories of residents;

2. The nature and extent of homelessness and the jurisdiction's strategy for assisting the homeless and those threatened with homelessness;

3. The characteristics of the housing market;

4. The effect of public policies on the availability of affordable housing and the jurisdiction's strategy to counter the negative effects of such policies;

5. The institutional structure through which the housing strategy will be carried out and the jurisdiction's plan for overcoming gaps in that system;

6. The private and non-Federal resources available to carry out the purposes of the Act;

7. The plan for investment or other use of housing funds made available under the HOME Investment Partnership Act, the United States Housing Act of 1937, the Housing and Community Development Housing Act of 1974, and the Stewart B. McKinney Homeless Assistance Act;

8. The manner in which the jurisdiction's plan will address the housing needs, the reasons for allocation priorities, and a list of any obstacles to addressing underserved housing needs;

9. The means of cooperation among the State and any units of general local government;

10. (In the case of a unit of local government) The number, condition, and revitalization needs of public housing units and the jurisdiction's strategy for improving their management, operation and living environment;

11. (In the case of a State) The strategy to coordinate use of the Low-Income Housing Tax Credit with the development of affordable housing;

12. The activities to encourage public housing residents to become involved in management and participate in homeownership;

13. The standards and procedures for monitoring activities;

14. A certification that it will affirmatively further fair housing;

15. A certification that the jurisdiction has in effect and is following a residential antidisplacement and relocation assistance plan;

16. The number of families to whom the jurisdiction will provide affordable housing;

17. An estimate of the number of housing units that are occupied by low- or very low-income families and that contain lead-based paint hazards;

18. A description of the jurisdiction's goals, programs, and policies for reducing the number of households with incomes below the poverty line;

19. A description of jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies, and;

20. A description of the jurisdiction's evaluation and reduction procedures of lead-based paint hazards.

All jurisdictions are expected to address each of the above elements in their five-year strategy except for elements #10, which applies only to units of general local government, and #11, which applies only to States. The annual plans submitted to HUD in the years 2 through 5 covered by the five-year strategy will address elements as called for, and then, only as appropriate. Provision has been made for non-entitlement CDBG jurisdictions and those not participating in the HOME Program to submit an "abbreviated" strategy to HUD to include only that information which is relevant to the specific program for which assistance is being sought.

Title I, as amended requires jurisdictions to submit for HUD review an annual performance report on the progress they have made in carrying out their housing strategy and in meeting the goals identified under element #16. The statutory requirements of this report will necessitate additional information gathering and record keeping. For example, the statute calls for jurisdictions to provide an estimate of the number of housing units that are occupied by low- or very low-income families and that contain lead-based paint hazards.

Title I, as amended mandates that jurisdictions meet certain pre-submission requirements involving citizen participation. Jurisdictions are statutorily directed to hold at least one public hearing in order to obtain the views of citizens on the jurisdiction's housing needs, and to publish their proposed CHAS to afford citizens, public agencies, and other interested parties the opportunity for comment.

2. *Purpose and Use of Information:* (Unchanged from previous submission).

The Act's conference language states that the CHAS will serve as a "working guide for each jurisdiction's use of Federal and other housing resources". The conferees express the concern that in the past, housing assistance plans and other planning documents required of recipients as a condition of receiving

HUD funds, were often burdensome exercises that did not further efficient management or the effective achievement of key housing goals. They emphasize that in replacing these plans, the CHAS as a single, action-oriented housing strategy will serve not only as an effective monitoring tool for HUD but also as an efficient and productive management vehicle for States and units of general local government.

The CHAS annual performance report provides a jurisdiction with the format necessary to measure accomplishments and progress in carrying out its housing strategy, and enables that jurisdiction to identify and then address areas of deficiency. Such self-scrutiny serves to assist a jurisdiction in avoiding possible HUD findings.

Information on the comments and views received from citizens and other interested groups during the citizen participation process must be considered by the jurisdiction and, to the extent possible, incorporated into their housing strategy. Title I requires that a jurisdiction attach a summary of such comments and views as part of their CHAS submission to HUD.

3. *Use of Improved Information Technology to Reduce Burden:* (Unchanged from previous submission).

Development of computer software to be used by jurisdictions would not be cost effective at this time. The information needed to complete the needs and housing inventory tables in the CHAS are based on Census data, local surveys and data collection relating exclusively to each jurisdiction. The information needed to complete the remaining CHAS elements would be provided through narratives and, like the data elements, would be unique to the housing needs and conditions of each jurisdiction. However, existing computer software applications will be reprogrammed to provide jurisdictions with the data needed to complete needs and housing inventory tables. This data will be assembled in special report forms which parallel the tabular formats.

4. *Describe the Efforts to Identify Duplication:* (Unchanged from previous submission).

The duplication that would have resulted from the new CHAS requirements has been avoided by eliminating the need for a Housing Assistance Plan (HAP) and a Comprehensive Homeless Assistance Plan (CHAP). These plans were previously required as a condition of funding under the Community Development Block Grant (CDBG) Program and the McKinney Homeless Assistance Programs. The jurisdictions required to submit a CHAS are, with few exceptions, recipients of assistance under CDBG or McKinney Act programs.

Furthermore, in developing the format for the annual performance report, HUD took into consideration the other performance reports required under various HUD programs in order to reduce duplication of effort in the collection and reporting of information.

5. *Why Similar Information Already Available Cannot be Used or Modified:* (Unchanged from previous submission).

The information collected for the CHAS, particularly the statistical data, is unique to each jurisdiction and changes over time. In recognition of the importance of having the most up to date information when preparing a CHAS, HUD is requiring that a new five-year strategy be prepared by all jurisdictions for FY94 since that will be the first opportunity to have fully incorporated complete 1990 Census data as the basis for strategy development.

6. *Small Business Involvement:* Not applicable.

7. *Consequence of Less Frequent Information Collection:* (Unchanged from previous submission).

Title I precludes a less frequent information collection. Importantly, the information being collected is the minimum necessary to implement the statute and achieve its stated purposes and objectives.

8. *Inconsistency with 5 CFR 1320.6:* Not applicable.

9. Not applicable. See previous submission (OMB approval #25060117).

10. Not applicable.

11. Not applicable.

12a. *Annual Cost Estimates for Five-Year Strategy Submission and Annual Performance Report* (Respondents are States, units of general local government, consortia and other consolidated submissions.):

| | Number of respondents | × | Original estimate of hours | Adjusted estimate of hours | × | Average hourly rate | = | Adjusted cost |
|---|---|---|---|---|---|---|---|---|
| CHAS preparation: | | | | | | | | |
| Localities | 800 | | 295 | 420 | | $15 | | $5,040,000 |
| States | 50 | | 354 | 604 | | 15 | | 453,000 |
| Citizen participation: [1] | | | | | | | | |
| Localities | 800 | | 16 | (3) | | 15 | | 192,000 |
| States | 50 | | 19 | (3) | | 15 | | 14,250 |
| Publication costs: [2] | | | | | | | | |
| Localities | 800 | | (3) | | | 1,250 | | 1,000,000 |
| States | 50 | | | (3) | | 5,000 | | 250,000 |
| Annual performance report: | | | | | | | | |
| Localities | 800 | | 80 | (3) | | 15 | | 960,000 |
| States | 50 | | 96 | (3) | | 15 | | 72,000 |
| Total annual cost to respondents | | | | | | | | 7,981,250 |

[1] It is anticipated that many jurisdictions that are CDBG recipients will hold their CHAS public hearings in conjunction with their CDBG public hearings.

[2] Includes five publications: notice of public hearing (CHAS), summary of CHAS and request for comment, Annual Performance Report request for comment, and, if appropriate, substantial amendment request for comment, and notice of minor amendment, if any.

[3] No change.

12b. *Annual Cost Estimates for Annual Plan Submission (Years 2 through 5) and Annual Performance Report* (Respondents are States, units of general local government, consortia and other consolidated submissions):

| | Number of respondents | × | Estimated hours | Adjusted estimated hours | × | Average hourly rate | = | Cost |
|---|---|---|---|---|---|---|---|---|
| Annual plan preparation: | | | | | | | | |
| Localities | 800 | | 68 | 148 | | $15 | | $1,776,000 |
| States | 50 | | 68 | 228 | | 15 | | 171,000 |
| Citizen participation[4] 127,500 | 850 | | 10 | ([6]) | | 15 | | |
| Publication costs:[5] | | | | | | | | |
| Localities | 800 | | | ([6]) | | 750 | | 600,000 |
| States | 50 | | | ([6]) | | 3,000 | | 150,000 |
| Annual performance report | 850 | | 80 | ([6]) | | 15 | | 1,020,000 |
| Total annual cost to respondents | | | | | | | | 3,844,500 |

[4] See footnote #1.
[5] Includes three publications: notice of public hearing (CHAS), summary of CHAS and request for comment, Annual Performance Report request for comment.
[6] No change.

12c. *Cost Estimates for Abbreviated Strategy Submission and Annual Performance Report* (Respondents are Non-CDBG entitlement units of general coal government.)

Unchanged from previous submission.

| | Number of respondents | × | Estimated hours | × | Average hourly rate | = | Cost |
|---|---|---|---|---|---|---|---|
| Abbreviated strategy preparation | 100 | | 60 | | $15 | | $90,000 |
| Citizen participation | 100 | | 10 | | 15 | | 15,000 |
| Publication costs[3] | 100 | | | | (at 750) | | 75,000 |
| Annual performance report | 100 | | 30 | | 15 | | 45,000 |
| Total annual cost to respondents | | | | | | | 225,000 |

[3] See footnote #5.

13a. *Estimate of Burden of Information Collection for Five-Year Strategy and Annual Performance Report*

Respondents: States, units of general local government, consortia and other consolidated submissions.

| | Section rule affected | Number of respondents | Response per respondents | Total annual responses | Hours per response | Adjusted hours per response | Total hours |
|---|---|---|---|---|---|---|---|
| CHAS prep | §§ 91.17, .42, & .70. | | | | | | |
| Localities | | 800 | 1 | 800 | 295 | 420 | 336,000 |
| States | | 50 | 1 | 50 | 354 | 604 | 30,200 |
| Citizen part | §§ 91.60, .62, & .65. | | | | | | |
| Localities | | 800 | 1 | 800 | 16 | ([9]) | 12,800 |
| States | | 50 | 1 | 50 | 19 | ([9]) | 950 |
| Annual performance report[8] | §§ 91.82, & .85. | | | | | | |
| Localities | | 800 | 1 | 800 | 80 | ([9]) | 64,000 |
| States | | 50 | 1 | 50 | 96 | ([9]) | 4,800 |
| Total annual burden hours | | | | | | | 491,950 |

[8] Included in the burden hours is the time that respondents will need to provide substantive responses to HUD recommendations on the annual performance report.
[9] No change.

13b. *Estimate of Burden of Information Collection for Annual Plan (Years 2 through 5) and Annual Performance Report.*

Respondents: States, units of general local government, consortia and other consolidated submissions.

| | Section rule affected | Number of respondents | Response per respondent | Total annual responses | Hours per response | Adjusted hours per response | Total hours |
|---|---|---|---|---|---|---|---|
| Annual plan preparation | §§ 91.21,46,70. | | | | | | |
| Localities | | 800 | 1 | 800 | 68 | 148 | 118,400 |
| States | | 50 | 1 | 50 | 68 | 228 | 11,400 |
| Citizen participation | §§ 91.60,62,65 | 850 | 1 | 850 | 10 | ([11]) | 8,500 |
| Annual performance report[10]. | §§ 91.82,85 | 850 | 1 | 850 | 80 | ([11]) | 68,000 |
| Total annual burden hours. | | | | | | | 206,300 |

[10] Included in the burden hours is the time that respondents will need to provide substantive responses to HUD recommendations on the annual performance report.
[11] No change.

13c. *Estimate of Burden of Information Collection for Abbreviated Strategy and Annual Performance Report* (Respondents are Non-CDBG entitlement units of general local government):
Unchanged from previous submission.

| | Section rule affected | Number of respondents | Response per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|---|
| Abbreviated strategy: | | | | | | |
| Preparation | 91.25 | 100 | 1 | 100 | 60 | 6,000 |
| Citizen participation | 91.60, 62, 65 | 100 | 1 | 100 | 10 | 1,000 |
| Annual performance report [12] | 91.82, 85 | 100 | 1 | 100 | 30 | 3,000 |
| Total annual burden hours | | | | | | 10,000 |

[12] See footnote #9.

14. *Changes in Burden*

As previously stated in the justification section, the CHAS is a requirement authorized under title I of the National Affordable Housing Act of 1990. The HCDA of 1992 creates additional burden in preparing a CHAS under sections 220, 622, 681, 1012, and 1206. These additional burden hours are illustrated in tables 12a-c and 13a-c and represent only the statutory requirements of the HCDA of 1992.

The additional information required by the HDCA of 1992 increase the burden hours for localities and States when preparing their five-year strategy, annual plans, and annual performance reports. For example, the inclusion of information pertaining to homelessness (section 220), linkage to funding priorities (section 220), anti-poverty planning (section 220), antidisplacement certification (section 220), lead-based paint hazard analyses (section 1014), and coordination efforts (section 681) has increased the total hours to prepare a five-year strategy for localities and States by 125 and 250 hours respectively. The table below illustrates the increase in hours for localities and States.

| | Five-year strategy and annual performance report | Annual plan | Abbreviated strategy |
|---|---|---|---|
| Localities | 125 | 80 | No change. |
| States | 250 | 160 | No change. |

15. The results of this collection of information are not planned for statistical use.

[FR Doc. 93-5431 Filed 3-9-93; 8:45 am]
BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-120-03-4210-04; G3-030; OR-45444]

### Exchange of Public Land, Coos County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Land Exchange.

SUMMARY: The following described public domain lands, including mineral rights, located on the North Spit of Coos Bay, Oregon, have been determined to be suitable for disposal out of Federal ownership, by exchange, pursuant to section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

**Willamette Meridian, Oregon**

T. 25 S., R. 13 W.
Sec. 7, Lots 5, 6, 8, SE¼SE¼SW¼, S½SE¼SE¼NE¼;
Sec. 18, Lot 7, E½E½NW¼.
Comprising 140.91 acres, more or less.

The patent, when issued, will be subject to a reservation of a right-of-way thereon for ditches and canals constructed by the authority of the United States of America, Act of August, 1890 (43 U.S.C. 945) and a reservation thereon for a road for public access to be constructed by the authority of the United States of America Act of October 21, 1976 (43 U.S.C. 1761). The patent will also be issued subject to the following existing rights-of-way grants and reservations:

1. OR 36509—U.S. Corps of Engineers
2. OR 38912—Federal Aviation Administration
3. OR 44459—Pacific Power & Light
4. OR 44460—Coos Bay North Bend Waterboard
5. OR 47060—Weyerhaeuser Company
6. OR 37075—Coos County
7. OR 49196—Bureau of Land Management

all granted pursuant to the Act of October 21, 1976.

In exchange for all or a portion of these lands, the United States of America will acquire all or a portion of the following described lands from the exchange proponent:

**Willamette Meridian, Oregon**

T. 25 S., R. 13 W.,
Sec. 18, Lot 4, NE¼SW¼ and accreted lands adjacent to and abutting Lot 4;
Sec. 19, accreted lands adjacent to and abutting Lot 4.
T. 25 S., R. 14 W.,
Sec. 25, Lot 1 and adjoining tidelands.
Comprising 157.4 acres, more or less.

The value of the lands to be exchanged has been established by fair market value appraisals and is approximately equal, the acreage may be adjusted or a cash payment may be made to the United States of America to equalize values at the time of consummation of the exchange transaction.

The exchange proponent, the Oregon International Port of Coos Bay, has submitted a written proposal concerning the lands noted above indicating that the purpose of this exchange is to fulfill

a public need which requires the acquisition of Federal lands to facilitate the orderly development of a Marine Industrial Park to assure that the shoreline is available for water dependent uses while accommodating non-water dependent uses on the inland portion of the existing industrial park. The private lands being considered for acquisition by the United States of America would add important scenic quality, recreational opportunities and wildlife habitat values to adjoining Federal lands.

This exchange proposal is consistent with the management objectives of the Coos Bay Management Framework Plan (MFP) and the Federal lands have been identified for disposal in the MFP. This exchange proposal has been discussed with Coos County and various State of Oregon agencies who have indicated that the proposal is consistent with local government plans. The public interest will be well served by making this exchange.

The publication of this notice in the **Federal Register** segregates the Federal lands described herein from all forms of appropriation and entry under the public land laws, including the mining laws, for a period of two years from the date of publication. The exchange is expected to be completed before the end of that period.

**ADDRESSES:** Detailed information concerning the exchange, including the environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459.

**DATES:** On or before April 26, 1993, interested parties may submit protests to the Coos Bay District Manager at the above address (Please reference exchange number OR 45444). Objections will be evaluated by the Oregon State Director of the Bureau of Land Management who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Daryl Albiston or Thom Green, Coos Bay District Office, (503) 756–0100.

Dated: February 22, 1993.

**Melvin E. Chase,**

*District Manager.*

[FR Doc. 93–4760 Filed 3–9–93; 8:45 am]

BILLING CODE 4310–33–M

## Bureau of Reclamation

### Implementation of the Reclamation Reform Act of 1982 in the Central Valley Project, California

**AGENCY:** Bureau of Reclamation (Interior).

**ACTION:** Notice of availability and notice of public hearings on draft environmental impact statement (DEIS); INT–DES–93–9.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and in accordance with a Federal court order, the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) on proposed rules to implement the Reclamation Reform Act of 1982 (RRA) in the Central Valley Project (CVP) in California. The DEIS evaluates three alternatives, including no action, and analyzes each with respect to several key RRA provisions. Four public hearings will be held to receive comments from interested organizations and individuals on the environmental impacts of the proposal.

**DATES:** A 45-day public review period begins with the Environmental Protection Agency's publication of DEIS availability in the **Federal Register**.

Public hearings on the DEIS will be held on the following dates at the locations indicated.

April 6—4 p.m. to 7:30 p.m., Franco's Restaurant, 610 South Tehama, Willows, California.

April 7—1 p.m. to 4 p.m., Red Lion Hotel, 1401 Arden Way (at Business 80) (Donner or Cedar Room), Sacramento, California.

April 8—1 p.m. to 4 p.m., Merced County Spring Fair (Germino Building), 4th and 5th Streets, Los Banos, California.

April 8—6:30 p.m. to 9:30 p.m., Holiday Inn—Airport (Raisin Room), 5090 East Clinton, Fresno, California.

**ADDRESSES:** Written comments on the DEIS may be submitted to: J. William McDonald, Assistant Commissioner—Resources Management, Bureau of Reclamation, Attention: D–5640, PO Box 25007, Denver, CO 80225.

Copies of the DEIS may be requested from the following:

- Assistant Commissioner—Resources Management, Bureau of Reclamation, Attention: D–5640, PO Box 25007, Denver, CO 80225; telephone: (303) 236–8530.
- Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, Attention: MP–750, 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 978–5487.

Copies of the DEIS are available for inspection at the addresses above and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW., Washington, DC 20240; telephone: (202) 208–4662.
- Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver, CO 80225; telephone: (303) 236–6963.
- Central Valley Project—Fresno Office, 2666 North Grove Industrial Drive, suite 106, Fresno, CA 93727; telephone: (209) 487–5041.
- Central Valley Project—Willows Office, 1140 West Wood Street, Willows, CA 94988; telephone: (916) 934–7361.
- Central Valley Project—Shasta Office, Shasta Dam, Redding, CA 96003; telephone: (916) 275–1554.
- Central Valley Project—Tracy Office, Mountain House and Kelso Roads, 10 miles west of Tracy, CA; telephone: (209) 836–6279.

*Libraries*

Bakersfield Library, 701 Truxtun Avenue, Bakersfield, California

Concord Library, 2900 Salvio, Concord, California

Fresno County Library, 2420 Mariposa Street, Fresno, California

Los Banos City Library, 1312 7th Street, Los Banos, California

Merced Library, 2100 O Street, Merced, California

Modesto City Library, 1500 I Street, Modesto, California

Red Bluff City Library, 645 Madison Street, Red Bluff, California

Sacramento County Library, 536 Downtown Plaza, Sacramento, California

Shasta County Library, 1855 Shasta Street, Redding, California

Stockton City Library, 605 North El Dorado, Stockton, California

**FOR FURTHER INFORMATION CONTACT:** Gary Anderson, Chief, Reclamation Law Administration Branch, Bureau of Reclamation, Attention: D–5640, PO Box 25007, Denver, CO 80225; telephone: (303) 236–8064.

**SUPPLEMENTARY INFORMATION:** In 1988, Reclamation was sued by the Natural Resources Defense Council (NRDC), which alleged, among other things, that Reclamation had not adequately complied with the National Environmental Policy Act (NEPA) in promulgating 1987 and 1988 rules to implement the RRA (43 CFR part 426).

On July 26, 1991, the United States District Court for the Eastern District of California ruled in favor of NRDC on the issue of NEPA compliance. After being briefed on the issue of relief, the court issued an order on March 10, 1992, declaring that:

1. The issuance of the 1987 and 1988 rules was a major act affecting the quality of the environment, thus requiring the preparation of an environmental impact statement (EIS).

2. Within 15 months (by June 10, 1993), Reclamation must issue interim rules to implement the RRA in the CVP of California, including the preparation of an EIS.

3. Within 30½ months (by September 25, 1994), Reclamation must issue final rules, including the preparation of an EIS that would apply to all Reclamation projects.

4. The existing regulations will remain in effect on an interim basis until new rules are prepared.

In accordance with the court order, Reclamation has prepared a DEIS evaluating the effects of implementing RRA rules for the CVP. Three alternatives, including no action, are evaluated in the draft statement. Under the no action alternative, regulations essentially identical to the 1987 and 1988 RRA regulations (43 CFR part 426), as amended, would be issued for the CVP. The preferred alternative is the no action alternative. One of the action alternatives would provide for rules identical to the draft acreage limitation rules Reclamation proposed on November 7, 1986 (51 FR 40749). The other action alternative would provide for a more restrictive application of the RRA and would require new legislation before it could be implemented.

Each alternative was analyzed with respect to four key RRA issues: (1) implementation of section 203(b) of the RRA which requires that, as of April 13, 1987, parties remaining subject to Reclamation law in effect prior to the enactment of the RRA must pay the full-cost rate for Reclamation irrigation water delivered to land leased in a landholding exceeding 160 acres; (2) definition of "lease"; (3) water conservation requirements for districts in Reclamation projects; and (4) the acreage threshold below which landholders on Reclamation projects are exempt from the information requirements of the RRA.

Dated: February 17, 1993.

**James O. Malila,**

*Assistant Commissioner—Administration.*

[FR Doc. 93–5499 Filed 3–9–93; 8:45 am]

BILLING CODE 4310–09–M

## Office of Surface Mining Reclamation and Enforcement

### Cancellation of a Notice of Intent

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

**ACTION:** Cancellation of a notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement is canceling the notice of intent to prepare a new or supplemental environmental impact statement for the approval of State and Tribal reclamation program grants under title IV of the Surface Mining Control and Reclamation Act of 1977.

**DATES:** Effective March 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** David S. Hamilton, Office of Surface Mining, Third Floor, suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, PA 17101; telephone: (717) 782–4036 (commercial) or (FTS).

**SUPPLEMENTARY INFORMATION:** On February 27, 1992 (57 FR 6737), the Office of Surface Mining Reclamation and Enforcement (OSM) published a notice of intent to prepare a new or supplemental environmental impact statement (EIS) for the approval of State and Tribal reclamation program grants under title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Title IV of SMCRA authorizes OSM to distribute grants from the Abandoned Mine Land (AML) Reclamation Fund to States and Tribes with approved coal mining regulatory programs and abandoned mine reclamation plans so that the States and Tribes can reclaim AML. The EIS was in the scoping stage.

After further consideration, OSM has decided not to prepare a new or supplemental EIS for approval of State and Tribal reclamation program grants because of the volume of site specific data that would be required in a single document for a nationwide program. Instead, OSM will continue to prepare site specific NEPA documentation for individual AML projects as necessary. Certain types of actions in the AML program have been determined by the Department of the Interior to be categorically excluded from the requirement to prepare either an EIS or an environmental assessment. The Department has recently approved certain additions to the list of such actions that are categorically excluded. The notice approving those additions is being published in this edition of the **Federal Register.**

Dated: March 1, 1993.

**Brent Wahlquist,**

*Assistant Director, Reclamation and Regulatory Policy.*

[FR Doc. 93–5428 Filed 3–9–93; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–347]**

### Certain Anti-Theft Deactivatable Resonant Tags and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 2, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Checkpoint Systems, Inc., 550 Grove Road, Thorofare, New Jersey 08086. An amended complaint was filed on February 23, 1993. The complaint, as amended, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain anti-theft deactivatable resonant tags and components thereof by reason of alleged infringement of claims 1, 2, 4, 6, 9, 10, 20, 21, 23 and 25 of U.S. Letters Patent 4,498,076 and claims 1, 2, 4, 6, 9, 10, 19, 20, 22, 24, 25, 26 and 27 of U.S. Letters Patent 4,567,473, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20536, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**FOR FURTHER INFORMATION CONTACT:** Alesia M. Woodworth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on March 3, 1993, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain anti-theft deactivatable resonant tags and components thereof by reason of alleged infringement of claims 1, 2, 4, 6, 9, 10, 20, 21, 23 or 25 of U.S. Letters Patent 4,498,076 or claims 1, 2, 4, 6, 9, 10, 19, 20, 22, 24, 25, 26 or 27 of U.S. Letters Patent 4,567,473; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Checkpoint System, Inc., 550 Grove Road, Thorofare, New Jersey 08086.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Actron AG, Lettenstrasse 8, CH–6343 Rotkreuz, Switzerland.
ADT, Limited, Cedar House, 41 Cedar Avenue, Hamilton, Bermuda.
Tokai Denshi Co., Ltd., 1071 Yabata, Chigasaki-shi, Kamagawa Prefecture, Japan.
All Tags Security AG, Industrie Strasse 11, CH–6343 Rotkreuz, Switzerland.
Toyo Aluminum K.K., Midosuji Daiwa Building, 3–6–8 Kyutarocho, Chuo-ku, Osaka-City, Osaka, Japan.
Custom Security Industries Inc., 19 Ruggles Avenue, Unit 5, Thorn Hill, Ontario, L3T 3S4, Canada.

(c) Alesia M. Woodworth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with sections 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure to a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 4, 1993.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 93–5463 Filed 3–9–93; 8:45 am]

BILLING CODE 7020–20–M

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**[Investigation No. 731–TA–621 (Final)]**

## Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a final antidumping investigation.

**SUMMARY:** The Commission hereby give notice of the institution of final antidumping investigation No. 731–TA–621 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) 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 the People's Republic of China of certain compact ductile iron waterworks fittings and accessories thereof,[1] provided for in subheadings 7307.19.30, 7318.15.20, 7318.16.00, and 7325.99.10 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, 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:** February 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

### Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain compact ductile iron waterworks fittings and accessories thereof from the People's Republic of China 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). The investigation was requested in a petition filed on July 8, 1992, on behalf of the U.S. Waterworks Fittings Producers Council, which is comprised of the following firms: Clow Water Systems Company (Coshocton, OH); Tyler Pipe

[1] The products covered by this investigation are (1) certain compact ductile iron waterworks (CDIW) fittings of 3 to 16 inches nominal diameter regardless of shape, including bends, tees, crosses, wyes, reducers, adapters, and other shapes, whether or not cement line, and whether or not covered with bitumen or similar substance, conforming to American Water Works Association/American National Standards Institute (AWWA/ANSI) specifications C153/A21.53, and rated for water working pressure of 350 PSI; and (2) certain CDIW fittings accessories which typically consist of a standard ductile iron gland, a styrene butadiene rubber (SBR) gasket, the requisite number of Cor-Ten steel or ductile iron T-head bolts, and hexagonal nuts, for fittings in sizes 3 to 16 inches, conforming to AWWA/ANSI specification C111/A21.11, and rated for water working pressure of 350 PSI. Gaskets, bolts and nuts are only included if they are imported as an accessory pack with a gland. However, glands imported separately are included in the scope of the investigation. Compact ductile iron waterworks fittings with nominal diameters greater than 16 inches and accessories used with such fittings, nonmalleable cast iron or gray iron fittings, and full-bodies ductile fittings all are excluded from the scope of this investigation.

Industries, Inc. (Tyler, TX); and Union Foundry Company (Anniston, AL).

**Participation in the Investigation and Public Service List**

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 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 this investigation upon the expiration of the period for filing entries of appearance.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, 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 this investigation will be placed in the nonpublic record on June 24, 1993, and a public version will be issued thereafter pursuant to section 207.21 of the Commission's rules.

**Hearing**

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 8, 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 June 30, 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 July 2, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

*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 July 1, 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 July 16, 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 to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 16, 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 investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: March 5, 1993.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 93–5466 Filed 3–9–93; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 22–53]**

## Certain Dairy Products; Institution of Investigation and Scheduling of a Public Hearing

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and scheduling of a public hearing.

**SUMMARY:** Following receipt on January 19, 1993, of a request from the President for an investigation under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), the Commission instituted investigation No. 22–53 under section 22(d) of the act for the purpose of determining whether the Harmonized Tariff Schedule of the United States (HTS) should be modified with respect to the following proposed actions:

(a) The exclusion of cajeta not made from cow's milk from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60);

(b) The exclusion of inedible dried milk powders used for calibrating infrared milk analyzers from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60);

(c) The exclusion of margarine cheese from Sweden from the quota on malted milk and articles of milk or cream (HTS subheading 9904.10.60), and the inclusion of margarine cheese from Sweden under the quota for lowfat cheese (HTS subheading 9904.10.57);

(d) The elimination of the import quota licensing requirement with respect to dried cream (HTS subheading 9904.10.15) and malted milk and articles of milk of cream (HTS subheading 9904.10.60); and

(e) The clarification of U.S. note (3)(a)(iii) to subchapter IV of chapter 99 to provide that, to the extent the Secretary of Agriculture determines that the specified country quota quantity is not likely to be entered in a calendar year, such country quota for a particular dairy product may be reallocated among all countries having quota allocations, including countries falling in the "other" category (unless it is specified that no quantity of such product should be entered from "other" countries).

The President asked that the Commission report its findings and recommendations at the earliest practicable date. The Commission anticipates submitting its report to the President by June 30, 1993.

**EFFECTIVE DATE:** January 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:** For further information concerning the conduct of

this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E, and part 204 (19 CFR parts 201, 204).

**Participation in the Investigation**

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service List**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Hearing**

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 29, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 14, 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 April 21, 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) and 201.13(f) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Testimony at the public hearing should be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. The deadline for filing prehearing briefs is the close of business on April 22, 1993. Posthearing briefs must be submitted not later than the close of business on May 6, 1993. In addition, the presiding official may permit persons to file answers to requests made by the Commission at the hearing within a specified time. The Secretary will not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

**Written Submissions**

As stated above, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 6, 1993. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the Commission's rules.

All written submissions except for confidential business information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which confidential business treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

This notice is published pursuant to § 204.4 of the Commission's rules (19 CFR 204.4).

Issued: March 5, 1993.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 93–5465 Filed 3–9–93; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 731–TA–625 (Final)]**

## Certain Helical Spring Lockwashers From Taiwan

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a final antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–625 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) 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 Taiwan of certain helical spring lockwashers,[1] provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, 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:** February 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Douglas Corkran (202–205–3177), Office of Investigation, 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.

[1] For purposes of this investigation, certain helical spring lockwashers are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non plated, with ends that are off-line. Such helical spring lockwashers are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screw or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain helical spring lockwashers from Taiwan 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). The investigation was requested in a petition filed on September 8, 1992, by the Shakeproof Industrial Products Division, Illinois Tool Works, Milwaukee, WI.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 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 this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, 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 this investigation will be placed in the nonpublic record on April 30, 1993, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 13, 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 May 5, 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 May 10, 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. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera.*

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 May 7, 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 May 21, 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 to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 21, 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 investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under the authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: March 3, 1993.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 93–5462 Filed 3–9–93; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 731–TA–550 (Final)]**

## Sulfur Dyes from India

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject investigation.

**FOR FURTHER INFORMATION CONTACT:** Diane J. Mazur (202–205–3184), 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 23, 1992, the Commission instituted the subject investigation and established a schedule for its conduct (57 FR 53779). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 4, 1993, to February 19, 1993. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's final schedule.

The Commission's new schedule for the subject investigation is as follows: A supplemental brief addressing only the final antidumping duty determination of the Department of Commerce is due no later than March 25, 1993. The brief may not exceed five (5) pages in length.

For further information concerning this investigation, see the Commission's notice of institution cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR 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: March 4, 1993.

By order of the Commission.

**Paul R. Bardos,**

*Acting Secretary.*

[FR Doc. 93–5464 Filed 3–9–93; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

**[Ex. Parte No. MC–95 (Sub-No. 8)]**

### Adequacy of Intercity Motor Common Carrier Passenger Service

By this notice, interested parties are requested to comment on several topics related to the adequacy of service in the motor carrier passenger industry and certain carrier practices.

In enacting the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261) (Bus Act), Congress sought to free the intercity bus industry from unnecessary regulatory restrictions to enhance the industry's financial viability and increase its competitive opportunities. Since 1982, bus companies have taken advantage of many of the reforms included in the Bus Act to streamline their route networks, eliminate unprofitable service, and raise intrastate fares to levels similar to those for comparable interstate travel. While these reforms have helped the bus industry, the industry's share of the intercity passenger travel market remains small, and some companies are experiencing financial difficulties.

As a result, the structure of the intercity bus industry has changed in recent years. Most notably, in 1988, the Commission authorized the purchase of Trailways Lines, Inc., by GLI Acquisition Company [1] (hereafter GLI or Greyhound). Since that time, there have been extensive modifications in bus industry services, operations, and practices. The most significant developments have been GLI's filing for bankruptcy on June 4, 1990, and its subsequent emergence under a reorganization plan approved by the Bankruptcy Court.[2] Efforts by GLI to explore methods to improve its viability subsequent to bankruptcy have raised issues of concern to many regional carriers. Several of these issues have recently been the subject of Commission proceedings.[3] The Commission has viewed the issues raised in most of these cases as matters that should be subject to negotiation and settlement between the parties. We did state in our 1988 decision authorizing GLI's purchase of Trailways, however, that we would monitor the results of the purchase to assure the protection of the public.

Accordingly, we are issuing this notice in an effort to expand our understanding of the industry's operations and practices. Specifically, we seek to obtain information on the nature and scope of the intercity bus industry as it now exists. We are concerned not only with how the Bus Act's reforms have affected the intercity bus industry, but also how the industry has responded to more recent developments, particularly the Greyhound-Trailways merger.

This notice is part of a multifaceted and detailed study of the bus industry being undertaken by the Commission. The Commission intends, based on the information received through the efforts of our headquarters and field staff, as well as in response to this notice, to examine such issues as adequacy of service, reservations and scheduling, terminal access and service, and the financial condition of major carriers in the industry. We intend to focus on regular-route operations, although an examination of charter and special operations may be appropriate in certain areas. When the study is complete, the Commission will use the information to determine whether we should take any further actions.

For this reason, comments are requested on, but not limited to, the following topics:

*1. Adequacy of Regular-Route Service*

—Significant changes in levels and scope of service since 1982 and, particularly, since 1988
—Changes in ridership levels
—Availability and usage of alternative modes of transportation
—Level and scope of "feeder" service to fill the gaps of discontinued regular-route service
—Availability and scope of competing services that do not use Greyhound facilities
—The role of Greyhound and "competing" and "complementary" smaller carriers in providing the public with adequate service

*2. Regular-Route Reservations and Schedules*

—Changes in traffic flow, levels of service, and adequacy of service since Greyhound began publication of an independent routing guide
—Specific improvements that have resulted from Greyhound's publication of an independent routing guide
—Changes in traffic flow, levels of service, and adequacy of service caused by schedule changes by Greyhound or other regular-route carriers on less than 30 days notice

*3. Terminal Access*

—Problems associated with negotiating terminal access
—Specific interline difficulties at terminals
—Whether the access granted is sufficient to conduct operations in an efficient manner—if not, identify the problems
—Trends in municipal ownership of terminals, including intermodal terminals
—Whether shared terminals are necessary for adequate service

*4. Terminal Service*

—Problems in the following areas with respect to operations conducted in terminals:
1. ticket sales
2. honoring tickets
3. arrival and departure announcements
4. schedule postings
5. bay assignments
6. other difficulties
—Changes in regular-route traffic flow and levels of service with respect to terminal service problems

*5. Financial Health*

—Financial impacts from the practices described above on operating revenues, ridership, load factors, operating ratios, and profitability
—Data on any other relevant financial implications of these practices
—Overall bus industry profitability for regular-route and charter operations
—The importance of revenues from charter and special operations in maintaining the viability of regular-route bus services for individual bus companies
—Scope of regular-route and charter bus service and usage vis-a-vis other passenger transportation modes

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[1] GLI Acquisition Company—Purchase—Trailways Lines, Inc. 4 I.C.C.2d 591 (1988), affirmed by unprinted decision served October 6, 1988, *aff'd sub nom. Peter Pan Bus Lines, Inc., et al. v. Interstate Commerce Commission*, Nos. 88–1556 and 88–1567 (D.C. Cir. May 8, 1989) (per curiam).

[2] In re: Eagle Bus Manufacturing, Inc., et al., Nos. 90–00985–B–11 to 90–00990–B–11 (Bankr. S.D. Tex.).

[3] No. MC–F–18505, GLI Acquisition Company—Purchase—Trailways, Inc.: Peter Pan Bus Lines, Inc.—Petition to Reopen (not printed), served March 19, 1991; Blue Ridge Lines, Ltd., d/b/a Blue Ridge Trailways—Petition to Reopen (not printed), served December 12, 1990, *stay denied, Greyhound Lines v. Interstate Commerce Commission*, No. 4920 (5th Cir. December 17, 1990); Petition for Clarification or Modification (not printed), served February 8, 1991; American Coach Lines, Inc.—Petition to Reopen (not printed), served June 28, 1991; Peter Pan Bus Lines, Inc.—Petition to Reopen—Ticket Sales Arrangements at New York, NY, (filed June 11, 1992), served March 4, 1993; Peter Pan Bus Lines, Inc.—Petition to Reopen—Mutual Honoring of Tickets, (filed June 25, 1992), served March 4, 1993; Bremerton Tacoma Stages, Inc., d/b/a Cascade Trailways—Petition to Reopen (not printed), served August 14, 1992, as corrected by decision August 31, 1992; Petition to Reopen for Reconsideration, (filed September 3, 1992), pending; Adirondack Trailways, et al.—Petition to Reopen and for Emergency Relief (not printed), served October 22, 1992. Ex Parte No. MC–95 (Sub-No. 7), Petition to Amend 49 CFR part 1063, Adequacy of Intercity Motor Common Carrier Passenger Service (filed January 14, 1993), served March 4, 1993.

Comments are due by April 9, 1993. Send an original and 10 copies of comments referring to Ex Parte No. MC–95 (Sub-No. 8) to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

For further information, contact Richard Felder, at (202) 927–5610 [Assistance for the hearing impaired is available through TDD service 927–5721].

Decided: March 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Philbin and Commissioner Walden dissented with separate expressions.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–5447 Filed 3–9–93; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Notice of Joint Motion to Modify Consent Decree Under the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 1, 1993, a Joint Motion to Modify Consent Decree was filed with the United States District Court for the District of Massachusetts in *United States* v. *City of Gloucester*, Civil Action No. 89–2206–Y. The motion was filed by the plaintiff-intervenor the Commonwealth of Massachusetts and the defendant City of Gloucester, and the United States proposes to join the motion. The motion seeks to modify the Consent Decree entered by the court in 1992 by replacing paragraph 59 of the Consent Decree with new provisions which would allow the City to use alternative water pollution abatement systems, instead of conventional sewer collection facilities, in certain areas of North Gloucester where the use of such alternative systems is determined to be appropriate.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed modification to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Gloucester*, D.J. Ref. 90–5–1–1–3388.

The joint Motion to Modify Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 J.W. McCormack P.O. & Courthouse, Boston, MA 02109, c/o George B. Henderson, II, Assistant U.S. Attorney, and at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the joint motion may also be examined at the Environmental Enforcement Section Document Center, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the joint motion may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction cost) made payable to Consent Decree Library.

**John C. Cruden,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 93–5444 Filed 3–9–93; 8:45 am]

BILLING CODE 4410–01–M

### Antitrust Division

### Notice Pursuant to the National Cooperative Research Act of 1984; "Ultra-Low Emission Engine Program"; Correction

In notice document 93–1569 appearing on page 6015 in the issue of Monday, January 25, 1993, in the second column, in the first paragraph, in the sixteenth (16th) line, "MT" should read "MI".

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93–5409 Filed 3–9–93; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–28,153]

### Coltec Industries, Inc., Pittsburgh, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Coltec Industries, Incorporated, Pittsburgh, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,153; Coltec Industries, Incorporated, Pittsburgh, Pennsylvania (March 1, 1993)

Signed at Washington, DC, this 3rd day of March, 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93–5458 Filed 3–9–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,014]

### CAS Refining, Inc., Lafayette, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at CAS Refining, Incorporated, Lafayette, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,014; CAS Refining, Incorporated Lafayette, Louisiana (February 26, 1993)

Signed at Washington, DC this 3rd day of March, 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93–5460 Filed 3–9–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,997]

### Texaco Exploration & Production, Inc., Eastern E&P Region, New Orleans, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Texaco Exploration & Production, Inc., Eastern E&P Region, New Orleans, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,997; Texaco Exploration & Production, Inc., Eastern E&P Region, New Orleans, Louisiana (February 26, 1993)

Signed at Washington, DC, this 3rd day of March, 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93–5459 Filed 3–9–93; 8:45 am]

BILLING CODE 4510–30–M

## Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

**ADDRESSES:** Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:**

**Regarding the Attestation Process**

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

**Regarding the Complaint Process**

Questions regarding the complaint process for the H–1A nurse attestation program shall made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 2nd day of March 1993.

**Robert A. Schaerfl,**

*Director, United States Employment Service.*

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS

[02/01/93 to 02/28/93]

| CEO-name/facility name/address | State | Approval date |
|---|---|---|
| Mr. Bob S. Edwards, Jr., Nevada County Hospital, Hwy 67 North, Prescott 71857, 501–887–2681 | AR | 02/19/93 |
| Ms. Gerry Garcia, Beaumont Conval. Hospital, David Kleis, Inc., Beaumont 92223, 714–845–1166 | CA | 02/04/93 |
| Ms. Iluminada Castillo Palacio, US Nurses Connection, 5907 Bataan Circle, San Diego 92139, 619–470–0313 | CA | 02/04/93 |
| Ms. Bernice Schraebeck, Westgate Gardens, 4525 W. Tulare Avenue, Visalia 93277, 209–733–0901 | CA | 02/04/93 |
| Mr. John Adams, Care West Anza, Care Enterprises West, El Cajon 92020, 714–544–4443 | CA | 02/11/93 |
| Mr. John Adams, Care West Huntington Valley, Care Enterprises West, Huntington 92647, 714–544–4443 | CA | 02/11/93 |
| Mr. John Adams, Care West Park Central, Care Enterprises West, Fremont 94536, 714–544–4443 | CA | 02/11/93 |
| Mr. John Adams, Care West Burlingame, Care Enterprises West, Burlingame 94010, 714–544–4443 | CA | 02/11/93 |
| Mr. John Adams, Care West Garfield, Care Enterprises West, Huntington Beach 92648, 714–544–4443 | CA | 02/11/93 |
| Mr. John Adams, Care West Washington Manor, Care Enterprises West, San Leandro 94578, 714–544–4443 | CA | 02/11/93 |
| Ms. Geraldine G. Villaluz, Hacienda Convalescent Hosp. Hacienda Care Ctr., Inc., Porterville 93257, 209–784–7375. | CA | 02/11/93 |
| Ms. Ellen L. Kuykendall, Roseville Conval. Hosp., 1161 Cirby Way, Roseville 95661, 916–782–1238 | CA | 02/11/93 |
| Mr. David Bigelow, Goleta Valley Community Hospital, Santa Barbara 93111, 805–967–3411 | CA | 02/19/93 |
| Mr. William W. Daniel, Pioneers Mem. Hosp. Dist., 207 West Legion Road, Brawley 92227, 619–344–2120 | CA | 02/19/93 |
| Ms. Carol K. Lucas, Needles-Desert Communities Hospital, Needles 92363, 619–326–4531 | CA | 02/19/93 |
| Mr. Stephen W. Hooker, Live Oak Living Center, Regenerative Health System, Inc., Richmond 94803, 510–222–1242. | CA | 02/19/93 |
| M.D. Anderson, Olive View Med. Ctr., 14445 Olive View Drive, Sylmar 91342, 818–364–1555 | CA | 02/24/93 |
| Sr. Marianna Bauder, Saint Joseph Hospital, 2005 Franklin Street, Denver 80205, 303–764–2255 | CO | 02/24/93 |
| Mr. John J. Meehan, Hartford Hospital, 80 Seymour Street, Hartford 06115, 203–524–3011 | CT | 02/19/93 |
| Sister Carol Keehan, Providence Hospital, 1150 Varnum Street, NE., Washington 20017, 202–269–7000 | DC | 02/04/93 |
| Mr. Douglas Shepherd, National Rehab. Hospital, 102 Irving Street, NW., G–050, Washington 20010, 202–877–1680. | DC | 02/04/93 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS—Continued

[02/01/93 to 02/28/93]

| CEO-name/facility name/address | State | Approval date |
|---|---|---|
| Mr. Thomas J. Stone, Desoto Memorial Hosp., Inc., P.O. Box 2180, Arcadia 33821, 813–494–8405 | FL | 02/02/93 |
| Mr. Edward J. Rosasco, Jr., Mercy Hospital, 3663 South Miami Avenue, Miami 33133, 305–285–2100 | FL | 02/04/93 |
| Mr. Fred D. Hirt, Mount Sinai Med. Ctr., 4300 Alton Road, Miami 33140, 305–674–2517 | FL | 02/04/93 |
| Dr. Kantilal K. Daya, Nurses International USA, Inc., Pompano Beach 33062, 305–783–9243 | FL | 02/11/93 |
| Ms. Ira Clark, Jackson Memorial Hospital, 1611 N.W. 12th Avenue, Miami 33136, 305–585–3745 | FL | 02/11/93 |
| Mr. Thomas F. Jones, Miami Children's Hospital, 6125 S.W. 31st Street, Miami 33155, 305–666–6511 | FL | 02/19/93 |
| Mr. Joseph A. Barrick, Helen Wilkes Healthcare Ctr., Renaissance—Helen Wilkes, Inc., Lake Park 33403, 407–842–2705. | FL | 02/19/93 |
| Mr. Joseph A. Barrick, Palmetto Health Ctr., Renaissance—Palmetto, Inc., Hialeah 33016, 305–823–3119 | FL | 02/19/93 |
| Mr. Joseph A. Barrick, Drew Village Rehab. & Nur. Ctr., Drew Village Nur. Home, Inc., Clearwater 34619, 813–797–6535. | FL | 02/19/93 |
| Mr. Marcus E. Drews, Methodist Medical Ctr., 580 W. 8th Street, Jacksonville 32209, 904–798–8188 | FL | 02/24/93 |
| Mr. Thomas G. Culbreth, Cedars Medical Center, 1400 N.W. 12th Avenue, Miami 33136, 305–325–5511 | FL | 02/25/93 |
| Mr. Walter M. Lawson III, Georgia Reg'l Hosp. at Savannah, P.O. Box 13607, Savannah 31416, 912–356–2011 | GA | 02/19/93 |
| Sister Beatrice Tom, St. Francis Medical Ctr., 2230 Liliha Street, Honolulu 96817, 808–547–6011 | HI | 02/11/93 |
| Mr. Kenneth C. Owens, Valley Rehab. & Living Ctr., Beverly Enterprises, Inc., Lewiston 83330, 206–696–3914 | ID | 02/25/93 |
| Mr. Eugene Caldwell, St. Agnes Health Care Ctr., 60 E. 18th Street, Chicago 60616, 312–922–2777 | IL | 02/04/93 |
| Ms. Faye Nazon, Cojenunaze Nursing Ctr., 3311 S. Michigan, Chicago 60616, 312–326–5700 | IL | 02/11/93 |
| Mr. Filipinas Madriaga, Nursing Resource Group, 7256 W. Olive, Chicago 60631, 312–763–4134 | IL | 02/11/93 |
| Mr. Stephen Weinstein, Doctors Hosp. of Hyde Park, 5800 South Stony Island Ave., Chicago 60637, 312–643–9200. | IL | 02/17/93 |
| Mr. Dov Solomon, Lincoln Park Terrace, Inc., 2732 North Hampden Court , Chicago 60614, 312–248–6000 | IL | 02/24/93 |
| Ms. Sheila Bogen, Warren Park Nursing Pavilion, 6700 N. Damen, Chicago 60645, 312–465–5000 | IL | 02/25/93 |
| Mr. Keith LeBlanc, Humana Hospital New Orleans, 6000 Bullard Avenue, New Orleans 70189, 504–241–6335 | LA | 02/19/93 |
| Mr. Joseph A. Barrick, Chestnut Hill Rehab. & Nur. Ctr., Hampden Nursing Homes, Inc., East Longmeadow 01028, 413–525–1893. | MA | 02/19/93 |
| Mr. Joseph A. Barrick, Chapel Hill Nursing Home, Renaissance Chapel Hill, Inc., Holyoke 01040, 413–536–3435 | MA | 02/19/93 |
| Mr. Joseph A. Barrick, Riverdale Gardens Nursing Home, Hampden Nursing Homes, Inc., West Springfield 01089, 413–733–3151. | MA | 02/19/93 |
| Mr. Joseph A. Barrick, Mary Lyon Nursing Home, Hampden Nursing Homes, Inc., Hampden 01036, 413–566–5511. | MA | 02/19/93 |
| Mr. Joseph A. Barrick, Chase Rehab. and Nursing Ctr., Renaissance—Fox Chase, Inc., Silver Spring 20910, 301–587–2400. | MD | 02/19/93 |
| Mr. Joseph A. Barrick, Fairland Nursing and Retirement Home, Silver Spring 20904, 301–384–6161 | MD | 02/19/93 |
| Ms. Darlene Grover, International Nurses Alliance, Brunswick 04011, 207–729–5895 | ME | 02/04/93 |
| Mr. Ronald A. Ommen, Trinity Lutheran Hospital, 3030 Baltimore, Kansas City 64108, 816–753–4600 | MO | 02/11/93 |
| Mr. Don Gray Angell, Jr., Meadowbrook Manor of Rockingham, 804 Long Drive, Rockingham 28379, 919–997–4493. | NC | 02/24/93 |
| Mr. Gray Angell, Jr., Meadowbrook Manor of Durham, 5935 Mt. Sinah Road, Durham 27705, 919–489–2361 | NC | 02/24/93 |
| Ms. Margaret K. Degnan, Morris Hills Multicare Ctr., 77 Madison Avenue, Morristown 07960, 201–540–9800 | NJ | 02/04/93 |
| Mr. Irv. J. Diamond, South Amboy Memorial Hospital, 540 Bordentown Avenue, So. Amboy 08879, 908–721–1000. | NJ | 02/11/93 |
| Mr. Joseph A. Barrick, Hamilton Plaza Nursing Ctr., Renaissance—Hamilton Plaza, Passaic 07055, 201–773–7070. | NJ | 02/19/93 |
| Mr. Joseph A. Barrick, Oakridge Manor Nursing Ctr., Oakridge Nursing Home, Inc., Wayne 07470, 201–835–3871 | NJ | 02/19/93 |
| Mr. Michael J. Sniffen, Overlook Hospital, P.O. Box 220, Summit 07902, 908–522–2238 | NJ | 02/19/93 |
| Mr. Joseph A. Barrick, Park Manor Nursing Home, Renaissance—Park Manor, Inc., Bloomfield 07003, 201–743–7772. | NJ | 02/19/93 |
| Mr. Frank L. Muddle, Irvington General Hospital, 832 Chancellor Avenue, Irvington 07111, 201–399–6131 | NJ | 02/19/93 |
| Ms. Dolores Turco, Andover Nursing Center, P.O. Box 1279, Andover 07821, 201–383–6200 | NJ | 02/19/93 |
| Sister Jane Frances Brady, St. Joseph's Hosp. & Med. Ctr., 703 Main Street, Paterson 07503, 201–977–2000 | NJ | 02/19/93 |
| Fred Lang, Barnert Hospital, 680 Broadway, Paterson 07514, 201–977–6600 | NJ | 02/24/93 |
| Mr. David Fletcher, Elizabeth General Med. Ctr., 925 East Jersey Street, Elizabeth 07201, 908–558–8153 | NJ | 02/24/93 |
| Mr. Mark D. Pilla, Community Medical Ctr., 99 Highway 37 West, Toms River 08755, 908–240–8007 | NJ | 02/24/93 |
| Mr. Claus Eggers, Valley Hospital Med. Ctr., 620 Shadow Lane, Las Vegas 89106, 702–388–4560 | NV | 02/19/93 |
| Mr. Havva S. Idriss, United Hospital Med. Ctr., 406 Boston Post Road, Port Chester 10573, 914–939–7000 | NY | 02/04/93 |
| Mr. Thomas G. Doherty, Coney Island Hospital, NYCH & Hosps. Corp., New York 10013, 212–566–7322 | NY | 02/04/93 |
| Mr. Thomas G. Doherty, Bronx Municipal Hospital, NYCH & Hosps. Corp., New York 10013, 212–566–7322 | NY | 02/04/93 |
| Mr. Thomas G. Doherty, Elmhurst Hospital—NYCH & Hosps., Corp., New York 10013, 212–566–7322 | NY | 02/04/93 |
| Ronald Gade, M.D., St. Barnabas Hospital, E. 183rd Street & 3rd Ave., Bronx 10457, 718–960–6198 | NY | 02/04/93 |
| Mr. James Cameron, Kateri Residence, 150 Riverside Drive, New York 10024, 212–769–0744 | NY | 02/04/93 |
| Mr. Jodee Berkowitz, Haym Salomon Home for the Aged, Brooklyn 11214, 718–373–1700 | NY | 02/11/93 |
| Mr. Paul Svensson, The Parkway Hospital, 70–35 113th Street, Forest Hills 11375, 718–990–4100 | NY | 02/11/93 |
| Mr. John R. Ahearn, The Hospital for Special Surg., 535 East 70th Street, New York 10021, 212–606–1000 | NY | 02/11/93 |
| Mr. Alan Kopman, Westchester Square Med. Ctr., 2475 St. Raymond Avenue, Bronx 10461, 212–430–7300 | NY | 02/18/93 |
| Mr. Nick Sialo, International Recruiters of America, Inc., New York 10001, 212–213–0473 | NY | 02/19/93 |
| Robert K. Match, M.D., Long Island Jewish Med. Ctr., 269–01 76th Avenue, New Hyde Park 11042, 718–470–7000. | NY | 02/19/93 |
| Mr. Charles J. Pendola, Wyckoff Heights Med. Ctr., 374 Stockholm Street, Brooklyn 11237, 718–963–7272 | NY | 02/19/93 |
| Mr. David P. Rosen, The Jamaica Hospital, 89th Avenue & Van Wyck Expwy., Jamaica 11418, 718–262–6802 | NY | 02/19/93 |
| Mark J. Mundy, The Methodist Hospital, 506 Sixth Street, Brooklyn 11215, 718–780–3000 | NY | 02/19/93 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS—Continued

[02/01/93 to 02/28/93]

| CEO-name/facility name/address | State | Approval date |
|---|---|---|
| Ms. Irene Kaye, Kent Nursing Home, Ludingtonville Road, Holmes 12531, 914–878–3241 | NY | 02/19/93 |
| Mr. William Frohlich, Beth Abraham Hospital, 612 Allerton Avenue, Bronx 10467, 212–920–6021 | NY | 02/19/93 |
| Mr. Meyer Rosenbrum, American Geri-Care Inc., 40 Heyward Street, Brooklyn 11211, 718–858–6200 | NY | 02/19/93 |
| Mr. Michael G. Guley, Our Lady of Lourdes Memorial Hospital, Inc., Binghamton 13905, 607–798–5111 | NY | 02/24/93 |
| David B. Skinner, M.D., The Society of the New York Hospital, New York 10021, 212–746–4085 | NY | 02/25/93 |
| Ms. Betty S. Leake, Your Home Visiting Nurse Service, Inc., Knoxville 37918, 615–688–1159 | TN | 02/24/93 |
| Ms. Thalia H. Munoz, Starr County Memorial Hosp. dba Starr County Mem. Hosp., Rio Grande City 78582, 512–487–5561. | TX | 02/04/93 |
| Ms. Lois Jean Moore, Harris County Hosp. Dist., 2525 Holly Hall, Houston 77054, 713–746–5435 | TX | 02/04/93 |
| Mr. Douglas Langley, Memorial Hospital, Gonzales County Hosp. Dist., Gonzales 78629, 210–672–7581 | TX | 02/04/93 |
| Charles A. LeMaistre, M.D., M.D. Anderson Cancer Center, The University of Texas, Houston 77030, 713–794–1922. | TX | 02/04/93 |
| Mr. Michael C. Waters, Hendrick Medical Ctr., 1242 North 19th Street, Abilene 79601, 915–670–2000 | TX | 02/19/93 |
| Mr. Eddie A. George, HCA Spring Branch Med. Ctr., 8850 Long Point Road, Houston 77055, 713–984–3644 | TX | 02/19/93 |
| Mr. Michael K. Jhin, St. Luke's Episcopal Hosp., 6720 Bertner Street, Houston 77030, 713–794–6339 | TX | 02/19/93 |
| Mr. Lex Guinn, The Heights Hospital, 1917 Ashland, Houston 77008, 713–802–8252 | TX | 02/19/93 |
| Ms. Florita Tolentino, Omni Health Services, Omni Consortium, Inc., Houston 77080, 713–690–1971 | TX | 02/25/93 |
| John N. Bogart, M.D., South Texas Hospital, 1301 Rangerville Road, Harlingen 78551, 512–423–3420 | TX | 02/25/93 |
| Mr. Joseph A. Barrick, Iliff Nursing Home, Renaissance—Iliff, Inc., Dunn Loring 22027, 703–560–1000 | VA | 02/19/93 |
| Mr. Rodger H. Baker, Fauquier Hospital, 500 Hospital Drive, Warrenton 22186, 703–347–2550 | VA | 02/25/93 |
| Total Attestations 98 | | |

[FR Doc. 93–5461 Filed 3–9–93; 8:45 am]

BILLING CODE 4510–30–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste Working Group on Low-Level Radioactive Waste Disposal; Facility Source-Term; Meeting

The ACNW Working Group on Low-Level Radioactive Waste Disposal Facility Source-Term will hold a meeting on March 23, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Tuesday, March 23, 1993—8:30 a.m. Until the Conclusion of Business**

The Working Group will meet with various groups including States, commercial operators, industry groups, federal agencies and other interested parties to obtain information on the sources, quantities, and characteristics of low-level waste being generated. The Working Group will review what percent of the waste is stored onsite by the generator vs. that sent to disposal facilities. As time permits the Working Group will discuss methods for waste volume reduction and site performance assessment techniques, including methods to ensure groundwater protection. Accounting methods for the amounts of waste being disposed will be reviewed, as well as methods to monitor trends and indicators of performance in low-level waste management and disposal facilities.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will hear presentations by and hold discussions with the NRC staff and their consultants, national laboratories, the DOE, DOE consultants, and other interested parties, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Mr. Howard Larson (telephone 301/492–7707) between 8:15 a.m. and 6 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 3, 1993.

**R. K. Major,**

*Chief, Nuclear Waste Branch.*

[FR Doc. 93–5471 Filed 3–9–93; 8:45 am]

BILLING CODE 7590–01–M

### Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 52nd meeting on Wednesday and Thursday, March 24 and 25, 1993, 8:30 a.m. until 6 p.m., room P–110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on Wednesday, February 24, 1993 (58 FR 11258).

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

A. The Committee will meet with representatives of the Electric Power Research Institute (EPRI) and possibly other interested parties to discuss studies EPRI has conducted on the volumes of LLW that may require interim storage, the applicable regulatory requirements, and the associated guidelines for waste generators.

B. The Committee will hear a report from its Low-Level Radioactive Waste Disposal Facility Source-Term Working Group Chairman on a recent meeting.

The Working Group will have obtained information on the source, quantities, and characteristics of low-level waste being generated and other related information.

C. The Committee will be briefed on proposed LLW disposal sites rejected by LLW host States. Representatives from host States, NMSS, and the Office of State Programs will participate.

D. The NRC staff will brief the Committee on staff comments on proposed EPA Standards for TRU and HLW disposal at sites other than Yucca Mountain.

E. The Committee will discuss reviews of various States' radiation control programs. Reviews conducted by the NRC staff and the Conference of Radiation Control Program Directors will be highlighted. The relationship between these two reviews will be a focus.

F. The Committee will review a rulemaking-clarification of assessment requirements for the siting criteria and performance objectives of a high-level radioactive waste geologic repository [10 CFR 60.122/112–113, siting criteria for a geologic repository (122), overall system performance objective for the geologic repository after permanent closure (112), performance of particular barriers after permanent closure (113)].

G. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. The Office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACNW/ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACNW/ACRS (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW/ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: March 4, 1993.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 93–5472 Filed 3–9–93; 8:45 am]

BILLING CODE 7590–01–M

## ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems; Meeting

The ACNW Working Group and ACRS Subcommittee on Occupational and Environmental Protection Systems will hold a joint meeting on March 26, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Friday, March 26, 1993—8:30 a.m. Until the Conclusion of Business**

The Working Group/Subcommittee will review the following proposed final regulatory guides implementing 10 CFR part 20, "Standards for Protection Against Radiation":

(1) DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,"

(2) DG–8009, "Interpretation of Bioassay Measurements," and

(3) DG–8013, "ALARA Radiation Program for Effluents from Materials Facilities."

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group/ACRS Subcommittee Chairmen; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, ACRS Subcommittee, their consultants, and staff. Persons desiring to make oral statements should notify the ACNW/ACRS staff members named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group/ACRS Subcommittee, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group/ACRS Subcommittee will hear presentations by and hold discussions with the NRC staff and the nuclear industry, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492–9851) or cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 8:30 a.m. and 5:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: March 3, 1993.

**R. K. Major,**

*Chief, Nuclear Waste Branch.*

[FR Doc. 93–5474 Filed 3–9–93; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Severe Accidents; Revised

The joint meeting of the ACRS Subcommittees on Severe Accidents and Probabilistic Risk Assessment scheduled to be held on March 18, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland, has been changed to a meeting of the Severe Accidents Subcommittee only. The PRA issues for the ABWR design scheduled for discussion previously will not be discussed during this meeting. Notice of the joint meeting was published in the **Federal Register** on Monday, March 1, 1993 (58 FR 11874).

The entire meeting will be open to public attendance.

The revised agenda for the subject meeting shal be as follows:

**Thursday, March 18, 1993—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will begin the discussion of severe accident issues in regard to the Advanced Boiling Water Reactor (ABWR) Certification Review (chapter 19 of the ABWR Standard Safety Analysis Report.) The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

All other items pertaining to this meeting remain the same as previously published.

Further information contact: Mr. Dean Houston, cognizant ACRS staff engineer (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: March 4, 1993.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 93–5473 Filed 3–9–93; 8:45 am]

BILLING CODE 7590–01–M

**Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Renewal**

The Nuclear Regulatory Commission announces the renewal of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of this Advisory Panel through September 30, 1993 is required in order to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damaged facility (Unit 2) at Three Mile Island Nuclear Power Station.

Dated at Rockville, Maryland, this 4th day of March, 1993.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 93–5475 Filed 3–9–93; 8:45 am]

BILLING CODE 7590–01–M

## RAILROAD RETIREMENT BOARD

**Computer Matching and Privacy Protection Act of 1988; Records Used in Computer Matching Programs**

**AGENCY:** Railroad Retirement Board (RRB).

**ACTION:** Notice of Records Used in Computer Matching Programs Notification to individuals who are receiving benefits under the Railroad Retirement Act.

**SUMMARY:** As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in a computer matching program, certain information obtained from the Social Security Administration with respect to individuals who received benefits under the Railroad Retirement Act. The information from the Social Security Administration will consist of Social Security Number, full name, and date of birth. The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by the RRB of this information obtained from the Social Security Administration by means of a computer match.

**DATES:** Comments should be received on or before April 9, 1993.

**ADDRESSES:** Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Erickson, Office of Inspector General, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4338.

**SUPPLEMENTARY INFORMATION:** Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of that matching program. Such a notice must include information in the following first five categories:

**Name of Participating Agencies**

The Railroad Retirement Board and the Social Security Administration.

**Purpose of the Match**

To identify certain individuals receiving benefits under the Railroad Retirement Act who may have married and failed to notify the RRB of their marriage. For certain beneficiaries marriage may terminate entitlement to benefits or affect the amount of benefits paid.

**Authority for Conducting the Match**

45 U.S.C. 231f(b) and 362(f); 42 U.S.C. section 503(c)(1); 5 U.S.C. App. 3, section 4(a)(4) of the Inspector General Act of 1978.

**Categories of Records and Individuals Covered**

All recipients of spouse, widow, and child benefits under the Railroad Retirement Act. Records furnished the Social Security Administration are covered under Privacy Act system of records RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System.

**Inclusive Dates of the Matching Program**

The agreement with the Social Security Administration will run for 18 months or until the one match is conducted, whichever is earlier.

**Procedure**

The RRB will furnish the Social Security Administration a tape file. The data elements will consist solely of the surname and the Social Security Number (SSN). The Social Security Administration will match on SSN and surname. For each record where there is a SSN match but a surname difference, the Social Security Administration will furnish the following information on its records: SSN, full name, and date of birth. The RRB will then write each such beneficiary requesting that he or she explain the reason for the change in surname and furnish a copy of the legal document that accounts for the surname change. Only if the beneficiary advises that the reason for the surname change is marriage or fails to timely respond to the letter will the RRB give notice that benefits will be terminated or adjusted.

**Other Information**

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: March 2, 1993.

By authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 93–5410 Filed 3–9–93; 8:45 am]

BILLING CODE 7905–01

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–31943; International Series Release No. 522]**

**Exemption Regarding Application of Cooling-Off Periods Under Rule 10b–6 to Distributions of Foreign Securities**

March 4, 1993.

Pursuant to delegated authority, the Division of Market Regulation sent the following letter to Marc E. Lackritz, President of the Securities Industry Association, clarifying the application of the "cooling-off" periods in Rule 10b–6 under the Securities Exchange Act of 1934 ("Exchange Act") to

distributions of foreign securities in the United States, and granting a class exemption from Rule 10b–6. Subject to certain conditions, the exemption permits distribution participants and their affiliated purchasers engaged in a distribution of foreign securities in the United States to effect solicited brokerage and principal transactions until two or nine business days before offers or sales are made in the United States. This exemption has been issued in the context of a continuing review of Rule 10b–6 and related provisions under the Exchange Act, and is published to provide notice of the availability of the exemption.

**Margaret H. McFarland,**

*Deputy Secretary.*

March 4, 1993.

Marc E. Lackritz, President, Securities Industry Association, 120 Broadway, New York, New York 10271–0080.

Re: *Application of Cooling-Off Periods under Rule 10b–6 to Distributions of Foreign Securities File No. TP 93–1*

Dear Mr. Lackritz: To facilitate multinational distributions of foreign securities, the Commission has determined to grant an exemption from Rule 10b–6 ("Rule 10b–6" or "Rule")[1] under the Securities Exchange Act of 1934 ("Exchange Act") that clarifies the application of the Rule's cooling-off periods to foreign securities.[2] The exemption permits participants in a distribution ("distribution participants") of foreign securities in the United States and their "affiliated purchasers,"[3] to bid for and purchase such securities, any securities of the same class and series, or any right to purchase such securities (collectively, "related securities") in solicited brokerage and principal transactions until two or nine business days prior to the commencement of offers or sales of the foreign security being distributed in the United States, subject to certain conditions as more fully described below.[4]

**I. Rule 10b–6**

Rule 10b–6 is an anti-manipulation rule that is intended to prevent participants in a distribution of securities from artificially conditioning the market for the securities in order to facilitate the distribution, and to protect the integrity of the securities trading market as an independent pricing mechanism. The Rule prohibits issuers, underwriters, prospective underwriters, dealers, brokers, and other persons who have agreed to participate or are participating in the distribution and their affiliated purchasers from bidding for or purchasing, or inducing others to purchase, the securities being distributed, or any related security, until they have completed their participation in the distribution.

Rule 10b–6 contains exceptions to its general prohibitions that are intended to permit an orderly distribution of securities or to limit disruptions in the market for the securities being distributed. The exceptions to the Rule contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) permit distribution participants to bid for or purchase the distribution securities and related securities in principal transactions until two or nine business days[5] before the commencement of offers or sales of such securities (*e.g.*, the effective date of the registration statement in the case of public offerings). Whether the security qualifies for the use of the two or nine business day cooling-off period contained in the exceptions depends upon the price and public float of the subject security. For stock with a minimum share price[6] of US$5.00 and a public float[7] of at least 400,000 shares, the cooling-off period is two business days. For other securities, the cooling-off period is nine business days.

**II. Application of the Rule to Multinational Offerings**

Since shortly after the Commission adopted Rule 10b–6 in 1955, the Commission has taken the position that, with respect to multinational distributions occurring in whole or in part in the United States, Rule 10b–6 applies to all distribution participants and their affiliated purchasers, wherever they are located or effect transactions.[8] Thus, when a distribution occurs in the United States, the restrictions of Rule 10b–6 apply to the activities of non-U.S. distribution participants conducted outside the United States.

While the fundamental restrictions of the Rule apply to all distributions in the United States, the availability of the cooling-off periods contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) of the Rule with respect to foreign securities is not clear because not all of the terms and the assumptions underlying Rule 10b–6 made concerning domestic securities appear to be valid with respect to foreign securities. For example, based on its experience with the U.S. markets, the Commission determined that it was appropriate to provide a shorter cooling-off period for securities trading at US$5.00 or more per share (and having a minimum public float). This may not be an appropriate price level for foreign securities because the shares of many substantial foreign issuers trade at prices below the equivalent of US$5.00 per share. Foreign securities, moreover, rarely (if ever) trade in U.S. dollars. Accordingly, the US$5.00 price requirement literally cannot be satisfied for such securities.[9] Also, the Rule's method for determining a security's price incorporates U.S. market features that do not apply to foreign securities transactions.[10]

Moreover, unlike the case with transactions effected by U.S. distribution participants,[11] the Commission does not have a comparable ability to obtain records of transactions in foreign securities markets by non-U.S. participants. This can hamper the Commission's ability to determine whether

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[1] 17 CFR 240.10b–6.

[2] For purposes of this exemption, the term foreign security means a security issued by a "foreign government" or a "foreign private issuer," as those terms are defined under Rule 3b–4 under the Exchange Act, 17 CFR 240.3b–4. *Cf.* Proposed Rule 3b–10(d), Securities Exchange Act Release No. 28733 (January 3, 1991), 56 FR 820, 822 ("Rule 3b–10 Release").

[3] "Affiliated purchaser" is defined in 17 CFR 240.10b–6(c)(6). Generally, an affiliated purchaser includes any person acting in concert with the issuer or other person making the distribution; any affiliate who directly or indirectly controls purchases by the issuer or other person, or whose purchases are controlled by or under common control with the issuer or other person; a broker-dealer affiliate; and a non-broker-dealer affiliate that regularly purchases securities for its own account or for another's account or recommends or exercises investment discretion with respect to the purchase or sale of securities.

[4] In Letter regarding Rule 10b–6: Interpretation of "Business Day" (June 29, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,751 [hereinafter "Business Day Letter"], the Division of Market Regulation ("Division") took the interpretive position that the exceptions to the Rule contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) were available to "specified foreign securities markets," as defined in Proposed Rule 3b–10(f), Rule 3b–10 Release, 56 FR at 822. Business Day Letter at p. 78,394 n.3. The exemption granted herein replaces that interpretive position of the Division.

[5] The two business day cooling-off period has been interpreted as a period of not less than 48 hours immediately prior to the commencement of offers or sales of the securities being distributed where such period includes two complete trading days (*i.e.*, including same day opening and closing) in the principal market for the security. The nine business day cooling-off period is calculated in a similar manner. See Business Day Letter.

[6] In general, the share price is the average price over a two-week period. See 17 CFR 240.10b–6(c)(7).

[7] The public float is calculated by subtracting from the total number of shares of stock outstanding the number of shares held by officers, directors, and any persons who, directly or indirectly, are the owners of 10% or more of the stock in distribution. 17 CFR 240.10b–6(c)(7).

[8] See, *e.g.*, Letters regarding Royal Dutch Petroleum Company (December 23, 1957); Philips N.V. (May 15, 1962); Standard Oil Company (New Jersey) (February 6, 1970); S.S. Kresge & Co. (April 14, 1972). For purposes of Rule 10b–6, the term "distribution" means an offering of securities, whether or not subject to registration under the Securities Act of 1933, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. 17 CFR 240.10b–6(c)(5).

[9] Foreign securities trading in the form of ordinary shares qualify for the exception providing for a two business day cooling-off period if the foreign security has a minimum share price of US$5.00 and a public float of at least 400,000 shares in the United States. Depositary shares also qualify for the two business day cooling-off period where such shares satisfy these criteria in the United States. Where foreign securities or depositary shares trading in the United States do not satisfy the US$5.00/400,000 share criteria, the Rule's two business day cooling-off period is not available for transactions effected during the U.S. distribution of such securities. Transactions in foreign securities or depositary shares may qualify, however, for the exemption granted herein.

[10] For example, paragraph (c)(7) of Rule 10b–6 references the last sale reporting mechanism for securities trading in the U.S. securities markets.

[11] In particular, Rule 17a–3 under the Exchange Act, 17 CFR 240.17a–3, requires that broker-dealers make records of, *inter alia*, each securities transaction effected for customer or proprietary accounts. Moreover, Rule 17a–4 under the Exchange Act, 17 CFR 240.17a–4, requires that such records be maintained for specified periods, and that the records be promptly furnished to the Commission upon request.

foreign distribution participants have observed the restrictions of the Rule, or have otherwise engaged in manipulative activity during the distribution period. Particularly in the context of the short time-frames contained in the cooling-off periods, it is essential that the Commission be able to obtain prompt access to transaction information where manipulative activity appears to have been, or to be, taking place during a distribution to U.S. investors. As a result of these uncertainties, the Commission has taken the position that the cooling-off periods contained in paragraphs (a)(4)(v), (a)(4)(xi), and (a)(4)(xii) are not automatically available with respect to distributions of foreign securities made in whole or in part in the United States.[12]

The Commission has granted exemptions, however, from Rule 10b–6 which provide two or nine business day cooling-off periods for participants in a distribution of foreign securities in the Untied States. The exemptions have been issued in connection with distributions of foreign securities possessing certain qualities comparable to those of domestic securities that would quality for use of the exceptions. Those qualities have included, *inter alia*, a large U.S. dollar value of total market capitalization, a significant U.S. dollar value of public float, and a significant trading volume. In general, these exemptions have not turned on whether the securities traded at the equivalent of US$5.00 per share.[13] In addition, the transactions permitted by these exemptions were subject to, among other things, the commitment of persons relying on the exemptions to maintain and provide the Commission with access to trading records upon request.[14]

## III. Exemption

To clarify the application of the Rule's cooling-off periods to foreign securities and thus reduce the burdens and costs to issuers and underwriters who otherwise must seek exemptions from the Commission on a case-by-case basis, the Commission hereby grants an exemption from Rule 10b–6 pursuant to paragraph (h) of the Rule[15] to permit participants in a distribution of foreign securities in the United States and their affiliated purchasers to bid for and purchase the securities being distributed and related securities in solicited brokerage and principal transactions until two or nine business days prior to the commencement of offers or sales of the foreign security being distributed in the United States, subject to: The condition that the distribution participants and their affiliated purchasers shall not, from the time each becomes a distribution participant until the completion of the distribution, effect any transactions in the security being distributed or related securities that are made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; and the additional conditions described below.

### *A. Notice Requirement*

A participant in a distribution of foreign securities relying on the exemption granted herein is required to provide a written notice to the Commission ("Notice"). The Notice must: (1) State that the distribution participant and its affiliated purchasers are aware of the terms and conditions of the exemption; (2) state which cooling-off period (*i.e.*, two or nine business days) is claimed; and (3) contain the applicable representations relating to transaction recordkeeping and record production discussed below. The Notice may be provided by the person relying on the exemption directly or through an agent.[16] Where an agent provides the Notice, the names of the persons for whom the Notice is provided must be included.

### *B. Nine Business Day Cooling-Off Period*

A nine business day cooling-off period is available for a security of any foreign issuer, provided that: (1) Transaction records are kept by distribution participants and their affiliated purchasers; and (2) the records are available to the Commission upon request.

1. Record Maintenance

Distribution participants and their affiliated purchasers are required to make records of transactions in the securities being distributed or any related securities during the period commencing on the later of the date one month prior to the commencement of the offers or sales in the distribution in the United States or the date on which the person becomes a participant in the distribution, and ending when the distribution in the United States is either completed or abandoned.[17] The records must be maintained for at least two years from the date thereof. The required transaction information is that generally recorded by a broker-dealer in the ordinary course of its business, *i.e.*: (a) The name of the security that is the subject of the transaction; (b) the date of the transaction; (c) the price and size of the transaction; (d) the securities market where the transaction was effected; (e) whether the transaction was effected for a customer or a proprietary account; (f) whether the transaction was a purchase or a sale; and (g) the identity of the account on whose behalf the transaction was effected.

If local law does not require the creation and maintenance of such records, however, then the Notice provided to the Commission by the distribution participant must include a commitment to maintain such records and a statement that the distribution participant has advised its affiliated purchasers of the requirement to maintain transaction records and that they have agreed to maintain such records.

2. Record Production

Distribution participants are required to make the transaction information available to the Commission or its staff, upon request, through either: (a) A comprehensive information sharing and enforcement assistance agreement or understanding with a foreign securities authority ("FSA")[18] that provides the Commission with the ability to obtain transaction information when securities prices appear to have been manipulated during a U.S. distribution ("Information Sharing Agreement");[19] or (b) a specific written commitment by the distribution participants to be included in the Notice provided to the Commission. This commitment would contain the following: (1) A statement that the required information will be provided to the Commission or its staff upon request;[20] (2) the names(s) of the

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[12] See, *e.g.*, Letters regarding Banco de Santander, S.A. (October 23, 1987), [1987–88] Fed. Sec. L. Rep. (CCH) ¶78,532; Societe Nationale Elf Aquitaine (June 7, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶79,734; and The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited (September 29, 1987), [1987] Fed. Sec. L. Rep. (CCH) ¶78,713, as modified in Letters regarding The International Stock Exchange of the United Kingdom and the Republic of Ireland (October 14, 1988) (available on LEXIS) and Distributions of Certain SEAQ Securities (December 1, 1992) (available on LEXIS) [hereinafter "LSE Letters"]; Business Day Letter.

[13] See, *e.g.*, LSE Letters; China Steel Corporation (May 15, 1992), [1992] Fed. Sec. L. Rep. (CCH) ¶76,274; Telefonos de Mexico, S.A. de C.V. (May 10, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶79,731; Orbital Engine Corporation Limited (November 21, 1991), [1991–92] Fed. Sec. L. Rep. (CCH) ¶76,058.

[14] See National Australia Bank Limited (July 31, 1989) (available on LEXIS; C.H. Beazer (Holdings) PLC (May 27, 1987), [1987–88] Fed. Sec. L. Rep. (CCH) ¶78,664.

[15] See 17 CFR 240.10b–6(h). The staff is currently engaged in a review of Rule 10b–6 and related provisions under the Exchange Act. The Commission has determined to proceed by exemption as described herein since, following the staff's review, the Commission may determine to modify this exemption or amend the provisions of the Rule with regard to the application of the Rule's cooling-off periods to foreign securities.

[16] For example, the managing underwriter of an underwriting syndicate may provide notice on behalf of other members of the syndicate.

[17] The one month period will enable the Commission to obtain information regarding trading during the distribution period taking place prior to the cooling-off period. This information is relevant to the condition to the exemption that manipulative transactions undertaken prior to the cooling-off period would make the exemption unavailable.

[18] FSA is defined in section 3(a)(50) of the Exchange Act as "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters." 15 U.S.C. 78c(a)(50).

[19] Currently, the following Information Sharing Agreements with the following jurisdictions qualify under this standard: Argentina, International Series Release No. 354 (December 18, 1991), 50 SEC Docket 878; Brazil, International Series Release No. 7 (July 1, 1988), 43 SEC Docket 206; Ontario, Quebec, and British Columbia, International Series Release No. 6 (January 7, 1988), 43 SEC Docket 186; France, International Series Release No. 117 (January 12, 1990), 45 SEC Docket 726; Japan, International Series Release No. 5 (May 23, 1986), 43 SEC Docket 184; Mexico, International Series Release No. 181 (October 22, 1990), 47 SEC Docket 1128; the Netherlands, International Series Release No. 115 (January 12, 1990), 45 SEC Docket 715; Norway, International Series Release No. 321 (September 30, 1991), 49 SEC Docket 1747; Spain, International Series Release No. 429 (July 30, 1992), 51 SEC Docket 2838; and the United Kingdom, International Series Release No. 323 (September 30, 1991), 49 SEC Docket 1767. When effective, the Information Sharing Agreement the Commission has negotiated with Italy also will qualify.

[20] The transaction information would be made available at the principal office of such distribution participant for inspection and copying by an authorized representative of the Commission. If it is not feasible for the Commission to examine such

person(s) on whose behalf such notice is being provided; and (3) a statement that the distribution participants have examined the laws of the countries in which the relevant information is maintained and persons with knowledge of that information are located, and have determined that they are in a position to provide the relevant information to the Commission upon the Commission's request.

A distribution participant would be required to produce, upon request, transaction records of its affiliated purchasers if such records are in the possession or control of the distribution participant or if the distribution participant otherwise has access to the records. Affiliated purchasers would be expected to provide the required information to their affiliated distribution participant and would be expected not to take any actions that would impede Commission access. Any person who fails to comply with the conditions of the exemption, including a failure to provide requested information, would not be permitted to rely on the exemption in future distributions.[21]

*C. Two Business Day Cooling-off Period*

A two business day cooling-off period is available where: (1) The conditions described above in paragraphs B.1. and B.2. relating to recordkeeping and production are satisfied; (2) the average daily trading volume in the security during any 20 consecutive business day period within 60 consecutive calendar days prior to the commencement of the applicable cooling-off period equals or exceeds the equivalent of US$250,000 as calculated from transactions reported to an FSA and published by an FSA or a newspaper, news magazine, or business or financial publication of general and regular circulation that publishes volume information regarding securities;[22] and (3) the market in which such exempted transactions are effected requires, at a minimum, contemporaneous trade reporting to an FSA.

The foregoing exemption from Rule 10b–6 is strictly limited to the application of the Rule to the class of transactions described herein, and is subject to compliance with the conditions set forth above and the Commission's continuing ability to obtain investigatory information regarding trading in the relevant foreign market with respect to the exemption set forth herein. In addition, distribution participants and affiliated purchasers relying on this exemption are directed to the antifraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a)(2) and 10(b) and Rule 10b–5 thereunder. This exemption is subject to modification or revocation if the Commission determines that such action is necessary or appropriate.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with each individual distribution participant and its affiliated purchasers. The Division expresses no view with respect to any other questions the class of transactions covered by the exemption might raise, including but not limited to, the applicability of any other federal or state laws to, such transactions.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

William H. Heyman,

*Director.*

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records at such principal office and if the expense of doing so is not unreasonable, a copy of the records must be furnished to the Commission at its office in Washington, DC and representatives of such distribution participant would be made available (in person or by telephone) to respond to inquiries of the Division prompted by such records.

[21] Upon a showing of good cause, however, the Commission or the Division may determine that it is not necessary under the circumstances that the exemption be denied. *Cf.* Letter regarding Application of Rules 10b–6, 10b–7 and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities (April 25, 1991), [1991] Fed. Sec. L. Rep. (CCH) ¶ 84,918, as modified in Letter regarding Application of Rules 10b–6, 10b–7 and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities (January 15, 1993), General Condition A.5.

[22] In order to calculate the U.S. dollar value, distribution participants would either: (1) Obtain the average of the trading value in U.S. dollars of the 20 consecutive business day reference period ("reference period"); or (2) obtain an average trading value in local currency for the reference period and apply a current exchange rate to obtain the dollar value of the average trading volume. The exchange rate would be the current rate of exchange between the currency in which the security trades and the U.S. dollar, as obtained from at least one bank that regularly conducts currency exchange operations. See, *e.g.*, Proposed Rule 3b–10(a), Rule 3b–10 Release, 56 FR at 822.

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**[Release No. 34–31941; File No. SR–DTC–92–15]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change Relating to Clarifications in the FAST Program Balance Certificate Agreement

March 3, 1993.

On September 23, 1992, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–92–15) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change clarifies provisions of the Balance Certificate Agreement ("Agreement") used in DTC's Fast Automated Securities Transfer ("FAST") program, as well as analogous provisions of the Commercial Paper program. The Commission published notice of the proposed rule change in the **Federal Register** on November 27, 1992.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description

The proposed rule change consists of clarifications of provisions in the Balance Certificate Agreement used in DTC's FAST program to the effect that (1) FAST transfer agent confirmations of the identity of securities issues covered by the Agreement as well as the amount of securities evidenced by each balance certificate retained by the FAST transfer agent may be effected using DTC's Participant Terminal System ("PTS") rather than requiring the submission of hardcopy (*i.e.*, paper) forms[3] and (2) certification to DTC of insurance maintained by the FAST transfer agent to cover losses of securities held under the Agreement may be provided by the FAST transfer agent's insurance broker or agent upon DTC's request. The proposed rule change also clarifies analogous provisions of the Commercial Paper Certificate Agreement used in DTC's Commercial Paper program.[4]

PTS was permanently approved by the Commission on December 30, 1983.[5] The system permits direct communications between participants and DTC, enabling the participants to effect book entry movements and other account related activity via a remote terminal linked with DTC. Participants that have full access to the system must have a direct link via a dedicated telephone line from the participant terminal to DTC.[6] DTC allows dial up communication linkages for some purposes, but limits the use of this linkage to an inquiry function. PTS, however, does not accept any

The US$250,000 average daily trading volume calculation takes into account trading on any market for the security where daily trading volume information is published by an FSA or a newspaper, new magazine, or business or financial publication of general and regular circulation that publishes volume information regarding securities.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 31476 (November 18, 1992), 57 FR 56390.

[3] Under the Agreement, when a FAST transfer agent uses PTS to transmit information to DTC, the FAST transfer agent will have the same obligations and liabilities as it currently has when it uses hardcopy (*i.e.*, paper) forms. Telephone conversation between Richard B. Nesson, General Counsel and Senior Vice President, DTC, and Ari Burstein, Attorney, Division of Market Regulation, Commission (February 5, 1993).

[4] For further details concerning the Commercial Paper program, see Securities Exchange Act Release No. 30986 (July 31, 1992), 57 FR 35856.

[5] Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966.

[6] A dedicated telephone line is a telephone line connecting the participant's terminal directly to the clearing agency on a continuous basis and allows participants to easily access information from or send information to the clearing agency without having to dial up the clearing agency to establish the telephone connection.

instruction or input data except through a dedicated line. PTS use has been authorized in a number of other situations to expand DTC's services and improve the efficiency and reduce the cost associated with the transfer of securities.[7]

Under the FAST program, DTC leaves securities in the custody of the issuer's transfer agent in the form of balance certificates, typically in one or more large denomination jumbo certificates, registered in Cede & Co., DTC's nominee name. As additional securities are deposited or withdrawn from the depository, DTC instructs the transfer agent to increase or decrease the size of the certificate. The obligations of the FAST transfer agent to DTC are set forth in the Agreement that is executed by the FAST transfer agent and DTC. The form of the Agreement in use since the FAST program was first approved by the Commission in 1977[8] provides, in part, that the Agreement relates to the custody of balance certificates evidencing the record ownership by Cede & Co. of each issue for which the FAST transfer agent act as transfer agent and the Agreement may be amended in writing from time to time by mutual agreement of the parties. The Agreement further provides that the FAST transfer agent shall confirm to DTC in writing the number of shares or units or the amount of obligations evidenced by each balance certificate, on a daily basis or other periodic basis, as DTC may reasonably request.

The Agreement also states in pertinent part that the FAST transfer agent must hold an insurance policy in the form of a Bankers Blanket Bond Standard Form 24, or similar coverage, in a specified amount sufficient to cover the loss of any securities received from DTC or held by the transfer agent on behalf of DTC, and must arrange each year for its insurance underwriter to certify to DTC the amount of such insurance. The proposed rule change will clarify provisions of the Balance Certificate Agreement to provide that the certification to DTC of insurance maintained by the FAST transfer agent to cover losses of securities held under the Agreement may be provided by the FAST transfer agent's insurance broker or agent upon DTC' request.[9]

## II. Discussion

The Commission believes that DTC's proposed rule change is consistent with Section 17A of the Act and, specifically, with Sections 17A(b)(3) (A) and (F) thereunder.[10] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and its rules be designed to enable it to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. In addition, section 17A(a)(1) encourages the adoption of efficient and effective procedures for the clearance and settlement of securities transactions. Specifically, section 17A(a)(1)(C) of the Act sets forth Congress' finding that "[n]ew data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement."[11]

DTC's proposal will eliminate certain costs and inefficiencies associated with DTC's arrangements with FAST transfer agents. By enabling the FAST transfer agent and DTC to confirm the identity of the issues covered by the Agreement and the amount of securities evidenced by each balance certificate by means of electronic communications through PTS rather than by the submission of hardcopy (*i.e.*, paper) forms, communication between DTC and the FAST transfer agent should be faster and more efficient. In addition, costs related to preparing and delivering routine instructions and other documents should be substantially reduced. The change, therefore, will promote the prompt and efficient clearance and settlement of securities transactions.

The proposed rule change also will relieve FAST transfer agents of certain administrative burdens associated with the maintenance of insurance to cover losses of securities held under the Agreement and the accompanying certification to DTC. DTC understands that the transfer agent can obtain the required certification more easily and promptly from its own insurance broker rather than from the insurer. In addition, by requiring submission of the certification only in response to DTC's request, FAST transfer agents can avoid establishing internal procedures for assuring that such certifications are automatically obtained and sent out. DTC intends to make such requests annually. The Commission believes this proposal is consistent with the requirement of section 17A(b)(3)(F) of the Act requiring the rules of a clearing agency to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

There are multiple layers of safeguards that are employed by DTC under PTS to protect the integrity of the system. DTC routinely monitors and polls terminals that are in use to ensure that access originates from the participant's authorized terminal. The participant terminals are also monitored to ensure that only functions authorized by the participant for the particular terminal are performed on that terminal. DTC also assigns confidential and unique passwords to each authorized participant-user of PTS. A hard copy of every terminal transaction is produced at both the participants terminal station and at DTC to ensure accurate and complete records for audit purposes. In addition the use of a dedicated telephone line prevents access to the system from locations other than the participant's office as opposed to the use of a dial up communication linkage which allows a participant to connect to the system over any telephone line. Accordingly, the Commission believes that the safeguards and controls DTC has established in connection with PTS are consistent with the requirements of section 17A(b)(3)(F) of the Act, which requires that DTC's rules be designed to assure the safeguarding of funds and securities which are in DTC's custody or control or for which it is responsible.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–

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[7] See Securities Exchange Act Release No. 22409 (September 16, 1985), 50 FR 38601 (adoption of procedure allowing DTC participants to pledge securities to the Options Clearing Corporation through PTS as an alternative to submitting pledge data in paper form); Securities Exchange Act Release No. 27297 (September 27, 1989), 54 FR 41191 (rule change enabling pledgee banks in DTC's Collateral Loan Program to make electronic demands for collateral from its pledgors via PTS rather than having the demands submitted to DTC in paper form); and Securities Exchange Act Release No. 31304 (October 16, 1992), 57 FR 47499 (implementation of procedures permitting agents for mortgage backed put securities to utilize PTS in order to receive instructions initiated by participants instead of through hardcopy forms).

[8] Securities Exchange Act Release No. 13342 (March 16, 1977), 42 FR 14792.

[9] For further details concerning the FAST program, see Securities Exchange Act Release No. 12353 April 20, 1977.

As noted above, the proposed rule change also clarifies analogous provisions of the Commercial Paper Certificate Agreement used in DTC's Commercial Paper program.

[10] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[11] 15 U.S.C. 78–1(a)(1)(C).

[12] 15 U.S.C. 78s(b)(2).

DTC–92–15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–5416 Filed 3–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19311; 811–4897]**

## Kidder, Peabody MarketGuard Appreciation Fund; Notice of Application

March 4, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

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**APPLICANT:** Kidder, Peabody MarketGuard Appreciation Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on September 8, 1992 and amended on November 2, 1992 and February 10, 1993.

**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 March 29, 1993, 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 such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 60 Broad Street, New York, New York 10004.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant, a Massachusetts business trust, is an open-end, non-diversified management investment company. On November 12, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. Applicant's registration statement was declared effective on March 2, 1987 and its initial public offering commenced on March 9, 1987.

2. On June 27, 1990, applicant's trustees approved a proposal to liquidate applicant. Applicant had engaged in a hedging strategy utilizing computer generated options and futures programs in order to achieve its investment objective. Applicant's management determined that, based on various circumstances relating to its hedging strategies, it would be appropriate to adopt a defensive investment strategy. Thus, on June 28, 1990, the termination date of applicant's hedging position, applicant sold all its portfolio securities, paying $15,686 is brokerage commissions. The proceeds of the sale were then re-invested in U.S. Government securities and repurchase agreements secured by U.S. Government securities. Shareholder approval of this sale was not required because applicant was permitted to invest for defensive purposes, as disclosed in its prospectus.

3. Applicant's securityholders approved the liquidation proposal at a special meeting held on November 2, 1990. The meeting had been adjourned from October 1, 1990 because the number of shares necessary to obtain a quorum were not represented at the meeting on October 1.

4. On November 9, 1990, applicant sold its U.S. Government securities, receiving a price based on the best competitive bid, and its repurchase agreement matured, causing applicant to receive in each case the amount specified in accordance with the terms of each agreement. On November 13, 1990, applicant distributed substantially all of its assets, totaling $14,506,051, to its shareholders on a *pro rata* basis. Approximately $14,596 was reserved for payment of accrued operating expenses. All liquidation expenses were paid by Kidder, Peabody & Co. Incorporated, applicant's principal underwriter.[1]

5. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–5451 Filed 3–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19312; File No. 811–3771]**

## New York Life VLI Series Fund, Inc.

March 4, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an order under the Investment Company Act of 1940 (the "1940 Act").

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**APPLICANT:** New York Life VLI Series Fund, Inc. (the "Applicant").

**RELEVANT 1940 ACT SECTION:** Order requested under section 8(f) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

**FILING DATE:** The application was filed on January 25, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 29, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Anne F. Pollack, President, New York Life VLI Series Fund, Inc., 372 Park Avenue South, New York, NY 10010.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Ujvari, Accountant, or Wendell M. Faria, Deputy Chief, on (202) 272–2060, Office of Insurance

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[13] 17 CFR 200.30–3(a)(12).

[1] By letter dated February 26, 1993, applicant represents that unamortized organizational costs, in the amount of $28,085, were paid by Kidder Peabody Asset Management, Inc., applicant's investment adviser.

Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application, the complete application is available for a fee from the SEC's Public Reference Branch.

**Applicant's Representations**

1. On June 16, 1983, Applicant filed a notification of registration as an investment company on Form N–8A and a registration statement under the 1940 Act (File No. 811–3771) and the Securities Act of 1933 (the "1933 Act") (File No. 2–84496) on Form N–1. The registration statement was declared effective on February 17, 1984. (The current registration statement is on Form N–1A.) Applicant was incorporated under Maryland law on June 3, 1983.

2. Applicant is registered as a diversified, open-end management company under the 1940 Act. Applicant has three portfolios (the "Funds"): Common Stock; Bond; and Money Market. New York Life Insurance Company serves as investment adviser to the Funds.

3. The New York Life Insurance and Annuity Corporation VLI Separate Account (the "Account"), a unit investment trust registered under the 1940 Act, has served as a vehicle for investment in the Applicant.

4. Pursuant to an Agreement and Plan of Reorganization ("Reogranization") approved by the Board of Trustees on August 4, 1992, all of the assets of the Applicant were acquired by the New York Life MFA Series Fund, Inc. (the "MFA Fund") in exchange for shares of MFA Fund's stock having an aggregate net asset value equal to the aggregate value of the net assets of the Applicant. After the close of trading on October 30, 1992, Applicant then distributed the MFA Fund shares to the Account (*i.e.*, New York Life Insurance and Annuity Corporation ("NYLIAC"), the sole securityholder of the Applicant) in exchange for the Applicant's shares, in complete liquidation and dissolution of the Applicant. No brokerage commissions were paid in connection with the Reorganization.

5. Effective after the close of trading on October 30, 1992, Applicant ceased conducting any business except for business related to the dissolution process.

6. Since the distribution of shares of the MFA Fund to NYLIAC, all of the issued and outstanding shares of the Applicant are retired, canceled, and no longer outstanding, and NYLIAC has ceased to be a shareholder with respect to such shares.

7. No securityholders remained in the funds as of January 21, 1993.

8. As of January 21, 1993, there were no assets in the Funds.

9. All legal, accounting, and other expenses incurred in connection with the reorganization have been or will be borne by the Applicant's investment adviser, New York Life Insurance Company.

10. Applicant has no debts or other liabilities which remain outstanding.

11. Applicant is not a party to any pending litigation or administrative proceedings.

12. As of June 1, 1992, Applicant has not, for any reason, transferred any of its assets to a separate trust.

13. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary to conclude its affairs.

14. Applicant requests an order pursuant to section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–5452 Filed 3–9–93; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Criteria for Designation of Four Additional Current or Former Military Airports for Participation in the Military Airport Program

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

**ACTION:** Notice of Criteria for designation and opportunity to participate.

**SUMMARY:** This notice announces the criteria to be applied by the Secretary of Transportation in designating four additional current or former military airfields for participation in the Military Airport Program. This notice also invites expressions of interest from qualified entities desiring an opportunity to participate in the program. This action responds to section 9109 of the Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101–508), establishing the Military Airport Program, and section 107 of the Airport and Airway Safety, Capacity, Noise Improvement and International Transportation Act of 1992, and is intended to improve the capacity of the national air transportation system.

**DATES:** Written notification expressing an interest in being designated to participate in the Military Airport Program should be addressed to the Secretary of Transportation and must be received by the Federal Aviation Administration (FAA) on or before April 15, 1993.

**ADDRESSES:** Send notification of interest in being designated to participate in the Military Airport Program to: Federal Aviation Administration, Military Airport Program, Office of Airport Planning and Programming, APP–1, 800 Independence Avenue, SW., room 600 East, Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. James V. Mottley, Military Airport Program, APP–4, Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue SW., Washington, DC 20591, (202) 267–8780.

**SUPPLEMENTARY INFORMATION:** This notice announces the criteria to be applied by the Secretary of Transportation (Administrator for the Federal Aviation Administration) in designating four additional current or former military airports for participation in the military airport grant program established under section 9109 of the Aviation Safety and Capacity Expansion Act of 1990. Section 107 of the Airport and Airway Safety Capacity, Noise Improvement and Intermodal Transportation Act of 1992 amends Section 508(d) of the Airport and Airway Improvement Act of 1982 to require the Secretary to distribute not less than 2.25 percent of the funds made available in fiscal year 1993 and not less than 2.5 percent in fiscal years 1994 and 1995 for airport development and planning to sponsors of current or former military airports designated by the Secretary for the purpose of developing those airports to improve the capacity of the national air transportation system. Section 107 requires the designation of four such airports in addition to the existing eight designated locations.

Under the military airport grant program, the Secretary shall consider the extent to which conversion of the current or former military airport in whole or in part to a civilian commercial or reliever airport as part of the national air transportation system would enhance airport and air traffic control system capacity in major metropolitan areas and would reduce current and projected flight delays. Only airports whose conversion will, in the opinion of the Secretary, produce such enhancements and reductions will be

considered further for program participation.

In making designations, the Secretary may consider any or all of the following criteria, as applicable:

(a) The proximity of a current or former military airport to air carrier airports in a major metropolitan area experiencing high levels of air carrier delay or projected to experience levels of such delay (20,000 hours annually) (Footnote: Based upon the 1991–92 Aviation System Capacity Plan (DOT/FAA/ASC–91–1):

(b) The existing airspace capacity and compatibility with airspace and air traffic flow patterns in the metropolitan areas in or near which a current or former military airport is located.

(c) The availability of local sponsorship for the civil development of a current or former military airport.

(d) Exiting and potential levels of operations at a current or former military airport.

(e) Existing facilities (terminals, runways, taxiways, etc.) of a current or former military airport.

(f) Capital development needs of the air carrier airports in the metropolitan area in which a current or former military airport is located and the capital development needs of the current and former military airport.

(g) Accomplishment of the required environmental review process for civil or joint-use airfields prior to such fields being designated.

(h) The availability of transportation networks (road, rail, high-speed rail, maritime facilities) to provide intermodal connections; and,

(i) Type and level of aviation and community interest in the civil use of a current or former military airport.

Specific Criteria

For an airport to be designated for participation in the grant program established under the Military Airport Program, the airport must meet the following criteria:

(a) In the case of a former military airport, the airport must meet the definition of a "public airport" as defined in section 503(a)(17) of the Airport and Airway Improvement Act of 1982.

(b) In the case of a current military airport, the airport must be subject to an existing joint-use agreement with the military department of the Department of Defense having jurisdiction over the airport and meet the definition of a "public airport" as defined in section 503(a)(17) of the Airport and Airway Improvement Act of 1982.

(c) The airport must meet the definition of a "commercial service airport" or a "reliever airport" as defined in sections 503(a)(5) and 503(a)(19) of the Airport and Airway Improvement Act of 1982, respectively and be included in the current National Plan of Integrated Airport System.

(d) The airport must have an identified "sponsor" as that term is defined in section 503(a)(22) of the Airport and Airway Improvement Act of 1982.

(e) The airport must be located in or near a major metropolitan area presently experiencing or projected to experience high levels of annual air carrier delay (exceeding 20,000 hours) at the existing air carrier airport(s) or, in or near a location where, in the opinion of the Secretary, the development of the airport would result in an increase in overall airport system capacity.

(f) The airport must have an approved airport layout plan (ALP) and identified capital development needs eligible for grants under this program all or part of which reasonably can be expected to be funded during fiscal year 1993.

(g) Written notification to the Secretary by or on behalf of the sponsor expressing the sponsor's interest in being designated for participation in the Military Airport Program must be received on or before April 15, 1993.

This notice is issued pursuant to section 508(d) of the Airport and Airway Safety, Capacity, Noise Improvement and Intermodal Transportation Act of 1992 (Pub. L. 102–581), October 31, 1992, and Section 307 of the Federal Aviation Act, as amended, "Use of Airspace," 49 U.S.C. App. 1348.

Issued in Washington, DC, on March 3, 1993.

**Paul L. Galis,**

*Director, Office of Airport Planning and Programming.*

[FR Doc. 93–5467 Filed 3–9–93; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

### Environmental Impact Statement: Santa Barbara County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** FHWA, in cooperation with the California Department of Transportation, is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Santa Barbara County, California. FHWA intended to publish the Notice of Intent for this project in August 1990. However, FHWA has been unable to verify that a Notice of Intent was ever previously published, therefore this Notice will serve as an updated version.

**FOR FURTHER INFORMATION CONTACT:** John R. Schultz, Chief, District Operations-A, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1314.

**SUPPLEMENTARY INFORMATION:** To increase capacity and correct operational deficiencies, the four-phased project revises interchanges, replaces bridges and overhead structures and widens Route 101 from four to six lanes between the Milpas Street Interchange in the City of Santa Barbara (Post Mile 12.8) and 1.1 miles north of Ventura County Line (Post Mile 1.1) in the City of Carpinteria. Alternates under consideration include widening along the existing alignment in the median, adding lanes to the outside shoulders and the No Project Alternative. Potential beneficial impacts include the alleviation of traffic congestion, a decrease in local air quality emissions (CO) and the correction of structural deficiencies. Potential unavoidable adverse impacts include an increase in local air quality emissions ($NO_X$) and noise levels, a decrease in visual quality, and construction impacts. As part of the scoping process for this project, a series of community involvement meetings have taken place from 1989 to the present. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments of questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: March 1, 1993.

**John R. Schultz,**

*Chief District Operations, "A".*

[FR Doc. 93–5445 Filed 3–9–93; 8:45 am]

BILLING CODE 4910–22–M

## National Highway Traffic Safety Administration

[Docket No. 93–16–Notice 1]

### General Tire, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Tire, Inc. (General), of Akron, Ohio, has determined that some of its tires fail to comply with 49 CFR 571.119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars" (Federal Motor Vehicle Safety Standard (FMVSS) No. 119), and has filed an appropriate report pursuant to 49 CFR part 573. General has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

During the week of January 26 to February 1, 1992, General manufactured approximately 300 Premium Rib truck tires that bear incorrect serial numbers. These tires were produced with the GTY plant code for Toyo 3C and the brand name owner code for Toyo, 9M2. These tires should have been produced with the GTY plant code for Yokohama, 6B, and the brand name owner code for Yokohama, 9M3. The size code, 37, is correct for either serial number and the date of manufacture is also correct for both serial numbers. The full serial number on the tires was labeled as 3C379M2042. Instead, the serial number should have been 6B379M3042.

Section S6.5 of FMVSS No. 119 specfies that each tire be labeled with the name of the manufacturer or brand name, and number assigned to the manufacturer in the manner specified in part 574. In addition, if the tire is manufactured for a brand name owner, a code must be included for this brand name owner.

General supports its petition for inconsequential noncompliance with the following:

Although the plant code for Toyo (3C) was put on the tires instead of the plant code for Yokohama (6B), both the 3C and 6B plant codes allow the tires to be traced back to General Tire, Inc. in Mt. Vernon, Illinois if a recall was required. In addition, General has not received any reports of accidents, injuries, or warranty claims with regard to these tires.

Interested persons are invited to submit written data, views, and arguments on the petition of General, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 9, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: March 4, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–5419 Filed 3–9–93; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

March 3, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Comptroller of the Currency**

*OMB Number:* 1557–0081
*Form Number:* FFIEC 031–034
*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 Recordkeepers:* 3,750
*Estimated Burden Hours Per Respondent:* 35 hours, 27 minutes
*Frequency of Response:* Quarterly
*Estimated Total Reporting Burden:* 524,660 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. 93–5420 Filed 3–9–93; 8:45 am]

BILLING CODE 4810–33–M

### Public Information Collection Requirements Submitted to OMB for Review

March 3, 1993.

The Department of the 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.

**U.S. Customs Service**

*OMB Number:* 1515–0145
*Form Number:* None
*Type of Review:* Reinstatement
*Title:* Cargo Container and Road Vehicle Certification for Transport Under Customs Seal
*Description:* This information is used in a voluntary program to receive internationally-recognized Customs certification that intermodal container/road vehicles meet construction requirements of international Customs conventions. Such certification facilitates International Trade by reducing intermediate international controls.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents/ Recordkeepers:* 22

*Estimated Burden Hours Per Respondent/Recordkeeper:* 3 hrs., 30 min.
*Frequency of Response:* Other
*Estimated Total Reporting/ Recordkeeping Burden:* 3,124 hours
*OMB Number:* 1515–0186
*Form Number:* None
*Type of Review:* Reinstatement
*Title:* Use of Air Waybill as In-Bond Document
*Description:* This allows the Air Waybill to be used as an in-bond document in place of the CF–7512 and CF–7512C. A successful test program was conducted earlier and current collection activities are meeting all expectations.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents:* 60
*Estimated Burden Hours Per Respondent:* 2 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 1,030 hours
*OMB Number:* 1515–0187
*Form Number:* None
*Type of Review:* Reinstatement
*Title:* Proposed Customs Regulations Amendments Relating to Assessment of Liquidated Damages for Failure to Deposit Estimate Duties, Texas and Charges, or to Remit Passenger Processing Fees to Customs
*Description:* This information collection will amend regulations to provide principally for the assessment of liquidated damages for failure to deposit estimated duties, taxes and charges timely on imported merchandise entered for consumption.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents:* 25
*Estimated Burden Hours Per Respondent:* 1 hour
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 100 hours
*Clearance Officer:* Ralph Meyer, (202 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 93–5423 Filed 3–9–93; 8:45 am]

BILLING CODE 4820–02–M

## Public Information Collection Requirements Submitted to OMB for Review

March 3, 1993.

The Department of the 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.

**Financial Management Service**

*OMB Number:* 1510–0047.
*Form Number:* TFS 2211.
*Type of Review:* Extension.
*Title:* List of Data.
*Description:* Information is collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents:* 25
*Estimated Burden Hours Per Response:* 18 hours
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 450 hours
*Clearance Officer:* Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Officer of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 93–5421 Filed 3–9–93; 8:45 am]

BILLING CODE 4810–35–M

## Public Information Collection Requirements Submitted to OMB for Review

March 3, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0575
*Form Number:* IRS Form 5330
Type of Review: Revision
*Title:* Return of Excise Taxes Related to Employee Benefit Plans
*Description:* Internal Revenue Code (IRC) sections 4971, 4972, 4973(a), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A, and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.
*Respondents:* Individuals or households, Businesses or other for-profit
*Estimated Number of Respondents/ Recordkeepers:* 8,403
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—16 hours, 59 minutes
Leearning about the law or the form—7 hours, 56 minutes
Preparing and sending the form to the IRS—8 hours, 34 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 281,416 hours
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 93–5422 Filed 3–9–93; 8:45 am]

BILLING CODE 4830–01–M

## Public Information Collection Requirements Submitted to OMB for Review

March 4, 1993.

The Department of the 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:* 1545–0927
*Form Number:* IRS Form 8390
*Type of Review:* Revision
*Title:* Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809
*Description:* Life insurance companies are required to provide data so the Secretary of the Treasury can compute the: (1) Stock earnings rate of the 50 largest stock companies; and (2) average mutual earnings rate. These factors are used to compute the differential earnings rate which will determine the tax liability for mutual life insurance companies.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents/ Recordkeepers:* 150
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—57 hours, 52 minutes
Learning about the law or the form—3 hours, 28 minutes
Preparing and sending the form to the IRS—4 hours, 35 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 9,888 hours
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 93–5455 Filed 3–9–93; 8:45 am]

BILLING CODE 4830–01–M

## Office of the Secretary

**[Supplement to Department Circular—Public Debt Series—No. 9–93]**

### Treasury Notes, Series K–1998

Washington, February 25, 1993.

The Secretary announced on February 24, 1993, that the interest rate on the notes designated Series K–1998, described in Department Circular—Public Debt Series—No. 9–93 dated February 17, 1993, will be 5⅛ percent. Interest on the notes will be payable at the rate of 5⅛ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 93–5457 Filed 3–9–93; 8:45 am]

BILLING CODE 4810–40–M

**[Supplement to Department Circular—Public Debt Series—No. 8–93]**

### Treasury Notes, Series T–1995

Washington, February 24, 1993.

The Secretary announced on February 23, 1993, that the interest rate on the notes designated Series T–1995, described in Department Circular—Public Debt Series—No. 8–93 dated February 17, 1993, will be 3⅞ percent. Interest on the notes will be payable at the rate of 3⅞ ercent per annum.

**Gerald Murphy,**

*Fiscal Assistat Secreary.*

[FR Doc. 93–5456 Filed 3–9–93; 8:45 am]

BILLING CODE 4810–40–M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 45
Wednesday, March 10, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL MARITIME COMMISSION

**TIME AND DATE:** 10:00 a.m., March 15, 1993.

**PLACE:** 1st Floor Hearing Room, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001.

**STATUS:** Closed.

**MATTER(S) TO BE CONSIDERED:**

1. Docket No. 91–06—*Burlington Northern Railroad Company v. M.C. Terminals, Inc.*—Consideration of the Record.
2. TransPacific Trades Malpractice Program.
3. Docket No. 90–16—*Seacon Terminals v. The Port of Seattle*—Consideration of the Record.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 93–5547 Filed 3–5–93; 4:32 pm]
BILLING CODE

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 58 FR 12631, March 5, 1993.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, March 10, 1993.

**CHANGES IN THE MEETING:** The open meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 8, 1993.

**Jennifer J. Johnson,**
*Associate Secretary of the Board.*

[FR Doc. 93–5579 Filed 3–8–93; 10:48 am]
BILLING CODE

federal register

Wednesday
March 10, 1993

Part II

# Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years and Inviting Applications for Certain New Awards Under the Rehabilitation Research and Training Centers for Fiscal Year 1993; Notices

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years 1993 and 1994

**AGENCY:** Department of Education.

**ACTION:** Notice of Final Funding Priorities for Fiscal Years 1993 and 1994 for Certain Rehabilitation Research and Training Centers.

**SUMMARY:** The Secretary announces final priorities for several Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3424, Switzer Building, Washington, DC 20202–2601. Telephone: (202) 205–8801. Deaf and hearing-impaired individuals may call (202) 205–5516 for TDD services.

**SUPPLEMENTARY INFORMATION:** This notice contains 14 final priorities under the RRTC program. Ten of the priorities are in areas related to employment and vocational rehabilitation; two of the priorities are for research related to individuals with mental retardation; and two of the priorities are for research on issues related to families in which one or more members have a disability. NIDRR has published other final priorities for other RRTCs and other programs for fiscal years 1993–1994.

Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program, the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

The final priorities support the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These priorities would address Goal 5 by helping individuals with disabilities to develop the skills necessary to live and work successfully in the world as it is today.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities. On September 17, 1992, the Secretary published a notice of proposed priorities in the **Federal Register** (57 FR 43108). The Department of Education received 160 letters commenting on the proposed priorities. Most of the comments suggested an additional priority for an RRTC on Mental Health and Deafness. In addition, a few of the commenters suggested substantive changes that would improve the priorities, and changes were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice

**Note:** This notice of final priorities does not solicit applications. A notice inviting applications is published in a separate notice in this issue of the **Federal Register**.

### Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. They serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge that will improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities. RRTCs provide training (including graduate, pre-service, and in-service training) to assist individuals to more effectively provide rehabilitation services. RRTCs also provide training (including graduate, pre-service, and in-service training) for rehabilitation research personnel and other rehabilitation personnel. RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals through conferences, workshops, public education programs, in-service training programs, and similar activities.

RRTCs conduct research on designated rehabilitation problem areas and provide training to researchers, service providers, and consumers. They conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Each Center disseminates and encourages the use of new rehabilitation knowledge and publishes all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions. Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients of clinical and research training. In addition, NIDRR encourages all Centers to make their research relevant to all minority populations with disabilities to the maximum extent appropriate.

To achieve the goals specified in the priority, the Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronted by individuals with disabilities. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes. However, the regulatory selection criteria for the program (34 CFR 352.31) require that

applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities: (1) Full integration into the community; (2) full employment; (3) independence and empowerment; (4) maximum human functioning and health; (5) improved vocational rehabilitation services; and (6) the translation of new knowledge and technology into practice. The priorities proposed in this notice are derived from the long-range planning process and are intended to achieve one or more of these six outcomes.

The publication of these final funding priorities does not obligate the Department of Education to fund projects in any or all of these areas. Funding of particular projects depends on the availability of funds and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: The Background section for some of the priorities may contain substantive requirements that must be followed by each applicant for these priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities:

*Ten Priorities on Vocational Rehabilitation and Employment*

The NIDRR long-range goals include facilitating increased employment and improved vocational rehabilitation services for individuals with disabilities. Achievement of these goals affects other NIDRR long-range goals of promoting community integration, independence, empowerment, and improved functioning. Testimony and deliberations of the NIDRR long-range planning process emphasized the need: (1) To make meaningful work and rewarding careers accessible to all Americans with disabilities; and (2) to assist the State-Federal vocational rehabilitation (VR) system to provide more effective services to individuals who are members of previously underserved groups, including minorities, persons with severe disabilities, rural residents, persons with substance abuse disabilities, and persons with long-term mental illness or specific learning disabilities. NIDRR proposes an intensive and extensive program of 10 Rehabilitation Research and Training Centers to enhance the vocational rehabilitation service delivery system in order to improve the employment outcomes of persons with disabilities.

NIDRR requires that each Center conducting research in the areas of employment and vocational rehabilitation cooperate and coordinate with the relevant State VR agencies.

*Priority 1—Enhancing Employability*

Background

The employment status of persons with disabilities is well-documented—only about one-third of persons with disabilities of working age are employed, and only about one-fourth are employed full-time (Kraus and Stoddard, 1991). This priority focuses on improving the vocational skills and work behaviors that will enable individuals to obtain and retain suitable and satisfying employment in an increasingly demanding economy if they are: (1) unemployed; (2) employed only part-time or part of the year when they seek full-time, year-round employment; or (3) employed below their skill level because they cannot obtain more suitable employment.

The International Center for the Disabled sponsored a survey of employers (Louis Harris and Associates, 1987) that revealed the importance of improving the vocational skills of persons with disabilities. The report on the survey concluded that the pool of qualified applicants with disabilities must be increased through improved education and appropriate job training. The report also indicated that employers generally do not have the in-service training capacity to assist employees in developing the skills needed for promotion. The report further suggested that current skills training programs are not meeting the needs of persons with disabilities who seek employment and, further, are not meeting their needs when they seek job advancement after initial employment has been achieved.

Persons with clear career goals are more likely to benefit from rehabilitation services than are clients without those goals (Sanderson, 1978). Career aspirations represent ambitions and motivations that are a central force in the attainment of educational and occupational achievements (Otto and Haller, 1979). Career exploration activities occur during adolescence or early adulthood. The limited research available suggests that youth with disabilities lag behind their non-disabled peers in the growth of career awareness and development of vocational interests (Chubon and Black, 1985; Simpson, 1986).

While there is a paucity of research on the career development of individuals with disabilities, there is even less information available on strategies that State vocational rehabilitation and educational agencies might use to place and maintain individuals with disabilities in jobs with opportunities for skill and salary advancement.

Overcoming barriers to opportunity and capitalizing on the increased access to employment provided by the Americans with Disabilities Act (ADA) require improvements in service delivery systems to increase the employability of individuals with disabilities.

An RRTC funded under this priority shall coordinate its efforts with the RRTCs that will be funded under Priority 2—Promoting Placement and Priority 3—Career Development and Advancement.

Priority

An RRTC on enhancing employability shall—

- Develop and evaluate model programs, involving collaborative efforts of multiple service delivery systems—including private and State rehabilitation agencies, independent living programs, and community facilities—to promote employment readiness, vocational skills, and positive work habits that will enhance the employability of individuals with disabilities;
- Identify, develop, and evaluate techniques to promote career awareness

and career exploration in young persons with disabilities, using strategies that involve special education, secondary education, vocational education, transition programs, and youth manpower programs;

• Identify, develop, and evaluate the best practices for enhancing employability, involving special education, adult and vocational education, secondary education, transition programs, and other manpower training programs, and develop and test community-based employment planning and advancement strategies for all persons with disabilities, with emphasis placed on those individuals with various severe disabilities;

• Identify skills and knowledge required to empower consumers of employment-related services, and develop and demonstrate model services emphasizing consumer choice and self-advocacy in planning for and gaining access to education and training programs that can improve their employment status;

• Evaluate the effectiveness of new and emerging technology in improving vocational rehabilitation eligibility determinations, vocational assessment, job preparation, and job placement; and

• Collect and maintain research that has been conducted on issues related to the employability of all individuals with disabilities.

*Priority 2—Promoting Placement*

**Background**

In the past decade the population served by rehabilitation agencies has included more individuals who have severe cognitive, emotional, and physical disabilities. Accompanying this increase in the number of individuals with severe disabilities has been an increase in the technical and interpersonal complexities of jobs, a decrease in the supply of entry level jobs available to individuals with disabilities, and higher unemployment rates in those occupations in which individuals with disabilities traditionally have found work. Placement specialists have responded to these circumstances with training in marketing methods and job clubs (Greenwood and Johnson, 1985, 1987; Schriner, Johnson, and Greenwood, 1988, 1991).

Rehabilitation counselors are being asked to place a larger number of persons with more severe disabilities in a more demanding and complex labor market. New placement techniques are needed to increase the number of placements. Providing rehabilitation counselors with training on these techniques will enable them to match the skills of their clients with the demands of the market.

An RRTC funded under this priority shall coordinate its efforts with the RRTCS that will be funded under Priority 1—Enhancing Employability and Priority 3—Career Development and Advancement.

Priority

An RRTC on promoting placement shall—

• Develop and evaluate placement models, with emphasis placed on persons with severe disabilities, using general marketing strategies and involving multiple service delivery systems, including private and State rehabilitation agencies, independent living programs, and community facilities;

• Develop methodologies to document best practices in placement and follow-up services for individuals, with emphasis placed on persons with severe disabilities;

• Identify and analyze concerns and practices of employers regarding their expectations and the contributions they are prepared to make in integrating individuals with disabilities into the workplace, with emphasis placed on persons with severe disabilities;

• Develop strategies to enhance VR agencies' use of technology and other job accommodation techniques to increase the number of appropriate placements into competitive employment, with emphasis placed on persons with severe disabilities, and to assist in matching client skills with market demands;

• Develop and maintain a national database on the number and type of placements made by VR agencies; and

• Provide technical assistance to VR agencies and rehabilitation educators in promoting job placement for persons with severe disabilities.

*Priority 3—Career Development and Advancement*

Background

Assisting individuals with disabilities to achieve vocational goals is the objective of vocational rehabilitation. However, the pressure to place individuals can compromise efforts of counselors to assist persons with disabilities to pursue vocations that offer opportunities for promotion and career development.

There has not been sufficient emphasis on career development and advancement for individuals with disabilities (Bagley, 1985). While there is a paucity of research on the career development of individuals with disabilities, there is even less information available on strategies that State vocational rehabilitation and educational agencies might use to place and maintain individuals with disabilities in jobs with opportunities for skill and salary advancement.

An RRTC funded under this priority shall coordinate its efforts with the RRTCs that will be funded under Priority 1— Enhancing Employability and Priority 2—Promoting Placement.

Priority

An RRTC on career development and advancement shall—

• Identify and analyze state-of-the-art career development practices for non-disabled individuals and develop and test, for individuals with disabilities, modifications that incorporate the latest knowledge on job training and job accommodations;

• Develop and evaluate career counseling techniques to assist clients with disabilities in identifying careers that most appropriately fit their individual interests and abilities;

• Develop research-based criteria to document best practices in aiding individuals with various disabilities to enter the careers they choose;

• Identify and analyze expectations, concerns, and practices of employers related to promoting the careers of individuals with disabilities;

• Develop standards and performance indicators that enable VR agencies, educational agencies, independent living centers, and individuals with disabilities and their families to assess the effectiveness of career development activities;

• Develop and maintain a national database on research on the career experiences of individuals with disabilities; and

• Provide technical assistance to VR agencies and to employers on expanding career options and professional development for persons with disabilities.

*Priority 4—Supported Employment*

Background

Since its inception in 1985, supported employment has evolved into an integral component of the State-Federal vocational rehabilitation program. The Survey of Supported Employment Implementation (Virginia Commonwealth University, 1991) indicated that approximately 70,000 individuals were receiving services through local supported employment programs in FY 1990. An estimated one-

third of these individuals had never worked before, and those who had worked experienced 400-to-500 percent increases in their earnings after participation in supported employment (Virginia Commonwealth University, 1991). In addition to enhancing economic self-sufficiency, supported employment has also had a tremendous impact on the personal and social lives of individuals with severe disabilities.

There remains a considerable unmet need for supported employment services. In FY 1989 State VR agencies reported data on 51,992 consumers with severe disabilities who had been served in supported employment programs (Rehabilitation Services Administration, 1991). This represents a 600 percent increase from 9,876 served in fiscal year 1986 (OSERS News in Print, 1990). These agencies estimated that more than two million other clients need supported employment services.

Research on supported employment can expand the knowledge base about effective practices in order to maximize the usefulness of the resources that are available. In order to serve more persons, new supported employment techniques must be developed, evaluated, and disseminated.

Priority

An RRTC on supported employment shall—

- Develop and evaluate service delivery strategies and interventions that will enhance the capacity of supported employment programs to meet the employment needs of those who could benefit from these programs;
- Develop and evaluate strategies to leverage VR funds to attract additional resources from other sources for long-term support;
- Develop guidelines and provide technical assistance for the involvement of individuals with severe disabilities and their families in determining supported employment objectives and evaluating outcomes;
- Determine the most effective methods to augment existing resources in order to increase the number and diversity of individuals with severe disabilities in supported employment programs;
- Develop models to facilitate assessment of the effectiveness of supported employment programs;
- Develop strategies for tracking individuals in supported employment programs longitudinally, beyond the 18-month period of VR agency support;
- Examine operational costs and consumer benefits of supported employment in relation to those obtainable through other service alternatives in order to address unmet needs;
- Develop and maintain a national database on research involving supported employment, particularly that which relates to innovative practices and the creative use of resources to address unmet needs; and
- Provide technical assistance to VR agencies and to employers on expanding supported employment options for persons with disabilities through the creative use of resources.

*Priority 5—Vocational Rehabilitation for Individuals Who are Substance Abusers*

The implications of substance abuse for employment and vocational rehabilitation require more intensive study. Vocational rehabilitation agencies provide services to two major categories of individuals who are substance abusers: (1) Those who have a work disability as a result of their substance abuse; and (2) those who have some other disability that qualifies them for vocational rehabilitation services and whose substance abuse interferes with their ability to benefit from vocational rehabilitation services. The National Institute on Drug Abuse (NIDA) 1988 National Household Survey indicates that 70 percent of the people who use illegal substances are in the workforce. According to NIDA (June, 1990) this suggests that over 10 million employed people are current users of illicit drugs. Studies have shown that substance abuse impairs employee performance and productivity and also causes substantial increases in accident rates, absenteeism, and health care costs. State vocational rehabilitation agencies reported that substance abuse comprised the third leading secondary disability (3.2 percent) after mental illness and orthopedic disabilities (Benshoff, Janikowski, Taricone, and Brenner, 1990).

One major question facing service providers is whether substance rehabilitation techniques or traditional vocational rehabilitation methods provide the most effective approach to serving individuals with substance abuse disabilities or individuals with disabilities who are substance abusers. In addition, little is known about the relationship between disabilities and substance abuse.

For the purpose of this priority, substance abuse is limited to substances other than alcohol, although alcohol abuse may be present, as well. Any RRTC to be funded under this priority shall address the needs of individuals: (1) Whose substance abuse has resulted in a work disability; and (2) who have some other disability that qualifies them for vocational rehabilitation services and whose substance abuse interferes with their ability to benefit from vocational rehabilitation services.

Regarding the former category of individuals, the RRTC shall distinguish between those individuals with substance abuse disabilities who are skilled and employed from those who are unskilled, unemployed, have a history of long-term drug abuse and may need more comprehensive treatment and rehabilitation services. Regarding the latter category of individuals, the RRTC shall address the needs of those whose substance abuse would constitute a secondary disability (which would qualify an individual for vocational rehabilitation services), as well as those individuals whose substance abuse is not severe enough to constitute a secondary disability.

Any RRTC to be funded under this priority shall coordinate its efforts with any other drug-related center funded by NIDRR and with those of the National Institute on Drug Abuse and the Rehabilitation Services Administration.

Priority

An RRTC on vocational rehabilitation for individuals who are substance abusers shall—

- Conduct epidemiological studies of the relationship between substance abuse and disability among individuals who need vocational rehabilitation services;
- Identify, develop, and evaluate effective models of vocational rehabilitation services;
- Develop and evaluate models of long-term support services as needed for persons placed in employment; and
- Provide training and technical assistance in the delivery of vocational rehabilitation services to these populations.

*Priority 6—Vocational Rehabilitation and Specific Learning Disabilities*

Background

Specific learning disability (SLD) is an "invisible" disability, affecting an individual's ability to learn and process knowledge through traditional channels It is a condition that may have severe manifestations that are often mistaken for lack of motivation and interest, psychological dysfunction, or mental retardation. Frequently, the functional and vocational limitations connected with SLD are masked by the traditional assessment approaches used by rehabilitation agencies (paper and pencil tests, psychometrics, vocational evaluations, or review of academic records).

In summarizing rehabilitation statistics in State VR programs, the Rehabilitation Services Administration reports that the percentage of clients with SLD as the primary disability rose from 1.3 percent in 1983 to an estimated 5 percent in 1990. During this same period, the percentage of persons with SLD as a secondary disability rose from 0.2 percent to 0.5 percent, making individuals with SLD the fastest growing disability population served in the State-Federal VR program (Carney, 1991). This may be due to new developments in identifying and reporting learning disabilities rather than to an increase in the actual incidence of the impairment. Adults, including young adults, did not necessarily have the opportunity to receive special education, and particularly not the enhanced special education services guaranteed by the Individuals with Disabilities Education Act, and therefore require special interventions to enhance their employability.

Although State VR agencies have been serving this challenging population with limited success, the varied approaches to training and service and the limited research activities that they have generated have not been integrated into a cohesive service model (Berkeley Planning Associates, 1989). There is a serious gap in applied research on SLD rehabilitation issues.

Priority

An RRTC on vocational rehabilitation and specific learning disabilities shall—

- Improve techniques for vocational rehabilitation professionals to assess the functional and work limitations, rehabilitation needs, and vocational potential of individuals with SLD, with a special emphasis on adults;
- Develop and evaluate rehabilitation intervention strategies that will lead to better employment outcomes for individuals with SLD;
- Develop, demonstrate, and evaluate service delivery models that coordinate the services of secondary education—including special education—postsecondary education, and other human resource service providers—including community-based facilities—in order to optimize employment and career outcomes for individuals with SLD served or having the potential to be served by vocational rehabilitation agencies; and
- Develop techniques for staff development and training to increase the availability of rehabilitation service professionals trained to identify and meet the special vocational needs of individuals with SLD.

*Priority 7—Improving Vocational Rehabilitation for Minority Populations*

Background

Research on the prevalence of disabilities in minority populations (Anderson, 1988; Bowe, 1985; Hopkins, 1988) and the employment status of minority individuals with disabilities (Asbury, Walker, Malhomes, Rackley, and White, 1991) indicates the importance of the vocational rehabilitation system in serving minority individuals with disabilities. In the early and mid-1980s, some researchers concluded that African-Americans were faring worse than their white counterparts in the rehabilitation process (Atkins and Wright, 1980; Johnson, 1983; Baldwin and Smith, 1984). While these studies raise serious issues concerning the status of African-Americans, their implications for the current vocational rehabilitation system are uncertain due to their limited size and scope, as well as the fact that the vocational rehabilitation system has undergone considerable change in the ensuing years (e.g., the growth of supported employment activities and the increasing utilization of assistive technology). In addition, the literature contains virtually no empirically-based research on the status of other minority populations such as Hispanic-Americans or Asian-Americans with disabilities in the vocational rehabilitation system.

While little quantitative current research exists regarding the status of minority populations with disabilities in vocational rehabilitation services as a whole, there is a substantial body of data that is largely unanalyzed about minority individuals who are eligible for services from the State-Federal vocational rehabilitation system. For example, the Rehabilitation Services Administration's Case Service Report contains considerable information on minority individuals served by the State vocational rehabilitation service system. Other databases such as the U.S. Current Population survey, the National Health Interview Survey, and the Survey of Income and Program Participation also include information about minority individuals with disabilities that may have significant implications for the future direction of vocational rehabilitation services to individuals with disabilities who are members of minority groups.

The RRTC funded under this priority will use the most recent databases on the status of minority individuals with disabilities as a starting point in order to conduct research that is national in scope and which addresses the common, as well as unique, vocational rehabilitation issues that may pertain to African-Americans, Hispanic-Americans, and Asian-Americans with disabilities. The RRTC funded under this priority may not include American Indians with disabilities because Priority 8—Rehabilitation of American Indians with Disabilities—will conduct research in this area.

Priority

An RRTC on the vocational rehabilitation of minority populations shall be carried out in two phases. In the first phase this RRTC shall—

- Analyze existing disability data to determine the relative prevalence of various disabling conditions among African-Americans, Hispanic-Americans, and Asian-Americans with disabilities;
- Analyze existing disability data, including data from the Rehabilitation Services Administration's Case Service Report, to compare the experiences within the vocational rehabilitation system of African-Americans, Hispanic-Americans, and Asian-Americans with disabilities to their white counterparts at major junctures in the vocational rehabilitation process, including analyses of data on acceptances, case closures, services provided and employment outcomes;
- Analyze existing disability data to determine the extent to which African-Americans, Hispanic-Americans, and Asian-Americans with disabilities are recruited for positions as vocational rehabilitation practitioners and are appropriately trained for these positions;
- Based on the needs identified by the above analyses, in the second phase an RRTC on the vocational rehabilitation of minority populations shall—
- Design interventions to improve outreach and participation rates for African-Americans, Hispanic-Americans, and Asian-Americans with disabilities;
- Develop and test service delivery models for the most underserved minority populations that result in higher rates of services and better employment outcomes; and
- Identify those vocational rehabilitation policies, programs or practices that contribute to improved employment outcomes for African-Americans.

*Priority 8—Rehabilitation of American Indians With Disabilities*

Background

The prevalence of disability is unusually high among American

Indians. There is evidence that some disabling conditions are disproportionately represented in this population (Northern Arizona University; University of Arizona, 1987). Testimony presented to the NIDRR public hearings for long-range planning emphasized concern with the prevalence of fetal alcohol syndrome, spinal cord and traumatic brain injuries, substance abuse, and diabetes.

American Indian tribes have had discrete formal vocational rehabilitation service programs for a relatively short period of time. Traditionally, the needs of individuals with disabilities were considered the responsibility of the reservation governance, the rehabilitation programs within State agencies, the Indian Health Service, and the Bureau of Indian Affairs. In recent years individual tribes have become directly involved in the provision of vocational rehabilitation services to their members.

A report on the special problems and needs of American Indians with disabilities, both on and off the reservation, recommended the following action steps in improving the rehabilitation of American Indians with disabilities: (1) Address the cultural influences on rehabilitation service delivery; (2) provide rehabilitation services to young American Indians with disabilities; (3) address the variability in the distribution of disabling conditions; (4) facilitate Vocational Rehabilitation-Tribal relationships to improve service delivery to American Indians; (5) increase efforts to conduct cooperative interagency activities; (6) increase rehabilitation efforts for American Indians who are disproportionately represented in certain disability-related conditions; (7) improve the employment status of American Indians with disabilities; and (8) improve the database on American Indians with disabilities (Northern Arizona University; University of Arizona, 1987).

Priority

An RRTC on rehabilitation of American Indians with disabilities who reside on or off a reservation, including urban areas, shall—

- Develop, demonstrate, and evaluate culturally relevant vocational rehabilitation techniques for use in the development of more effective services to American Indians;
- Develop, demonstrate, and evaluate specialized interventions that effectively address disabilities of high prevalence among American Indians;
- Develop strategies to improve employment opportunities and outcomes for American Indian clients of the VR service system, including higher rates of employment and more promising occupational placements;
- Develop strategies to increase the number of qualified American Indian professionals providing VR services through State and tribal agencies; and
- Develop models to improve rehabilitation and independent living services for American Indians in their communities.

*Priority 9—Community-Based Rehabilitation Programs*

Background

The nearly 7,000 rehabilitation community-based rehabilitation programs are faced with significant challenges, including the increased complexity and severity of the disabilities of individuals they serve, the increasingly diverse cultural backgrounds of their clients, and the potential of new technology for enabling clients to achieve many of their objectives. The changing nature of the client population, which numbers 800,000 on average per day, creates different expectations of these community-based service providers and their role in the rehabilitation process by individuals, families, and employers (Botterbusch, 1990; Menz, 1985, 1988, 1990; Thomas and Menz, 1990).

Nearly 90 percent of the individuals with disabilities who receive vocational rehabilitation services from community-based rehabilitation service providers are sponsored in part by public funds, and one-third are clients of the State-Federal vocational rehabilitation program, accounting for approximately 40 percent of vocational rehabilitation case service dollars. The primary focus in these programs continues to be on the independence, community integration, and vocational development of the individual.

Priority

An RRTC on improving community-based rehabilitation programs shall—

- Identify, evaluate, adapt, and demonstrate model community-based rehabilitation programs that reflect advances in rehabilitation practice, adapt to local labor market conditions, emphasize consumer self-direction in identifying effective rehabilitation and placement strategies, and promote community integration and quality employment;
- Develop techniques for community-based rehabilitation providers to access a variety of community resources, including non-traditional funding sources, to support ongoing rehabilitation services in the community;
- Develop training and technical assistance materials to increase the expertise of personnel of these programs in obtaining community-based employment for, and providing a wide range of services to, complex and diverse populations; and
- Develop and demonstrate methods to increase participation by individuals with disabilities in the management and operation of rehabilitation programs.

*Priority 10—Management of Information and Information Systems in State VR Agencies*

Background

Information systems can be useful to VR agencies in financial and program management, client tracking, job development and placement, and measuring performance and outcomes. Contemporary VR information systems may be difficult to use and may be inadequate for the purposes of managers, counselors, individuals with disabilities and their families, and policy makers in the public and private sectors (President's Committee on Employment of Persons with Disabilities, 1990).

Measuring progress, overcoming existing barriers to opportunity, and capitalizing on promising social and policy initiatives require a modern rehabilitation information system that, at a minimum: (1) Addresses well-defined objectives and serves the needs of specific users; (2) is both comprehensive and versatile; (3) is kept current through frequent updates, enabling it to document patterns and trends; (4) is user friendly to the extent that development, maintenance, and updating of the information system can be handled by existing staff; (5) is readily accessible to researchers, service providers, consumers, and others; and (6) provides timely response to requests from Federal policy-makers.

The RRTC funded under this priority shall coordinate its efforts with the Rehabilitation Services Administration's study "Assessment of Client Information Systems" and the longitudinal evaluation of the VR system.

Priority

An RRTC on management of information and information systems in State VR agencies shall—

- Develop systems to provide VR agencies with access to both private-sector and public-sector data—regarding

economic trends and identification or prediction of long-term job and career opportunities—that can be used for aiding individuals with disabilities;

• Expedite the transfer of policy, program, and training information and maintain special outreach and dissemination efforts, including an electronic bulletin board to reach professionals in State VR agencies, other Federal agencies, NIDRR grantees, independent living programs, and consumers;

• Evaluate all existing State Vocational Rehabilitation agencies' management information systems and identify exemplary practices; and

• Provide training on the establishment and operation of information systems to State-Federal VR personnel and other rehabilitation service providers.

Two Priorities Related to Mental Retardation

The deinstitutionalization of individuals with mental retardation, together with rising expectations for productive and rewarding lives among individuals with mental retardation and their families, creates demands for new and improved services in the community to meet the needs of this population. The service system must develop the capacity to assist and empower individuals with mental retardation and their families to choose from a range of options in work, living arrangements, education, and recreation. For the first time, a significant and growing number of individuals with mental retardation are aging in community-based settings and experiencing a wider range of the typical problems of aging: Exacerbated manifestations of their disability, new health impairments, and loss or aging of parents and other family members.

The following two priorities address the need for new service models to address the emerging problems related to community integration and aging with mental retardation.

*Priority 11—Aging With Mental Retardation*

Background

The process of aging is often accelerated among individuals with various forms of mental retardation. Some of the phenomena that have been observed include decline in physical strength and endurance and general health earlier than in the general population, earlier onset of dementia, and accelerated decline in cognitive functions and behavior. These additional functional losses may compromise the individual's ability to compensate or use other adaptive strategies to cope with the original functional loss.

Advances in medical technology and lifetime medical care have resulted in increased longevity for individuals with mental retardation. While data indicate that life expectancy is still somewhat shorter in individuals with mental retardation as a whole than in the general population, it is not unusual for individuals with mental retardation to outlive their parents. Thus, the need for planning and provision of future services has become an important issue for parents and other family members. In addition, as a result of the deinstitutionalization of substantial numbers of individuals with mental retardation, many of these individuals will age in community living situations.

Although mental retardation is the single largest category of life-long disability in developed nations, most research and service attention has been concentrated on infants, children, and youth with mental retardation. There has been little study of older individuals with mental retardation, resulting in a need for research focused on the increasing number of these aging individuals who live and work in the community and who have expectations and needs for support services to enable them to remain in the least restrictive environments.

In recent years, service providers, families, and individuals with disabilities have recognized the need for age-appropriate services for mentally retarded adults. Research is needed on how a new and expanded service continuum, including innovative technology, and enhanced self-determination skills can enable members of this population to achieve and maintain independence, productivity, community integration, and full citizenship.

Priority

An RRTC on aging with mental retardation shall—

• Develop models and assess techniques for empowering individuals aging with mental retardation to participate in decision-making processes of their future service plans, housing, life-planning, health care, and community participation;

• Acquire data on the medical conditions associated with aging with mental retardation;

• Increase the understanding of their families and service providers about the changing physical, psychological, vocational, and life-planning needs of this aging population;

• Demonstrate successful techniques, including assistive technologies, that enable individuals aging with mental retardation to cope with and compensate for deteriorating physical and psychological functional capacities;

• Develop and evaluate counseling and other techniques to assist aging individuals with mental retardation to cope with and adjust to the death or incapacity of their parents or other caregivers; and

• Evaluate strategies and interventions to improve the retirement, financial security, health care, and independent living status of this aging population.

*Priority 12—Community Integration for Persons With Mental Retardation*

Background

Nearly four million Americans have mental retardation and other developmental disabilities of diverse levels and types, and with varied individual capabilities (U.S. Department of Health and Human Services, 1989). Of these four million persons, approximately one million may require an extensive array of services (Gettings, 1990). The number of individuals with mental retardation and other developmental disabilities in State institutions decreased by more than 50 percent, or more than 100,000 persons, during the two decades from 1967 to 1988 (Braddock and Hemp, 1990), thus leading to increased demands on community resources.

Consequently, individuals with mental retardation need to have opportunities and support to achieve full integration into the community, productive employment, and self-direction. Three areas of research have demonstrated particularly promising approaches to enhancing community integration: development of appropriate technologies; model services to cope with transitions and family support issues; and strategies to increase empowerment and self-advocacy for individuals with developmental disabilities.

During the past decade there has been an increase in assistive technology to aid individuals with disabilities to become more independent. There is a need to identify: (1) The variables that contribute to the successful use of technology by individuals with mental retardation; and (2) the types of technology that will contribute to their community integration. Individuals with mental retardation and their families, service providers, vocational rehabilitation counselors, employers, and others need training in the benefits

and uses of assistive technology that can promote maximum independence and community integration.

Successful community integration of persons with disabilities is dependent, in part, on the skills of family members. Moroney (1979) has stated that the limited options and minimal support currently provided to families of persons with mental retardation and other developmental disabilities is the result of public policies emphasizing substitution for the family rather than its enhancement. Very little research has been undertaken to determine how best to help families of persons with mental retardation, particularly those from minority, poor, rural, and non-traditional backgrounds (Testimony of the Arc, formerly the Association for Retarded Citizens, NIDRR Long-Range Plan Hearing, 1990).

Priority

An RRTC on community integration for persons with mental retardation shall—

- Demonstrate and evaluate models to improve the use of technology for communication, self-management, employment, and home management by individuals with mental retardation;
- Develop and evaluate models to increase physical and social integration of individuals with mental retardation in their communities and in the workplace;
- Demonstrate and evaluate the effect of enhanced family participation and increased involvement of friends and other significant persons in the community integration of persons with mental retardation;
- Demonstrate and evaluate models that result in more effective self-direction and self-representation by persons with mental retardation; and
- Develop and evaluate models to improve the recruitment, training and retention of direct service personnel to provide high quality community services to people with mental retardation.

Two Priorities on Families of Individuals With Disabilities

Families that have members with disabilities can contribute significantly to an enhanced quality of life for those members. Throughout the long-range planning process, NIDRR was reminded of the importance of the family in attaining successful outcomes for both children and adults with disabilities. Because of the need for a significant volume of research on families, and because of some basic differences in the issues confronting families in which the disabled members are adults versus those in which disabled members are children, NIDRR has chosen to establish priorities for two Centers to focus separately on strategies to meet the needs of each of these two family configurations.

*Priority 13—Families of Children With Disabilities*

Background

The major goals of family support programs are to "deter out-of-home placements; enhance the care-giving capacities of the families; and enable persons to return to their families if they have been living in institutions" (Agosta and Bradley, 1985). There are several specific areas in which research and training could contribute to the achievement of these family-centered goals. These include: (1) The use of technology to enhance functioning and meet needs for care; (2) strategies to improve the service systems; (3) strategies to serve minority groups; (4) strategies to reduce the incidence of neglect and abuse; and (5) strategies to serve as effective advocates for themselves and their children in reforming policy and gaining access to appropriate services.

As many as 17,000 children rely on medical technology to perform vital life functions, and many thousands more could benefit from assistive technology for communications, adaptive seating, mobility, and interactions with the environment. Families need information on the potential and uses of technology and on resources to obtain technology. Public policy and financing practices may either facilitate or impede access to technology, and these effects must be better understood.

The existing service systems for families of children with disabilities have been developed with an imperfect understanding of or lack of focus on family needs. Many service delivery systems are still tied to the concepts of "family dysfunction or incapacity, with the child and family as the target for change" (Franke, 1988). There is a need to investigate the ways in which families can identify accurately their strengths, resources, and needs and a concomitant need to identify effective family-centered service delivery systems. Parents and service providers, as well as children with disabilities themselves, need training and technical assistance in effective self-representation and validated strategies to access family supports.

There is evidence that certain children may be at a higher risk for abuse and neglect than others. "Children who are difficult to manage and exacerbate already high stress levels in the family, or who are perceived as 'different' are more likely to become victims of maltreatment from high risk caretakers" (Ammerman, 1988). Indeed, a number of studies have found an over-representation of physically and mentally disabled children among samples of maltreated children (Kurland and Burgess, 1992). Researchers need to identify the factors that contribute to and are predictive of maltreatment of children with disabilities and develop appropriate interventions.

Priority

An RRTC on families of children with disabilities shall—

- Demonstrate and evaluate appropriate use of technology to facilitate in-home care and community integration for children with disabilities;
- Develop, demonstrate, and evaluate service delivery models that identify critical family needs and develop interventions to meet those needs;
- Develop, demonstrate, and evaluate an array of service delivery models that encourage families to serve as effective advocates for themselves and their children in reforming policy and gaining access to appropriate services;
- Develop, demonstrate, and evaluate service delivery models that meet the needs of all parents, regardless of their individual circumstances, for effectively parenting children with disabilities; and
- Develop, demonstrate, and evaluate service delivery models that reduce the incidence of neglect and abuse of children with disabilities.

*Priority 14—Families of Adults With Disabilities*

Background

Whether families are formed through marriage, birth, adoption, or other commitments, they are basic units in which the individuals have a commitment and shared responsibility to provide emotional, physical, and financial supports to maintain each member's well-being. While there is a growing body of literature on families with children with disabilities, less is known about families in which the disabled member is an adult. The challenges a family might face when an adult has a disability will vary greatly depending on the type of disability, the time of life in which it occurs, and the impact of the disability on need for care, ability to earn income, and life expectancy.

Problems of family function that may confront adults with disabilities and their families include, but are not

limited to: (1) Establishing appropriate independence from parents; (2) creating and maintaining a marital relationship; (3) reproducing or adopting children or becoming foster parents; (4) parenting children; (5) caring for aging parents; (6) providing economic well-being and security for the family; (7) providing for personal care and assistance; and (8) planning for future economic and care needs in light of anticipated future diminution in functional capacity or reduced life expectancy. These problems may be common to all families, but individuals who have disabilities frequently need additional supports and technologies to enable them to solve these problems.

Priority

An RRTC on families of adults with disabilities shall—

- Identify and assess current options and develop new options for individuals with disabilities to become parents; and develop strategies to help them effectively parent their children, including increased access to support services;
- Identify and assess current techniques, and develop new techniques to provide tangible and intangible supports to spouses and other members of families of adults with disabilities, particularly during crises caused by the onset of a disability or its significant exacerbation;
- Develop strategies that promote the ability of adults with disabilities to provide long-term financial support, insurance, health benefits, education, and other benefits for their families; and
- Promote appropriate assistive technology to enhance parenting, self-care, care by and of others, independence in the family, community integration, and work.

*Applicable Program Regulations:* 34 CFR parts 350 and 352.

**Program Authority:** 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: March 4, 1993.

**Richard W. Riley,**

*Secretary of Education.*

**Appendix—Analysis of Comments and Changes**

The Department received 160 comments in response to the proposed priorities. One hundred and twenty-two letters were devoted exclusively to advocating the continuance of an RRTC in the area of mental health and deafness. Of the remaining 38 letters, 16 supported the priorities as published, 18 requested additions or revisions to specific priorities, and 4 provided comments that applied to all of the published priorities. This appendix contains a synopsis of those comments, except for those that supported the priorities as published, as well as the Secretary's responses. The general comments and the comments regarding a mental health and deafness priority are discussed at the end of the appendix.

*Priority 3—Career Development and Advancement*

*Comment:* One commenter urged NIDRR to include an emphasis on postsecondary education in the priority.

*Discussion:* The Secretary believes that an applicant may emphasize postsecondary education within the scope of the priority, as written. The merit of such an emphasis will be determined on a case-by-case basis in the application review process.

*Changes:* None.

*Priority 5—Vocational Rehabilitation for Individuals With Substance Addiction Disabilities*

*Comment:* Two commenters urged NIDRR to expand the priority to include persons who have a disability and are also substance abusers. One commenter stated that recently completed studies within the Michigan Rehabilitation Services Agency indicated that the group of individuals who have a disability and are also substance abusers is larger than the group whose only disability is substance abuse. The commenter also suggested that NIDRR expand the priority to include "basic epidemiology into the correlations between other disabilities and chemical dependency."

*Discussion:* After consulting with representatives from the Rehabilitation Services Administration and the National Institute on Drug Abuse, the Secretary believes that expanding the proposed priority as suggested by the commenters will lead to a better understanding and treatment of substance abuse problems. The Secretary agrees that epidemiological research is also important.

*Changes:* The priority has been expanded to include research on individuals who have a disability and are substance abusers, and includes epidemiological research. The title and background of the priority have been changed to be consistent with the expansion of the priority. In addition, as a technical matter, the first and second activities have been combined into one activity.

*Priority 6—Vocational Rehabilitation and Specific Learning Disabilities*

*Comment:* One commenter urged NIDRR to add the development of a more accurate, computer-based diagnostic instrument to the priority.

*Discussion:* The Secretary believes that an applicant may propose to develop a more accurate, computer-based diagnostic instrument within the scope of the priority as written. The merit of such a proposal will be determined on a case-by-case basis in the application review process.

*Changes:* None.

*Comment:* One commenter urged NIDRR to expand the priority to include ADA issues, such as program access and accommodation strategies, and to emphasize the differing needs and circumstances of individuals from urban or rural areas.

*Discussion:* The Secretary believes that an applicant may propose to expand the priority to include ADA issues and emphasize the differing needs and circumstances of individuals from urban or rural areas within the scope of the priority, as written. The merit of such proposals will be determined on a case-by-case basis in the application review process.

*Changes:* None.

*Priority 7—Improving Vocational Rehabilitation for Minority Populations*

*Comment:* One commenter urged NIDRR to add financial training (e.g., initiating a small business, negotiating loans) for minority persons with disabilities to the training activities of the proposed RRTC.

*Discussion:* The Secretary believes that an applicant may propose to include financial training within the scope of the priority, as written, if it serves the purpose of disseminating and encouraging the utilization of new rehabilitation knowledge, findings, and techniques resulting from an RRTC's research activities (see 34 CFR 352.10(c)). The merit of such a proposal will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Comment:* One commenter was concerned that the RRTC address the interaction between service providers, persons with disabilities and the families of persons with disabilities. The commenter urged NIDRR to ensure that the research conducted by the RRTC utilize a participatory action research model involving persons with disabilities, service providers and their families.

*Discussion:* The Secretary believes that the preamble to the proposed

priorities provides sufficient guidance on this matter. The preamble states: "Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center."

*Changes:* None.

*Priority 8—Rehabilitation of American Indians With Disabilities*

*Comment:* One commenter urged NIDRR to expand the third activity of the proposed priority to include the development of innovative and realistic strategies to improve employment opportunities for disabled American Indians residing in reservation areas.

*Discussion:* The Secretary agrees that strategies are also needed to improve employment opportunities.

*Changes:* The third activity of the priority has been expanded to include the development of strategies to improve employment opportunities.

*Comment:* The same commenter was concerned that the proposed priority seemed to exclude Indians who do not reside on reservations. The commenter suggested that the first activity of the proposed priority be revised to include disabled American Indians residing in urban as well as on reservation areas. In addition, the commenter suggested the addition of a priority calling for a needs assessment of American Indians with disabilities living in urban areas.

*Discussion:* The Secretary agrees that clarification in the priority is necessary to ensure that the RRTC will address the rehabilitation needs of American Indians with disabilities who reside on or off the reservation, including urban areas.

In regard to the addition of an activity involving a needs assessment of American Indians with disabilities living in urban areas, the Secretary also believes that in order to carry out its required activities, the RRTC will have to assess the needs of the target populations, including those living in urban areas. Therefore, adding a needs assessment activity is unnecessary.

*Changes:* The priority has been changed to clarify that the RRTC will address the rehabilitation needs of American Indians with disabilities who reside on or off a reservation, including urban areas.

*Comment:* The same commenter was concerned that the research activities of the proposed RRTC were too limited and should be broadened beyond the vocational rehabilitation process.

*Discussion:* The Secretary disagrees. Improving the vocational rehabilitation of American Indians is a complex undertaking that raises an imposing set of research questions. The Secretary believes that broadening the proposed priority beyond the vocational rehabilitation process would detract from the purpose of the proposed RRTC.

*Changes:* None.

*Comment:* The same commenter suggested that the priority emphasize prevention of primary or secondary disabilities for persons who are "at high risk."

*Discussion:* The Secretary recognizes the importance of prevention activities. However, those activities are too far outside the scope of the RRTC and would detract from its purpose.

*Changes:* None.

*Comment:* The same commenter was concerned that the specific disabling conditions delineated in the background statement (i.e., fetal alcohol syndrome, spinal cord and traumatic brain injuries, substance abuse and diabetes) were not addressed specifically in the priority.

*Discussion:* The disabling conditions mentioned in the background statement are not definitive. The second activity of the priority requires the RRTC to "Develop, demonstrate, and evaluate specialized interventions that effectively address *disabilities of high prevalence among American Indians*" (emphasis added). The Secretary believes that applicants should be given the discretion to specify which disabilities are considered of high prevalence. The merit of each applicant's specification of high prevalence disabilities will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Priority 11—Aging With Mental Retardation*

*Comment:* One commenter suggested that the first activity of the priority regarding decision-making emphasize the role of the independent living concept.

*Discussion:* The Secretary believes that an applicant may propose to emphasize the concept of independent living within the scope of the first activity of the priority, as written. The merit of such an emphasis will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Comment:* The same commenter suggested that the proposed RRTC activity regarding the acquisition of data on medical conditions associated with aging with mental retardation be expanded to include investigating the role of medical data as a correlate of psychosocial well-being.

*Discussion:* The Secretary believes that an applicant may propose to investigate the role of medical data as a correlate of psychosocial well-being within the scope of the second activity of the priority, as written. The merit of such a proposal will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Comment:* The same commenter urged NIDRR to include further investigatory procedures and a dissemination component in the proposed activity of the RRTC addressing the understanding of their families and service providers about the changing physical, psychological, vocational, and life-planning needs of this aging population.

*Discussion:* The Secretary believes that the number of and specific kind of investigatory procedures required to carry out the activities of the RRTC should be left to the discretion of each applicant. In regard to adding a dissemination component, all RRTCs are required to engage in dissemination activities.

*Changes:* None.

*Comment:* The same commenter urged NIDRR to specify that preventive counseling techniques should be developed in conjunction with the activity to develop and evaluate counseling and other techniques.

*Discussion:* The Secretary believes that an applicant may propose to develop preventive counseling techniques within the scope of the fifth activity of the priority, as written. The merit of such a proposal will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Comment:* The same commenter suggested adding an activity addressing drug dependency, including all potential iatrogenic reactions from prescriptions, over-the-counter and illicit drugs.

*Discussion:* The Secretary believes that an applicant may propose to address drug dependency within the scope of the priority, as written. The merit of such a proposal will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Priority 12—Community Integration for Persons With Mental Retardation*

*Comment:* A number of commenters suggested that the third activity of the RRTC to demonstrate and evaluate the effect of enhanced family participation

be expanded to include persons outside the immediate family who may play a comparable role in the life of a person with mental retardation.

*Discussion:* The Secretary agrees with the commenters that persons outside the immediate family of persons with disabilities may play a significant role in the life of a person with mental retardation.

*Changes:* The priority has been changed by adding the increased involvement of friends and other significant persons to the activity of the RRTC addressing enhanced family participation.

*Comment:* A number of commenters urged NIDRR to revise the first activity of the RRTC relating to technology to clarify that technology could be defined to include a number of instructional techniques and was not limited to the application of assistive devices. The commenters also suggested that social and independent living skills be added to the list of areas that technology would improve.

*Discussion:* The first activity requires the RRTC to "Demonstrate and evaluate models to improve the use of technology for communication, self-management, employment, and home management by individuals with mental retardation." The Secretary believes that an applicant may define technology to include instructional techniques (in addition to assistive devices and services) within the scope of the priority, as written. In regard to adding independent living skills to the list of areas that technology would improve, the Secretary believes that an applicant may propose that independent living skills be addressed within the scope of the first activity of the priority. The merit of such a definition and proposal will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Comment:* A number of commenters urged NIDRR to add an activity to the priority to develop and evaluate models and programs to improve the recruitment, training, and retention of direct service personnel to provide high quality community services to people with mental retardation.

*Discussion:* The Secretary agrees with the commenters that the recruitment, training, and retention of direct service personnel is a pivotal step in contributing to the community integration of persons with mental retardation. As a number of commenters pointed out, this topic was emphasized during NIDRR's long-range planning process, and the turnover rate of direct service personnel is alarmingly high.

*Changes:* An activity has been added to the priority to develop and evaluate models to improve the recruitment, training, and retention of direct service personnel to provide high quality community services to people with mental retardation.

*Comment:* One commenter urged NIDRR to delineate a more formal link between the community integration and employment in the priority.

*Discussion:* The Secretary believes that employment is a cornerstone of community integration for all persons with disabilities. The first two activities of the proposed priority reference employment and the workplace, respectively. The Secretary also believes that an applicant may emphasize the relationship between community integration and employment within the scope of the priority, as written. The merit of such an emphasis will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Comment:* One commenter suggested that an activity be added to the priority that would develop and evaluate models of professional services that are less oriented to clinical services and more oriented to developing and maintaining community supports and activities.

*Discussion:* The Secretary believes that an applicant may propose the development and evaluation of models of professional services within the scope of the new activity that has been added to the priority regarding direct service personnel. The merit of such a proposal will be determined on a case-by-case basis during the application review process.

*Changes:* None.

*Comment:* One commenter urged NIDRR to expand the priority to include an emphasis on the problems faced by adolescents, especially in their transition to adult life.

*Discussion:* The Secretary believes that an applicant may propose to emphasize the problems faced by adolescents within the scope of the priority, as written. The merit of such an emphasis will be determined on a case-by-case basis during the application review process.

*Changes:* None.

Mental Health and Deafness

*Comment:* The Secretary received 122 letters urging a continuation of an RRTC on mental health and deafness. Those letters presented three basic arguments why the Secretary should continue an RRTC on mental health and deafness: (1) New methods for treatment, intervention and prevention are needed in order to maintain and improve the quality of direct services, and resolve emerging treatment issues (e.g., substance abuse, sexual abuse); (2) the RRTC plays a vital role by linking local agencies through the sharing of information and informal networking; and (3) demands for equal access to the mental health field from persons who are deaf will increase as a result of the Americans with Disabilities Act.

*Discussion:* The Secretary appreciates the arguments of the commenters. NIDRR has supported an RRTC on mental health and deafness for 15 years. The Secretary believes that further evaluation and consideration of the future direction of the field is necessary. The Department plans on convening a group of nationally-recognized experts in the field of mental health and deafness in order to assist NIDRR in reviewing the state of the science and determining the agency's future activities on the subject.

*Changes:* None.

*General Comments:*

*Comment:* One commenter suggested a rank ordering of the proposed priorities.

*Discussion:* The proposed priorities were organized according to topical areas. The Secretary does not consider rank ordering to be appropriate.

*Changes:* None.

*Comment:* One commenter expressed support for the two proposed priorities addressing selected minorities and American Indians, and urged NIDRR to encourage all of the RRTCs to make their research and training relevant to minority populations with disabilities.

*Discussion:* The Secretary believes that research conducted by all the RRTCs should be relevant to all minority populations with disabilities to the maximum extent appropriate. The Secretary also believes that adding an encouragement to the preamble will contribute to improving the relevance of RRTC research to all minority populations with disabilities.

*Changes:* A sentence has been added to the preamble encouraging all the RRTCs to make their research relevant to all minority populations with disabilities to the maximum extent appropriate.

*Comment:* One commenter suggested that each RRTC be required to undertake at least one task that is geared towards examining and changing public policies that affect its area. In addition, the commenter suggested that the RRTCs should be encouraged to work with mainstream service providers to ensure that they are adapting their services to meet the needs of people with disabilities.

*Discussion:* The Secretary believes that the decision of whether to require an RRTC to undertake policy research should be decided on a case-by-case basis. In regard to encouraging the RRTCs to work with mainstream service providers, the preamble includes the following directive: "Each Center must involve individuals with disabilities and, if appropriate, their family members, *as well as rehabilitation service providers—including vocational rehabilitation service providers*—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center" (emphasis added). The Secretary also believes that this provision encourages RRTCs to work with service providers.

*Changes:* None.

*Comment:* One commenter indicated that it was important for the RRTCs on enhancing employability, promoting placement, career development and advancement, and supported employment to look broadly at all disability groups and do not inadvertently dismiss investigating how their research can apply to people with psychiatric disabilities.

*Discussion:* The Secretary does not wish to single out any specific disability group. The Secretary believes that all disability groups should be considered by RRTCs that are not disability-specific.

*Changes:* None.

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## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

**[CFDA NO: 84.133B]**

### National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for Certain New Awards Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1993

*Note to Applicants:* This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The final priorities for the Rehabilitation Research and Training Centers (RRTC) program are published in this issue of the **Federal Register**. This consolidated application package includes the closing dates, estimated funding, and application forms necessary to apply for awards under any of this program's competitions. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels.

**Note:** The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals with disabilities from minority backgrounds. Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

In addition, the 1992 Amendments also require that each grantee that provides services to individuals with disabilities must advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs may be obtained by calling (202) 205–9343.

If you need further information about these requirements, please contact David Esquith at (202) 205–8801.

APPLICATION NOTICES FOR FISCAL YEAR 1993 REHABILITATION RESEARCH AND TRAINING CENTERS CFDA NO. 84.133B

| Funding Priority | Deadline for transmittal of applications | Estimated number of awards | Estimated project period (months) | Estimated funds available |
|---|---|---|---|---|
| Enhancing Employability | May 10, 1993 | 1 | 60 | $650,000 |
| Promoting Placement | May 10, 1993 | 1 | 48 | 400,000 |
| Career Development and Advancement | May 10, 1993 | 1 | 36 | 400,000 |
| Supported Employment | May 10, 1993 | 1 | 60 | 650,000 |
| Vocational Rehabilitation for Individuals with Substance Addiction Disabilities | May 10, 1993 | 1 | 36 | 400,000 |
| Vocational Rehabilitation and Specific Learning Disabilities | May 10, 1993 | 1 | 36 | 400,000 |
| Improving Vocational Rehabilitation for Minority Populations | May 10, 1993 | 1 | 60 | 500,000 |
| Rehabilitation of American Indians with Disabilities | May 10, 1993 | 1 | 60 | 600,000 |
| Community-Based Rehabilitation Programs | May 10, 1993 | 1 | 60 | 600,000 |
| Management of Information and Information Systems in State Vocational Rehabilitation Agencies. | May 10, 1993 | 1 | 60 | 600,000 |
| Aging with Mental Retardation | May 10, 1993 | 1 | 60 | 550,000 |
| Community Integration for Persons with Mental Retardation | May 10, 1993 | 1 | 60 | 575,000 |
| Families of Children with Disabilities | May 10, 1993 | 1 | 60 | 650,000 |
| Families of Adults with Disabilities | May 10, 1993 | 1 | 48 | 400,000 |

### Invitational Priority

Within absolute priority 2—Promoting Placement—specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

The Secretary recognizes that assistive technology can be of major significance in helping persons with disabilities overcome the barriers that often lead to underemployment. The Secretary also considers assistive technology essential to achieving the goals of the Americans with Disabilities Act because the effective use of such technology provides persons with disabilities the services and devices they need to enable them to participate fully and appropriately in the workplace and the community. As a result, the Secretary is particularly interested in the development and evaluation models that demonstrate how the provision of

appropriate assistive technology devices and services during the rehabilitation process as well as job modifications and changes in the workplace design can improve placement options.

This notice of final priorities supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This notice would address Goal 5 by helping individuals with disabilities to develop the skills necessary to live and work successfully in the world as it is today.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 352; and (c) the Notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**.

*Purpose of Program:* Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

*Selection Criteria:* The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program.* (20 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design.* (35 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program.* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management.* (20 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

*Eligible Applicants:* Those eligible for assistance under this program are as follows: (a) State and public agencies or organizations, (b) private agencies or organizations, (c) institutions of higher education, and (d) Indian tribes and tribal organizations.

**Instructions for Transmittal of Applications**

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

**Application Forms and Instructions**

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

*Part I:* Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

*Part II:* Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

*Part III:* Application Narrative.

**Additional Materials**

Public Reporting Burden Estimate Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable)) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances and certification form must each have an original signature. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** William Whalen, The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Room 3417 Switzer Building, Washington, DC 20202–2704. Telephone: (202) 205–9141; deaf and hearing impaired individuals may call (202) 205–5474 for TDD services.

**Program Authority:** 29 U.S.C. 760–762.

Dated: March 4, 1993.

**William L. Smith,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

**Frequent Questions**

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register.** However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms and Certifications included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One Program Competition NIDRR or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applications for Rehabilitation Research and Training Centers must, by statute, limit their indirect charges to 15 percent of total costs.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs may be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only State, public or private agencies or organizations, institutions of higher education and Indian tribes and tribal organizations are eligible to apply for grants under this program.

8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff cannot advise you of whether your subject area or proposed approach is likely to receive approval. However, NIDRR staff can advise you of the requirements of the program for which you propose to submit your application.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

10. How Soon After Submitting My Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame, as well.

For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted each year of the project. Additionally, there will be negotiations on the budget each year.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-U

OMB Approval No. 0348-0043

## APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name | Organizational Unit |
| Address (give city, county, state, and zip code) | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

| 13. PROPOSED PROJECT | | 14. CONGRESSIONAL DISTRICTS OF | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |
| | | | |

| 15. ESTIMATED FUNDING | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|

23. Remarks

SF 424A (4-88) Page 2
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**Instructions for the SF–424A**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

*Section A. Budget Summary*

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column (a)* and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

*Lines 1–4, Columns (c) through (g)*

*For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications,* submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus; as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

*Section B. Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

*Section C. Non-Federal-Resources*

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

*Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Line 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a). Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Column (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Instructions for Part III—Application Narrative**

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.
4. The Secretary strongly requests the applicant to limit the Application Narrative to no more than *100* double-spaced, typed pages (on one side only).

**Instructions for Estimated Public Reporting Burden**

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instruction, searching existing data sources, gathering, maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, 20503.

(Information collection approved under OMB control number 1820–0027. Expiration date: July 31, 1995.)

BILLING CODE 4000–01–U

OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq ); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted –

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

## DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

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As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>For Material Change Only:<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>Congressional District, *if known*: | Congressional District, *if known*: |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, *if applicable*: _____ |
| 8. Federal Action Number, *if known*: | 9. Award Amount, *if known*:<br>$ |
| 10. a. Name and Address of Lobbying Entity<br>(*if individual, last name, first name, MI*): | b. Individuals Performing Services (*including address if different from No. 10a*)<br>(*last name, first name, MI*): |

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

| 11. Amount of Payment (*check all that apply*): | 13. Type of Payment (*check all that apply*): |
|---|---|
| $ _____ ☐ actual ☐ planned | ☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment (*check all that apply*):<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, *if necessary*)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 93–5399 Filed 3–9–93; 8:45 am]

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Standard Form - LLL-A

federal register

Wednesday
March 10, 1993

Part III

# Department of Agriculture

## Cooperative State Research Service

## Rangeland Research Grants Program for Fiscal Year 1993; Notice of Solicitation of Applications

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research Service

### Rangeland Research Grants Program for Fiscal Year 1993; Solicitation of Applications

Notice is hereby given that under the authority in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The total amount of funds available for grants under the Rangeland Research Grants Program (program) during fiscal year 1993 is $452,869.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary. Except in the case of Federal laboratories, each grant recipient shall match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

#### Applicable Regulations

This program is subject to the provisions found in 7 CFR part 3401 (51 FR 16152, April 30, 1986), in which reference is made to 7 CFR part 3400. The rules regarding incorporation by reference are contained in 1 CFR part 51. In pertinent part, 1 CFR 51.1(f) provides: "[I]ncorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included." Accordingly, amendments to 7 CFR part 3400 promulgated after April 30, 1986, (53 FR 49640–49642, December 8, 1988, and 56 FR 58146–58152, November 15, 1991) do not apply to the fiscal year 1993 Rangeland Research Grants Program. The provisions in 7 CFR part 3401 set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching funds requirement. In addition, the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016, as amended, the regulations governing Governmentwide Deberment and Suspension (Nonprocurement) and the Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended, the New Restrictions on Lobbying, 7 CFR part 3018, and the CSRS regulations implementing the National Environmental Policy Act of 1969, 7 CFR part 3407, apply to this program.

#### How to Obtain Application Materials

Copies of this solicitation, the Application Kit, and the Administrative Provisions for this program (7 CFR part 3401) may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200, Telephone: (202) 401–5048.

#### What to Submit

Each applicant shall include an original and nine copies of each proposal submitted under this program. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made. Each copy of each proposal must include a Form CSRS–661, "Application for Funding." Applicants should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Application Kit).

Members of review committees and CSRS staff expect each project description to be complete in itself. Grant proposals shall be limited to 10 pages (single-spaced), exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s), and other professional personnel. Attachment of appendices is discouraged and should be included only if pertinent to an understanding of the proposal.

#### Compliance with the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the CSRS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSRS so that CSRS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

*(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)*

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

*(2) CSRS Categorical Exclusions. (7 CFR 3407.6)*

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment;

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and

minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusion, the specific exclusions must be identified. The information submitted shall be identified in the Table of Contents as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

All copies of each proposal shall be mailed in one package. Please make sure that each copy of each proposal is stapled securely in the upper left-hand corner. Do not bind. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR Part 3401. Proposals submitted by organizations other than Federal laboratories shall state that the 50 percent non-Federal funding requirement will be met.

**Where and When To Submit Applications for Funding**

Each research application for funding shall be submitted to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200.

Please Note. Hand-delivered proposals or those delivered by overnight express services shall be brought to: Room 303, Aerospace Center, 901 D Street SW., Washington, DC 20024.

To be considered for funding during fiscal year 1993, proposals must be received in the Proposal Services Branch by close of business on April 2, 1993.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

**Specific Areas of Research To Be Supported in Fiscal Year 1993**

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion, and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

If necessary, further information may be obtained by calling Dr. Wayne K. Murphey, CSRS-USDA; telephone: (202) 401-4089.

**Supplementary Information**

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, the 2d day of March 1993.

**John Patrick Jordan,**

*Administrator, Cooperative State Research Service.*

[FR Doc. 93–5413 Filed 3–9–93; 8:45 am]

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March 10, 1993

Part IV

# Department of Education

34 CFR Parts 600 and 668
Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Final Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 600 and 668**

**RIN 1840–AB38**

## Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions regulations regarding administrative actions to terminate the eligibility of an institution and to impose emergency sanctions on an institution.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ann S. Clough, Division of Eligibility and Certification, U.S. Department of Education, 400 Maryland Avenue SW. (Regional Office Building 3, room 3030), Washington, DC 20202-5242. Telephone: (202) 708-4906. Deaf and hearing impaired individuals may call (202) 708-8248 for TDD services.

**SUPPLEMENTARY INFORMATION:** The purpose of these regulations is to improve the efficiency of Federal postsecondary education programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the National Education Goals.

These regulations modify three features or elements of the Department of Education's (Department's) procedures regarding administrative actions taken to enforce program requirements. First, the regulations permit parties to file certain documents in administrative proceedings by facsimile. Second, the regulations clarify and explain the administrative actions the Secretary may take when an institution or part of an institution ceases to satisfy applicable eligibility requirements. Third, the regulations clarify and explain the manner in which the Secretary uses the emergency action authority available under section 487 of the HEA.

### Filing Documents by Facsimile

In recognition of the increasing reliability and convenience of facsimile technology, these regulations reflect the Department's effort to accommodate the public by revising the existing regulations to permit the submission of certain filings in Department administrative proceedings by facsimile. The regulations change the existing regulations only regarding filings that the Department reasonably can accept by facsimile, given its existing facsimile technology and resources.

Specifically, the Department's existing regulations governing administrative proceedings pursuant to 34 CFR 600.41 and subparts B, G, and H of part 668 of title 34 of the Code of Federal Regulations are amended to permit hearing requests and certain other documents required in administrative proceedings to be filed by facsimile, as well as by hand-delivery or mail. Where a filing may be permitted by facsimile, the Department will give the affected party timely written notice of the name and facsimile telephone number of the department official to whom a facsimile filing must be transmitted. The existing regulations also are amended to provide that documents submitted by facsimile are filed on the date the facsimile transmission is sent, that parties who file documents by facsimile are responsible for confirming that a complete and legible document is received by the Department, and that the hearing officer or other designated department official may require a follow-up hard copy of documents filed by facsimile. Finally, these final regulations state that the Secretary discourages facsimile transmission of documents longer than five pages.

### *Loss of Eligibility and Emergency Action*

On August 7, 1990, the Secretary promulgated final regulations amending 34 CFR parts 600 and 668. 55 FR 32180. Those amendments made two principal changes to those parts: They added 34 CFR 600.41, which provides an opportunity for an administrative appeal under section 487(c) of the HEA for an institution that the Department of Education (ED) considers no longer to qualify as an eligible institution under the HEA, and revised 34 CFR 668.83 to conform to the statutory amendments to the HEA that expressly authorized ED to take emergency action against an institution. The Secretary concurrently issued a notice of proposed rulemaking (NPRM) on these same regulations, inviting public comment on the provisions published that day as final regulations. 55 FR 32186. Based on a careful consideration of both the public comments received in response to the NPRM and ED's experience in proceedings conducted under the final regulations, the Secretary is making in these final regulations a number of significant revisions to the August 7, 1990 regulations.

### *Consequences of Loss of Eligibility*

A number of clarifying and conforming changes are made here to those provisions, including § 600.41, that explain the actions an institution may take after a loss of eligibility occurs or an emergency action is imposed. On July 19, 1991, the Secretary amended 34 CFR 668.25 to prescribe the actions to disburse Title IV, HEA program funds that an institution may take after it loses eligibility. 56 FR 33341. Under the amended § 668.25, an institution that loses its eligibility to participate in Title IV, HEA programs during a payment period, but continues to provide educational instruction until the scheduled completion of the payment period or period of enrollment, may make payments of Title IV, HEA student financial assistance to a student who is enrolled on the date of the institution's loss of eligibility in the following manner: For a Pell Grant or campus-based program aid, the institution may disburse funds for the payment period during which the loss of eligibility occurred if the institution made a commitment to the student for that aid prior to the date on which the loss of eligibility occurred. 34 CFR 668.25(c)(1). The institution may release to the student all proceeds of a Federal Family Education Loan Program loan (including a Federal Stafford Loan, Federal PLUS loan or Federal SLS program loan) made for an enrollment period that began prior to the loss of eligibility if the institution had released at least one disbursement of that loan to the student before the date of loss of eligibility. 34 CFR 668.25(c)(2).

The Secretary may require an institution to meet its closeout obligations regarding audits, disposition of records, transfer of Perkins Loans, and satisfaction of refund obligations before it may make, or receive additional funds for, these final disbursements. If the loss of eligibility affects only a location or educational program of the institution, the Secretary may limit the eligibility of the institution by requiring the institution to follow a particular procedure to ensure that title IV, HEA program funds

are not thereafter used for the ineligible location or program.

The same standards are meant to be applied in terminations of eligibility under both 34 CFR part 668 and part 600; the specific provisions previously contained in 34 CFR 668.25(c) governing these disbursements of Title IV, HEA program funds also were included in 34 CFR 668.94, which, in turn, was referenced in § 600.41(d). To clarify that the same rule applies in terminations based on loss of eligibility and terminations for violation of participation requirements, both §§ 600.41(d) and 668.94(b) are being revised here to refer to § 668.25.

*Loss of Institutional Eligibility; Consequences With Respect to Obligations Under the Federal Family Education Loan Program.*

ED's recent experience applying regulations that address the consequences of loss of institutional eligibility for FFELP loan transactions suggests the need to clarify the effect of § 600.40 (and § 668.25) on the obligations of both institutions and borrowers. Both regulations address the institution's responsibility to ED with respect to a loss of eligibility. They permit the institution to deliver loan proceeds to students after the effective date of the loss of eligibility, but the regulations are not intended to create any other rights for student borrowers or to suggest that borrowers are excused from repaying loans received to attend that institution.

Section 668.25(c) requires an institution that loses eligibility to return to the lender the proceeds of FFELP loans it receives other than proceeds of loans that were partially disbursed to the borrower prior to the date of the loss of eligibility. This direction in § 668.25(c) refers to loan proceeds received from the lender by check or electronic funds transfer and held by the institution for delivery to the borrower, not loan proceeds that have already been delivered to the borrower and applied to educational expenses.

The institution becomes subject to § 668.25 after the termination becomes final with respect to loan proceeds it still holds for delivery or thereafter receives from the lender. However, under § 600.40(a) as currently in effect and as amended in these regulations, the effective date of the loss of eligibility is the date on which the institution ceased or failed to meet an element of the standards for eligibility. In proceedings under § 600.41, that date will ordinarily be well before the date on which the termination action becomes final. The institution may have delivered loan proceeds and disbursed other Title IV, HEA program assistance after the effective date, and the Secretary holds the institution liable for the full costs to the government of that aid provided after the effective date of the loss of eligibility.

For Title IV, HEA program assistance provided from Federal funds ED advanced to the institution, the cost of that assistance is clearly the actual amount of Federal funds the institution provided to students after that effective date. However, under the FFELP, ED provides no Federal funds to the institution itself. The financial loss to the government caused by guaranteed loans made after the effective date of the loss of eligibility is not the amount of funds advanced on guaranteed loans received for its students, because those funds are advanced by lenders, not ED. Rather, the loss to the government is the cost of the subsidies paid to holders of those loans and the costs of defaults on those loans for which the government is contingently liable under its reinsurance agreements with guarantee agencies.

To recoup the loss to the government for the FFELP loans received by borrowers after the effective date of the loss of eligibility, therefore, ED holds the institution liable for the actual cost of the subsidies paid to lenders and the cost of defaults on those loans. ED passes the cost of defaults on to the institution either by requiring the institution to pay ED the actual amount of reinsurance payments already paid and the estimated amount of reinsurance payments that will be paid on those loans, or by requiring the institution to assume the risk of loss on those loans by purchasing those loans from the lender or guarantee agencies that now hold them.

Where ED chooses to require an institution to purchase from their respective holders those FFELP loans made after the effective date of the institution's loss of eligibility, ED does no more than remedy the unauthorized imposition on the government of contingent liability for defaults on those loans. If the institution in fact purchases those loans from the holders, the loans no longer qualify for Federal reinsurance or subsidies. Further, it is unlikely that the guarantee agency will continue to insure the loans. However, the loans would be enforceable by the institution, according to their terms, as its own receivables.

Because ED regulations have permitted the lender to rely in good faith (absent an origination relationship) on representations made in FFELP loan applications by both the borrower and the institution, ED generally holds the lender harmless from the consequences of a lapse of institutional eligibility. To hold the lender harmless in these situations, ED must continue to subsidize and reinsure those loans that the ineligible institution does not purchase. Whether these loans are assigned to the institution or, as is more likely, the loans remain with the lender or guarantee agency, ED considers the loss of institutional eligibility to affect directly only the liability of the institution for Federal subsidies and reinsurance paid on those loans. In either case, the borrower retains all the rights with respect to loan repayment that are contained in the terms of the loan agreements, and ED does not suggest that these loans, whether held by the institution or the lender, are legally unenforceable merely because they were made after the effective date of the loss of institutional eligibility.

*Analysis of Comments and Changes*

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, and appropriate sections of the regulations are referenced. Other substantive issues are discussed under the section of the regulations to which they pertain. Among the minor changes made to current regulations on which no comments were received and which are not otherwise addressed in this part are the inclusion of certain definitions in part 668 previously found in other parts; among these is the definition the student aid report, or "SAR." Because of changes made by the Higher Education Amendments of 1992, the definition of that term will be amplified in the future to explain more fully the consequences of loss of eligibility or emergency action on the awarding and delivery of Pell Grant funds.

*Section 668.81—Scope and Special Definitions*

*Comments:* One commenter asked whether the Secretary had eliminated paragraphs (c)(3), (d), (e), and (f) of this section. These paragraphs provided that the procedures contained in Subpart G do not apply to decisions by the Secretary to refuse initially to certify an institution for participation in the title IV, HEA programs, to decisions to provide title IV, HEA program funds to an institution by reimbursement, and to administrative actions to enforce various anti-discrimination laws. Paragraph (f) contains definitions of

terms used in subpart G. The same commenter believed that the subpart G procedures should be available for an institution whose funding method was changed from advance funding to reimbursement funding.

*Discussion:* The omission of paragraphs (d), (e), and (f) from the proposed rule as published reflects only that no changes were to be made to those paragraphs, which remain in effect. On the other hand, the commenter is correct that paragraph (c) was revised to eliminate former paragraph (c)(3) and to modify former paragraphs (c) (1) and (2).

The revisions to 34 CFR 668.81(c) do more than merely combine in paragraph (c)(1) the previous references to eligibility determinations and in paragraph (c)(2) the previous reference to initial certification determinations. Both parts of revised paragraph (c) contain a number of significant changes. New paragraph (c) reflects the increased focus of ED's eligibility and certification review, and respective appeal procedures, on the qualifications that must be shown by the institution as a whole, and by each affected *location* (such as a branch), for the institution or that location to participate in the title IV, HEA programs.

In both the eligibility review process described in part 600 and the certification process described in subpart B of part 668, ED scrutinizes an initial applicant as it is constituted at the time of application; 34 CFR 668.81(c) consistently has barred an institution initially applying for eligibility and certification or one of its parts from using the formal administrative appeal procedure under subpart G to challenge an ED determination that the institution does not meet factors of financial responsibility or standards of administrative capability under subpart B of part 668, or that the institution or a part of that institution does not qualify as an eligible institution or location under part 600 or as an eligible program under part 668.

The revisions to part 600 made on August 7, 1990, establishing the appeal procedures regarding a determination that an institution as a whole no longer meets eligibility standards, gave the institution the same appeal rights with regard to a determination that a location or program that was previously included within ED's designation of eligibility no longer meets eligibility standards. No comparable provision was needed in Subpart G of part 668, because a determination that the institution lacks the administrative or financial capability to administer properly the title IV, HEA programs at a location previously included within the scope of the institution's certification is, with respect to the institution itself, not a termination, but only a limitation of its ability to participate, for which appeal procedures already exist. 34 CFR 668.86.

When an institution adds a location, it must submit an application to ED demonstrating that the location meets the eligibility standards in part 600 if the new location is to be included within the designation of eligibility for the institution. 34 CFR 600.10(b)(3). At that time, ED may require the institution to demonstrate that it has the administrative and financial capability needed to manage properly the title IV, HEA programs at that additional location. The August 7, 1990 revision to paragraph (c)(2) was significant in that the regulation as revised provides that the institution receives no administrative appeal from ED under subpart G if ED decides that the institution lacks the resources needed to manage title IV, HEA program funds for that new location and, for that reason, refuses to extend the certification previously given to the institution to include that location. If, on the other hand, ED determines that the institution lacks the resources to manage title IV, HEA program administration at a location that previously was included within ED's certification of that institution, the institution may appeal that limitation action under existing appeal procedures in Subpart G.

The manner in which ED provides funding to an institution consistently has been viewed by the Secretary as a matter completely distinct from the institution's eligibility to participate in the title IV, HEA programs. ED never has regarded the change from advance funding to reimbursement funding as a limitation on eligibility that requires or warrants a formal administrative hearing. Unlike a limitation action, which bars reimbursement for awards of title IV, HEA program aid made by an eligible institution in violation of the terms of the limitation, a change in funding method has no effect on the legal right of the institution to obligate title IV, HEA program funds and receive full reimbursement from ED. ED's authority to pay title IV, HEA program funds by reimbursement is expressly recognized in the statute, 20 U.S.C. 1226a–1, and has been fully supported by the case law. See, *e.g., Bowling Green Jr. College* v. *U.S. Department of Education*, 687 F. Supp. 293 (W.D. Ky. 1988).

When ED proposes to change the funding method for an institution from advance to reimbursement, ED regularly gives the institution an informal opportunity to present objections to the change in funding and have the objections considered. Based on ED's experience with the informal procedure, the Secretary has determined that there is no need to formalize the opportunity by including it in the procedures addressed in these parts of the regulations that govern eligibility matters.

*Changes:* Changes are made to clarify current law; § 668.81(c)(2) is revised by the addition of new paragraph (c)(2)(ii) to clarify that ED's determination of whether to include a new location within the scope of participation of a previously-certified institution is not subject to formal administrative appeal by the institution under subpart G. Paragraph (a) of § 668.81 is also revised to include technical changes to conform to the changes in paragraph (c) and the addition of termination procedures under part 600. Thus, the procedures established under subpart G of part 668 apply by their own force to adverse action regarding the participation of an institution that meets the requirements of part 600 and has been certified to participate; ED follows those subpart G procedures for administrative actions to limit or terminate the eligibility of an institution conducted under authority of part 600.

*Section 668.83—Emergency Action*

*Comments:* One commenter believed that the use of emergency action in instances in which an institution was thought no longer to be an eligible institution because of a loss of accreditation or State licensure would result in a summary revocation of eligibility. The commenter opined that ED's use of emergency action in cases of loss of license or accreditation would contradict its announced intention to adopt, in § 600.41, the interpretation of the Court of Appeals in *Continental Training Services* v. *Cavazos*, 893 F.2d 877 (7th Cir. 1990), that the procedural protections found in section 487(c) of the HEA applied to revocations of eligibility based on loss of license or accreditation. 20 U.S.C. 1094(c). The commenter believed that by adopting such an interpretation ED would provide the institution no predeprivation process at all, in derogation of the institution's rights under the Fifth Amendment.

*Discussion:* An emergency action is, by its very terms, a temporary deprivation of the benefits of eligibility; no permanent deprivation of eligibility takes place under ED regulations before the institution has an opportunity to

dispute the proposed permanent deprivation in a formal administrative proceeding. Even the temporary deprivation, as will be discussed shortly, is accompanied by a prompt opportunity for an informal hearing to dispute that action. Because Congress plainly and expressly authorized this temporary deprivation of eligibility without requiring an opportunity for a formal administrative hearing, the argument that ED violates an institution's procedural due process rights under other provisions of the statute or under the Constitution by taking emergency action has no merit. Moreover, for the reasons explained here, a revocation (termination) action under § 600.41, even when preceded by an emergency action, is not a summary proceeding, and does not violate the institution's right under section 487(c)(1)(F) of the HEA, as redesignated by section 490(d)(2) of Pub. L. 102–325, to a hearing prior to termination.

In § 600.41, ED guarantees an institution an opportunity for a formal administrative proceeding conducted in accordance with subpart G of part 668. In that proceeding, the institution may challenge a termination of eligibility based on loss of accreditation or license. This is clearly a change in ED's longstanding interpretation of section 487 of the HEA; it was made to adopt the interpretation of that section of the HEA statute reached by the 1990 *Continental* court ruling. Subpart G provides for an opportunity for a full administrative proceeding to contest a proposed termination action, and contains no provision for summary termination proceedings.

Use of emergency action in conjunction with a termination or revocation of eligibility under § 600.41 does not make the revocation proceeding a summary proceeding. As another commenter observed, an emergency action is an administrative version of a temporary restraining order (TRO). An emergency action, like a TRO or preliminary injunction, is a temporary remedy; a court that issues a TRO or preliminary injunction still conducts a full trial on the merits in the case, and similarly, ED makes available a full administrative proceeding to dispute a proposed termination to an institution against which it has taken emergency action. The use of emergency action in connection with a termination case does not make the termination proceeding a summary proceeding any more than the issuance of a preliminary injunction would reduce the subsequent trial to a summary proceeding.

*Changes:* No change has been made.

*Comments:* A commenter stated that the opportunity for a show-cause proceeding for emergency actions when licensure or accreditation is lost that is provided under this section is meaningless because, the commenter believed, the Secretary intends to continue any emergency action commenced in such instances no matter what the institution demonstrated in the course of the show-cause proceeding.

*Discussion:* The Secretary expects to act promptly through emergency action in reaction to a loss of licensure or accreditation for an institution, while at the same time commencing a termination action on the basis of that loss. The mere fact that a loss of licensure or accreditation presents ED with a very narrow factual question does not make a show-cause proceeding provided in § 668.83(e) after an emergency action has been taken a meaningless exercise. For example, it is possible that the Department might begin a termination and issue an emergency action on the basis of an erroneous report that an institution had lost its license or accreditation. The institution immediately can correct such a mistake through the show-cause proceeding. The proceeding gives the institution an effective means of correcting the kind of simple factual misunderstanding that ED has the authority to correct.

The Secretary recognizes that an institution that loses its license or accreditation may face imminent and serious economic loss as a result of the ensuing loss of title IV, HEA program eligibility, even if the latter loss is temporary; however, the possibility of economic loss should not cause the Secretary to defer action until the completion or expiration of the appeal period. The Secretary must consider the legal consequences of that loss under the statutory scheme, as well as the statutory responsibility to prevent funds being received by an institution that may not lawfully receive them. Section 487(c)(1)(G), as redesignated by section 490(d)(2) of Pub. L. 102–325, 20 U.S.C. 1094(c)(1)(G), directs the Secretary to consider whether the likelihood of loss from misuse of Federal funds outweighs the value to the institution of deferring action until completion of formal termination proceedings. That balancing test, in the case of a loss of license or accreditation, in most cases will dictate that the Secretary take emergency action against an institution. The unlicensed or unaccredited institution does not qualify to continue receiving student assistance funds (with the limited exceptions in § 668.25), and it has no legitimate basis for seeking to delay ED's recognition of its loss of authorization and for the resulting consequences to be put in place.

*Changes:* No change has been made.

*Comment:* One commenter objected that by making the show-cause proceeding under § 668.83 available only after the emergency action is taken, the regulation violated the institution's due process rights and rendered the appeal opportunity meaningless.

*Discussion:* The statute plainly does not require the Secretary to provide the institution an opportunity to be heard prior to placing an emergency action in effect. To the contrary, the statute directs that the emergency action takes effect on the date that the notice of emergency action is mailed to the institution. The statute does not provide that the emergency action will be stayed pending a show cause proceeding, and such a result would be inconsistent with the goal of emergency action as stated in the statute itself. The Secretary notes that other parts of section 487(c), unlike section 487(c)(1)(G), expressly mandate an opportunity for a prior hearing for other enforcement actions. In the immediately preceding and succeeding provisions of section 487(c)(1), for example, Congress authorizes the Secretary to limit, suspend, or terminate eligibility and fine an institution, 20 U.S.C. 1094 (c)(1)(F) and (c)(2), or to take similar action against a student aid contractor, 20 U.S.C. 1094(c)(1)(H), as also redesignated by section 490(d)(2) of Pub. L. 102-325, only "after reasonable notice and an opportunity for a hearing." Not only is the text of the statute clear that Congress intended ED to provide the institution an opportunity to show cause *after* the commencement of the emergency action, but the background of its enactment makes clear that Congress understood and intended to approve that practice, followed by ED for some fifteen years. 45 CFR 177.76(c), 40 FR 7598, February 20, 1975. The enactment of section 487(c)(i)(E) after the decision in *Ross University School of Medicine* v. *Cavazos*, 716 F.Supp. 638 (D.D.C. 1989), adopting, almost verbatim, the language of the same regulations viewed by the court as contrary to congressional intent in the prior decade, shows that Congress approved, and intended ED to continue, its practice of providing a show-cause hearing only *after* an emergency action has been taken.

Congress' decision in section 487(c)(1)(G) to approve ED's practice of affording an opportunity to be heard after, rather than before, the emergency action takes effect not only is consistent with legislative intent as inferred from the circumstances of its enactment, but

comports with constitutional requirements regarding the extent to which a party has a right to a predeprivation hearing. The constitutional right to a hearing prior to deprivation of a protected interest is not an unqualified right; in limited circumstances the government properly may postpone the opportunity to be heard until after the initial deprivation. *FDIC* v. *Mallen*, 486 U.S. 230, 239 (1988); *Boddie* v. *Connecticut*, 401 U.S. 371, 379 (1971). The regulatory assurance of an opportunity for a show-cause meeting, upon request, promptly after the emergency action takes effect, with an official authorized to grant relief from the action, falls well within the time limits found acceptable in the case law.

*Changes:* No change has been made.

*Comment:* Several commenters suggested that ED should authorize guarantee agencies to take emergency action of the kind provided for in this section.

*Discussion:* The same statutory amendments that codified ED's right to take emergency action also revised corresponding provisions in section 428(b)(1)(T) and (U) of the HEA regarding enforcement actions by guarantee agencies to include recognition of the agencies' right to take emergency action. See 20 U.S.C. 1078(b)(1)(T),(U), as amended by section 2006(b) of P.L. 101-239. As discussed earlier, these statutory changes, which adopted almost verbatim ED regulations for emergency action, represent congressional affirmation of ED's practice during the past decade of taking emergency action under regulatory authority. See 45 CFR 177.76(c), adopted February 20, 1975. Some guarantee agencies similarly have adopted emergency action in their programs as an enforcement measure during that period.

The Secretary fully agrees with the commenters that guarantee agencies should be able to adopt and use emergency action procedures. However, the Secretary does not authorize guarantee agencies to take emergency action; agencies derive that right, like the right to take other adverse action, not from either the HEA or ED regulations, but from their own charters or authorizing statutes or resolutions. Guarantors therefore have no need for regulatory authorization from ED to continue or to commence the use of emergency action they otherwise are empowered to take. Similarly, to the extent that section 428(b)(1)(T) and (U) measures the propriety of guarantor emergency action procedures against Federal procedures, the Secretary regards the congressional affirmation of Federal emergency action authority (exercised previously solely under ED regulatory power) to represent an affirmation of the propriety of comparable guarantor emergency actions taken prior to these statutory amendments. 20 U.S.C. 1078(b)(1)(T),(U).

*Changes:* No changes have been made.

*Comment:* One commenter believed that the regulations should provide the institution with an opportunity for an immediate show-cause meeting and decision from the show-cause official.

*Discussion:* The Secretary has exercised the emergency action authority in a flexible manner to permit an institution to seek and obtain a show-cause meeting as soon as the institution was prepared to present its case, which it could do either in writing or in person. In practice, institutions usually have not requested that meeting immediately upon receipt of the notice, but have taken several days, or even longer, to prepare their responses. If an institution were to request an immediate meeting, ED cannot guarantee that it will always have a show-cause official available to conduct a show-cause meeting on the very day requested by the institution; nevertheless, ED treats the need for a prompt meeting as deserving high priority. Although ED does not consider it to be feasible in every case to commit to meet on the very date requested by the institution, ED has made, and intends to continue to make, every reasonable effort to accommodate a request for a show-cause meeting on the date the institution wishes to make its in-person presentation and to issue a written decision as soon after the meeting as possible. The Secretary intends to have a decision issued by the show-cause official ordinarily within ten days of the close of the meeting or receipt of a written presentation.

*Changes:* The regulations are revised to include a provision that the show-cause proceeding is available, upon request by the institution, as soon as practicable, and that a decision will be issued promptly after completion of the meeting or receipt of the institution's written presentation.

*Comment:* The same commenter objected that the regulations appear to provide improperly that the same official who initiated the emergency action would conduct the show-cause proceeding. The commenter believed that an independent official or administrative law judge (ALJ) should conduct the show-cause meeting.

*Discussion:* The Secretary agrees that the same official who initiates an emergency action should not serve as the show-cause official for that action; in practice, ED arranges for an official other than the official initiating the emergency action to conduct the show-cause meeting. The officials who have conducted show-cause meetings for institutions typically have been officials who have authority over enforcement actions, but who have had no prior involvement in the decision to commence emergency action with regard to that institution. Neither the statute nor constitutional due process considerations dictate that the show-cause proceeding be conducted by officials completely separated from the administration of the title IV, HEA programs. The statute states that the Secretary is to provide the show cause opportunity, not an official independent of his authority. Due process is satisfied if the individual conducting the meeting has the authority to grant the relief requested and has not been involved in the prior decisions regarding the adverse action at issue against the institution. See *Morrissey* v. *Brewer*, 408 U.S. 471, 486 (1972).

*Changes:* The regulations are revised to clarify that the official who conducts the show-cause proceeding is not the same individual who initiated the emergency action, that the show-cause official is an official who has authority to modify or withdraw the emergency action, and that the show-cause official issues a written decision promptly after the institution has completed presenting the material it wishes to have considered in support of its petition.

*Comment:* A commenter objected that the regulations do not guarantee the institution a right to present evidence and argument at a show-cause meeting, do not allocate the burden of proof between the institution and ED, do not articulate the standards an institution must meet to show that an emergency action was unwarranted, and do not prescribe the standard of proof that applies in determining whether the emergency action should be withdrawn.

*Discussion:* The emergency action itself is a preliminary and provisional remedy, and the statute plainly does not require that the show-cause meeting be conducted as a formal administrative hearing. There is therefore no need to follow requirements that attend formal proceedings. The only thing specified by the statute is that the school bears the ultimate burden of proof—that is, of showing cause why the emergency action is unwarranted. In all other respects, it is up to the show-cause official to set these rules on a case-by-case basis. ED has, in practice, permitted an institution to include in its

show-cause presentation whatever evidence and argument the institution wished to produce, subject only to the relative informality and brevity with which ED conducts the proceeding, as connoted by the term "show-cause meeting." Consistent with that relative informality, these meetings can be, but are not always, transcribed, and the show-cause official may require individuals who want to present oral statements to do so under oath. In the notice of emergency action sent to an institution, the initiating official describes the grounds for the action in a manner designed to provide, at the very least, sufficient detail to allow the institution to respond meaningfully to the charges. The standards an institution must meet are those described in the notice and taken from the statute: that the acts or omissions described in the notice on which emergency action was premised did not occur, or that the particular restrictions imposed by emergency action are not necessary to prevent misuse of title IV, HEA program funds.

*Changes:* The regulations have been revised to state that the institution has the right at a show-cause meeting to present evidence and argument to support its challenge to the emergency action; this is, however, subject to the authority of the show-cause official to restrict or exclude material he or she considers irrelevant. The regulations have been revised further to provide particular examples of conduct that, in addition to obvious examples of misconduct (such as theft, embezzlement, and false determination of student eligibility), will be considered to cause misuse and loss of title IV, HEA program funds, and to provide that the institution bears the burden of persuading the show-cause official that the violations of HEA requirements and expected loss of funds on which the action was premised did not occur, are no longer occurring, and will not recur, or can be prevented reliably by an alternative restriction or procedure.

*Comment:* One commenter urged that the use of emergency action in conjunction with termination for loss of licensure or accreditation would make it nearly impossible for an institution to complete teaching the courses in which students were then enrolled or to make responsible teachout arrangements, and to that extent the operation of emergency action under § 668.83 conflicts with 34 CFR 668.25.

*Discussion:* In using emergency action in cases of loss of eligibility, the Secretary does not intend to thwart legitimate efforts by the institution to complete its educational responsibilities. On the other hand, ED repeatedly has found that institutions that lose their eligibility due to loss of license or accreditation and thereafter close make no effort to meet their closeout responsibilities to currently enrolled students, to former students to whom refunds are owed, or to ED and to the public, to which the institutions have a duty to account for the funds they already received. 34 CFR 668.25(a). Further, it should be noted that under many State laws, an institution may not operate lawfully without a license; in those States, an institution that loses its State license thus may not be authorized to complete its educational responsibilities.

ED's general practice under the current regulations has been to impose an emergency action initially but to agree, upon request, to modify the emergency action if an institution presents a credible proposal to prevent the misuse charged in the notice. The emergency action thereafter remains in place, but rather than operating as a temporary suspension or termination, the action is then more in the nature of a temporary limitation on the institution's eligibility. In the case of a loss of eligibility under part 600, for example, an emergency action might be modified upon a request to permit the institution to meet all its closeout obligations described in 34 CFR 668.25, subject, in particular cases, to the further condition that the institution first make adequate provision for a final audit, for record retention, and for satisfying outstanding refund and other claims by students and by ED.

Moreover, in addition to close-out situations, there may be other instances in which ED could conclude that it is unnecessary to impose the emergency action in the full measure authorized in the statute, and that to do so might cause needless disruption to students. Upon a credible presentation by an institution that a lesser restriction suffices to prevent the misuse charged in the notice, ED may agree to modify an emergency action temporarily to limit, rather than suspend, the eligibility of the institution.

For these reasons, the Secretary agrees that the current regulations should be modified to incorporate more flexibility into the scope of the emergency action as initiated. In cases that do not involve close-out situations, for example, emergency action could be used to impose an immediate limitation, such as a requirement that the institution engage a responsible third party to monitor and control the institution's access to title IV, HEA program funds. Rather than withdrawing completely the authority of the institution to disburse title IV, HEA program funds, the Secretary in such a case would use emergency action to require the institution to deposit all title IV, HEA program funds into an escrow account administered by an accounting firm or other professional, to be released only upon proof by the institution that each proposed student recipient qualifies for the aid, and, if title IV, HEA program funds are to be used to meet tuition expenses, that the institution already had provided the portion of the training for which the payment is being sought.

Similarly, in the case of a loss of eligibility under part 600, emergency action could be used to permit the institution only to make "closeout" disbursements for its students, subject, in particular cases, to the condition that the institution first make adequate provision for a final audit, for record retention, and for satisfying outstanding refund and other claims by students and by ED.

*Changes:* The Secretary is revising § 668.83 to provide, in paragraph (a)(2), that ED, by emergency action, may either withdraw the authority of the institution to use or permit the obligation of title IV, HEA program funds, or withdraw the authority of the institution to use title IV, HEA program funds, except in accordance with a specified procedure.

*Comment:* One commenter objected that the regulations convert emergency action, a sanction intended for interim use, into one that is indefinite in duration. The commenter stated that in a case in which a termination action results in a decision favorable to the institution and the case then is appealed to the Secretary by ED's Student Financial Assistance Programs, the regulations permit the emergency action to remain in effect throughout the appeal. The commenter viewed the continuance of emergency action as being unjustified, because the facts on which the emergency action was premised in such cases would have been decided already at the administrative hearing in a manner contrary to that asserted by the official who initiated the emergency action. The commenter believed that this unfairly and unduly prolongs the emergency action in a manner contrary to the statutory requirements.

*Discussion:* The comment poses two separate concerns: (1) the consistency with the governing statute of a rule under which an emergency action may persist through appeal proceedings and (2) the duration of an emergency action. The statute is clear that the authority to

initiate and continue an emergency action is distinct from, although designed to attend to the outcome of, limitation, suspension, or termination proceedings. In taking emergency action, the statute directs the Secretary to consider whether the likelihood of loss outweighs the importance of the procedures prescribed for terminating eligibility. 20 U.S.C. 1094(c)(1)(G)(iii).

This language refers to balancing the need for immediate action against the desirability of deferring action until the *completion* of those procedures. Section 487 of the HEA and ED regulations have always regarded the crucial and effective component or step in those administrative proceedings to be the decision of the Secretary, not that of the hearing official; the regulations consistently have characterized the decision of the hearing official as the *initial* decision, which then becomes the decision of the Secretary *only if neither party lodges a timely appeal.* 34 CFR 668.90(c)(1). Until that *initial* decision becomes the Secretary's decision, neither party is bound by the findings of fact of the hearing official. Therefore, it is not inconsistent with the statute that vests termination decision-making power in the Secretary for the Secretary to permit the emergency action to continue until his own review of the evidence regarding the underlying facts, whether or not the hearing official credited that evidence.

On the other hand, the Secretary believes that different kinds of changed circumstances could justify revisiting the emergency action prior to the end of the formal termination proceedings. For example, the immediate problems that gave rise to the need for emergency action may be resolved during that period to ED's satisfaction. On the other hand, the Secretary also believes that if the institution were permitted repeated opportunities to challenge the emergency action, the institution would have much less incentive to present during the show-cause proceeding either a well-considered rebuttal or a responsible proposal to cure the problem, and ED officials would be required to waste considerable amounts of their time sifting through frequent, unsubstantiated demands to reopen initial show-cause determinations.

After an emergency action has been in effect for a specified period of time, it can be useful to provide a single opportunity for an institution to demonstrate that it has cured the problem that caused the imposition of the emergency action. To provide this opportunity accommodates the need to relieve a sanction that is no longer warranted, the need to retain a credible incentive for serious initial presentations and negotiations, and the need to avoid wasted administrative reviews. For several reasons, the Secretary considers six months to be long enough after imposition of an emergency action to meet these competing considerations. This length of time, one-half of an award year, should provide a sufficiently long period for the institution to demonstrate that it actually has put in place correct procedures for properly calculating student need and qualification for aid; for tracking attendance, withdrawals, and other matters that require adjustment of student awards; and for honoring its refund obligations.

*Changes:* Section 668.83 is revised to provide that if an emergency action remains in effect for six months, an institution may present and have considered written evidence and argument demonstrating that because of actions occurring after the show-cause meeting the imposed emergency action is no longer warranted or should be modified.

*Waiver of Proposed Rulemaking*

In accordance with section 431(b)(2) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, because the changes made in these regulations to §§ 668.15 and 668.91 regarding the filing of documents in administrative proceedings, including the provisions permitting filing by fascimile, are amendments to rules of agency procedure, no public comment is required under 5 U.S.C. 553(b)(A) for those provisions. Therefore, the Secretary has determined that publication of a proposed rule for those particular provisions is not required. This waiver applies exclusively to the provisions related to filing requirements; the other provisions of these regulations were previously published as a proposed rule.

*Executive Order 12291*

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

*Paperwork Reduction Act of 1980*

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

*Assessment of Educational Impact*

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, ED has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 600*

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

*34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: February 22, 1993.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Stafford Loan Program, 84.032; PLUS Program, 84.032; Supplemental Loans for Students Program, 84.032; Consolidation Loan Program, 84.032; College Work-Study Program, 84.033; Perkins Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069; Income Contingent Loan Program, 84.226.)

The Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

## PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

**Authority:** 20 U.S.C. 1082, 1085, 1088, 1094, and 1141, unless otherwise noted.

2. Section 600.40 is amended by revising paragraph (a) to read as follows:

**§ 600.40 Loss of eligibility.**

(a)(1) An institution, or a location or educational program of an institution, ceases to be eligible to participate in programs authorized under the HEA on the date on which the institution,

or ceases to meet an applicable eligibility requirement of this part.

(2) An institution or location ceases to be eligible to participate in programs authorized under the HEA on the date on which the institution ceases offering educational programs, or, with respect to a location, ceases offering educational programs at that location, except for normal vacation periods.

* * * * *

3. Section 600.41 is amended by revising paragraphs (a),(b),(c),(d), and (e) to read as follows:

**§ 600.41 Termination and emergency action proceedings.**

(a) If the Secretary believes that an institution as a whole, or at one or more of its locations, that was previously designated by the Secretary as an eligible institution under the HEA does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may, in accordance with the procedural provisions in 34 CFR 668.81, 668.83, 668.86, 668.87, 668.88, 668.89, 668.90(a)(1), (4) and (c) through (f), and 668.91—

(1) Terminate the eligibility of the institution as a whole or as to a location to participate in one or more title IV, HEA programs;

(2) Limit the authority of the institution to disburse, deliver, or cause the disbursement or delivery of funds under one or more title IV, HEA programs as otherwise provided under 34 CFR 668.25 for the benefit of students enrolled at the ineligible institution or location prior to the loss of eligibility of that institution or location; and

(3) Initiate an emergency action with regard to the institution's participation in one or more title IV, HEA programs.

(b) If the Secretary believes that an educational program offered by an institution that was previously designated by the Secretary as an eligible institution under the HEA does not satisfy relevant statutory or regulatory requirements that define that educational program as part of an eligible institution, the Secretary may, in accordance with the procedural provisions described in paragraph (a) of this section—

(1) Terminate the eligibility under one or more title IV, HEA programs of the institution as to that educational program, and limit the institution's authority to deliver, disburse, or cause the delivery or disbursement of funds provided under that title IV, HEA program to students enrolled in that educational program, as otherwise provided in 34 CFR 668.25; and

(2) Initiate an emergency action with regard to the institution's participation in one or more title IV, HEA programs with respect to students enrolled in that educational program.

(c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

(2) Once a termination under this section becomes final, the termination is effective with respect to any commitment, delivery, or disbursement of funds provided under the applicable title IV, HEA program by the institution—

(i) Made to students enrolled in the ineligible institution, location, or educational program; and

(ii) Made on or after the date of the act or omission that caused the loss of eligibility as to the institution, location, or educational program.

(3) Once a limitation under this section becomes final, the limitation is effective with regard to any commitment, delivery, or disbursement of funds under the applicable title IV, HEA program by the institution—

(i) Made after the date on which the limitation became final; and

(ii) Made to students enrolled in the ineligible institution, location, or educational program.

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution shall not certify applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

(1) In accordance with the requirements of 34 CFR 668.25(c) with respect to students enrolled in the ineligible institution, location, or educational program; and

(2) After satisfaction of any additional requirements, imposed pursuant to a limitation under paragraph (a)(2) of this section, which may include the following:

(i) Completion of the actions required by 34 CFR 668.25 (a) and (b).

(ii) Demonstration that the institution has made satisfactory arrangements for the completion of actions required by 34 CFR 668.25 (a) and (b).

(iii) Securing the confirmation of a third party selected by the Secretary that the proposed disbursements or delivery of title IV, HEA program funds meet the requirements of the applicable program.

(iv) Using institutional funds to make disbursements permitted under this paragraph and seeking reimbursement from the Secretary for those disbursements.

(e) For purposes of this section, the title IV, HEA programs are those listed at 34 CFR 668.1(c).

* * * * *

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

4. The authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

5. Section 668.2 is amended by adding definitions of "Payment period" and "Student Aid Report (SAR)" in alphabetical order to paragraph (b) to read as follows:

**§ 668.2 General definitions.**

* * * * *

(b) * * *

*Payment period:* (1) With respect to the Pell Grant Program, a payment period as defined in 34 CFR 690.3.

(2) With respect to the campus-based programs, a payment period as defined in 34 CFR 674.2, 675.2, and 676.2.

* * * * *

*Student Aid Report* (SAR): A report provided to an applicant for a Pell Grant showing the amount of his or her expected family contribution.

* * * * *

6. Section 668.15 is amended by removing the words "in writing to the Secretary's designated Departmental official that is postmarked" in paragraph (g)(1), and adding, in their place, "to the Secretary's designated Department official, filed in accordance with the requirements in paragraph (j) of this section" and adding a new paragraph (j) to read as follows:

**§ 668.15 Additional factors for evaluating administrative capability.**

* * * * *

(j)(1) An appeal by an institution under paragraph (g) of this section or a notice of intent to appeal under paragraph (f)(7)(i) of this section must be filed with the designated Department official by hand-delivery, mail, or facsimile transmission.

(2) The filing date of an appeal under paragraph (g) of this section is the date the document is—

(i) Hand-delivered;

(ii) If mailed, received by the designated Department official; or

(iii) Sent by facsimile transmission.

(3) Documents filed by facsimile transmission must be transmitted to the designated Departmental official in accordance with instructions provided by the Secretary in the notice of default rate provided under this section. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the designated Departmental official, and may be required by that official to provide a hard copy of the document filed by facsimile.

(4) The Secretary discourages the use of facsimile transmission for documents longer than five pages. (Authority: 20 U.S.C. 1082, 1094)

7. Section 668.81 is amended by revising paragraphs (a), (c)(2), and (f) to read as follows:

**§ 668.81 Scope and special definitions.**

(a) (1) This subpart establishes regulations for the following actions with respect to a participating institution:

(i) An emergency action.

(ii) The imposition of a fine.

(iii) The limitation, suspension, or termination of the participation of the institution in a title IV, HEA program.

(2) A "participating institution" is an institution that the Secretary has—

(i) Determined meets the applicable requirements of 34 CFR part 600; and

(ii) Certified to satisfy initially the factors of financial responsibility and standards of administrative capability contained in subpart B of this part.

* * * * *

(c) * * *

(2)(i) An institution fails to qualify for initial certification to participate in any title IV, HEA program because the institution does not meet the factors of financial responsibility or standards of administrative capability contained in subpart B of this part; or

(ii) A participating institution that seeks to have included within its certification an additional location fails to meet those factors or standards with respect to that additional location.

* * * * *

(f) The following definitions apply to this subpart:

*Designated department official:* An ED official to whom the Secretary has delegated responsibilities indicated in this subpart.

*Initiating official:* The designated Department of Education official authorized to begin an emergency action under § 668.83.

*Show-cause official:* The designated Department of Education official authorized to conduct a show-cause proceeding for an emergency action under § 668.83.

(Authority: 20 U.S.C. 1094)

8. Section 668.83 is revised to read as follows:

**§ 668.83 Emergency action.**

(a) Under an emergency action, the Secretary may—

(1) Withhold title IV, HEA program funds from an institution or its students; and

(2)(i) Withdraw the authority of the institution to commit, disburse, deliver, or cause the commitment, delivery, or disbursement of title IV, HEA program funds; or

(ii) Withdraw the authority of the institution to commit, disburse, deliver, or cause the commitment, delivery, or disbursement of title IV, HEA program funds except in accordance with a particular procedure.

(b)(1) The initiating official begins an emergency action against an institution by sending the institution a notice by registered mail, return receipt requested. The initiating official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action to the institution, and that the institution may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) The initiating official takes emergency action against an institution only if that official—

(i) Receives information, determined by the official to be reliable, that the institution is violating any statutory provision of or applicable to title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation;

(ii) Determines that immediate action is necessary to prevent misuse of title IV, HEA program funds; and

(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate the participation of the institution in one or more title IV, HEA programs.

(2) Examples of violations of a title IV, HEA program requirement that cause misuse and the likely loss of title IV, HEA program funds include—

(i) Causing the commitment, delivery, or disbursement by any party of title IV, HEA program funds in an amount that exceeds—

(A) The amount for which students are eligible; or

(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Stafford Loan, PLUS, and SLS program loan if the institution had made a refund allocable to that loan in the amount and at the time required;

(ii) Using or offering to make available title IV, HEA funds for educational services if—

(A) The institution or its agents have made a substantial misrepresentation as described in 34 CFR 668.72, 668.73 or 668.74 related to those services; or

(B) The institution lacks the administrative or financial ability to provide those services in full, or to compensate by appropriate refund for any portion of the educational program not completed by the student.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action against an institution's participation in a title IV, HEA program becomes effective, an institution may not—

(i) Make or increase awards or make other commitments of aid to students under the applicable title IV, HEA program;

(ii) Disburse either program funds or institutional funds as assistance to a student under that title IV, HEA program; or

(iii) (A) Certify an application for a loan under the Stafford Loan, PLUS, or SLS Loan programs;

(B) Deliver loan proceeds to a student under that program; or

(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution to commit, deliver, or disburse title IV, HEA program funds except in accordance with a particular procedure specified in the notice of emergency action, the institution may not take any action described in paragraph (d)(1) (i), (ii), or (iii) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution, the Secretary provides the institution, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any

emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of title IV, HEA program funds; or

(iii) The institution will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution and the initiating official.

(6) The show-cause official notifies the institution of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action submitted by the institution. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in § 668.90(c) or (f), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, the continuation, modification, or revocation of the emergency action is at the sole discretion of the initiating official, or, if a show-cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration, modification, or revocation of an emergency action against an institution does not bar subsequent emergency action against that institution on grounds other than those specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation by an institution of an agreement or limitation imposed or resulting from the prior emergency action.

(Authority: 20 U.S.C. 1094)

9. Section 668.91 is amended by revising paragraph (a), by redesignating paragraph (a) and (b) as paragraphs (b) and (c), respectively, by revising the heading and adding a new paragraph (a), to read as follows:

**§ 668.91 Filing of requests for hearings and appeals; verification of mailing and receipt dates.**

(a) *Filing of request for hearing, show-cause opportunity, or appeal.*

(1) A request by an institution for a hearing or show-cause opportunity, other material submitted by an institution in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the Department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing by facsimile transmission must confirm that a complete and legible copy of the document was received by the Department, and may be required by that official to provide a hard copy of the documents filed by facsimile.

(3) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4) If agreed upon by the parties, service of a document required to be served on another party may be made upon the other party by facsimile transmission.

(b) *Verification of mailing and receipt dates.* (1) The date on which a notice from a designated department official initiating an action under this subpart is regarded as mailed is the date of mailing evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is regarded as received is, as applicable—

(i) The date of receipt evidenced on the original receipt for a document sent by certified mail.

(ii) The date following the date recorded by the delivery service as the date material was sent for a document sent by next-day delivery service.

(iii) The date a document sent by regular mail is recorded, according to the regular business practice of the office receiving the document, as received.

(iv) The date a document sent by facsimile transmission is recorded as received by the facsimile equipment that receives the transmission.

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10. Section 668.94 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

**§ 668.94 Termination.**

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(b) After its participation in a title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with § 668.25 and with any additional requirements imposed under this part.

(Authority: 20 U.S.C. 1094)

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Part V

# Department of the Interior

## Office of the Secretary

## National Environmental Policy Act Implementing Procedures; Notice

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### National Environmental Policy Act: Implementing Procedures (516 DM 6, Appendix 8)

**AGENCY:** Department of the Interior.

**ACTION:** Final notice of an addition to the Department of the Interior's Categorical Exclusions for the Office of Surface Mining Reclamation and Enforcement.

**SUMMARY:** This notice announces an addition to the categorical exclusions included in the Department Manual 516 DM 6, appendix 8, that lists actions excluded from the National Environmental Policy Act of 1969 (NEPA) procedures for the Office of Surface Mining Reclamation and Enforcement (OSM). The additional categorical exclusion pertains to certain projects carried out in the Abandoned Mine Lands (AML) program under title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Department issued a notice of the proposed categorical exclusion on August 19, 1992 for public comment. Based on analysis of the comments received, one change has been made in the language of the categorical exclusion. This change is to clarify that placement of material into underground mine voids through drilled holes, to address a single structure subsidence problem, is eligible for exclusion if the other criteria are met. This clarification is more thoroughly explained under the subsidence section later in the text.

**EFFECTIVE DATE:** April 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jonathan P. Deason, Director, Office of Environmental Affairs, MS 2340–MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 or telephone (202) 208–3891; for OSM, David Hamilton, Chief, Operations Branch, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, suite 3C, 4th and Market Streets, Harrisburg, PA 17101 or telephone (717) 782–4036.

**SUPPLEMENTARY INFORMATION:** SMCRA authorizes OSM to collect a fee on each ton of coal produced from mining. The fee collected from coal producers is placed in the AML Reclamation Fund (Fund). States and Tribes with approved coal mining regulatory programs and abandoned mine reclamation plans receive grants annually from OSM to reclaim specific abandoned mine land projects. Since 1981, OSM has been awarding grants to 23 States and 3 Tribes for the construction and administration of AML reclamation projects. Through Fiscal Year 1991 approximately 1.2 billion dollars have been awarded from the Fund for reclamation of over sixty thousand acres of eligible abandoned mine lands and waters.

States, Tribes, and Federal reclamation activities reclaim and restore land and water resources damaged by coal mining, including abandoned surface coal mines, abandoned coal processing areas, sealing and filling abandoned deep coal mine entries and voids, vegetation of land adversely affected by past coal mining to prevent erosion and sedimentation, and control of water pollution created by coal mine drainage (section 401(c)(1) of SMCRA). These reclamation projects may also be conducted where the damage was a result of non-coal mining if certain conditions are met (section 409(a) of SMCRA). Projects vary considerably in size, from those affecting only a few square feet to those affecting hundreds of acres, and vary in costs from a few thousand dollars to several million.

AML problems are exhibited in several broad categories including highwalls, surface and underground burning coal and coal refuse, subsidence, mine openings (shafts and portals), sediment clogged streams, landslides, piles and embankments, structures, impoundments, mine discharges, and barren or poorly vegetated lands. AML sites present public health and safety and environmental hazards. In order to facilitate compliance with the requirements of the NEPA in the AML program, OSM prepared OSM–EIS–2 in March of 1980 and OSM–EIS–11 in November of 1983.

These environmental impact statements address programmatic aspects of AML and the impacts of reclamation. However, the preparation of site specific environmental assessments has still been required for each project.

NEPA requires that when a major Federal action may have significant impacts on the quality of the human environment, a detailed statement (EIS) be prepared (section 102(2)(C)). When it is known in advance that a certain category of actions will not have a significant effect on the human environment, that category of actions may be excluded from further NEPA requirements (40 CFR 1508.1). The Department previously reviewed the activities authorized under title IV and excluded certain decisions relative to the approval of grants under the AML program.

Review of 649 environmental assessments related to AML projects located in 27 States and 3 Tribal lands across the country from July 1989 to the present has led OSM to conclude that the majority of AML projects have virtually the same reclamation descriptions, reclamation design techniques, environmental impacts, and mitigating measures. These projects are implemented consistent with State and Federal laws, and generally have only local, negligible to moderate short- or long-term impacts which are effectively mitigated through common construction practices.

The Department has created an additional categorical exclusion as subparagraph 8.4.B(33) in appendix 8 in the Department of the Interior's Manual (516 DM 6). The excluded activities would include a majority of typical AML projects, although the excluded projects would be limited in size and scope, as described below. The exclusion is for a category of actions that does not individually or cumulatively have a significant effect on the quality of the human environment. If any proposed AML project involves any of the following, an environmental assessment and/or environmental impact statement will be prepared in accordance with OSM's NEPA Handbook.

1. If the project involves any of the Departmental exceptions to the categorical exclusions listed in Department Manual 516 DM 2, appendix 2.

2. If the project area is more than 100 acres or involves hazardous wastes; explosives; hazardous or explosive gases; dangerous impoundments; mine fires and refuse fires; undisturbed, non-commercial borrow or disposal sites; dangerous slides where abatement has the potential for damaging inhabited property; or subsidence control involving the placement of material into underground mine voids through drilled holes to stabilize more than one structure.

3. If the project impacts resources requiring specialized mitigation or poses unresolved issues concerning topography, land use, soils, vegetation, hydrology, fish and wildlife, historic and cultural resources, recreation, air quality, noise, or other socioeconomic concerns. Unresolved issues would include general controversy expressed by the public.

Appendix 8 must be interpreted in conjunction with the Department's NEPA procedures (516 DM 1–6) and the Council on Environmental Quality

(CEQ) regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Department's procedures were published in the Federal Register on April 29, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 8 for OSM was published on January 23, 1981 (46 FR 7487) and revised on February 28, 1990 (55 FR 7038). The Department's notice of the proposed addition to categorical exclusions included in the Department Manual 516 DM 6, appendix 8 was published in the August 19, 1992 Federal Register (57 FR 37550).

Categorical Exclusion 33 reads as follows: AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

Eligibility for this categorical exclusion would be determined by OSM based on the results of on-site inspection(s), survey(s), and other methods of evaluation and documentation prepared by the States or Tribes or OSM to determine the presence or absence of the criteria. States or Tribes will submit environmental information for a site to OSM. OSM will then determine the applicability of the categorical exclusion. Details of this determination process will be added to OSM's NEPA Handbook and the chapter on environmental compliance in the Federal Assistance Manual, which applies to projects funded by grants under title IV. Projects that do not fully meet all of these criteria will not qualify for this categorical exclusion.

**Discussion of Categorical Exclusion and Disposition of Comments**

In addition to the Federal Register notice, the Department sent supplemental mailings, soliciting comments, to over 100 Federal, and State agencies, interest groups and private citizens. Comments were received from the U.S. Environmental Protection Agency; U.S. Bureau of Mines; States of Arkansas, Colorado, Illinois, Kansas, Missouri, Ohio, Pennsylvania, and Virginia; and the Navajo Tribe.

*General Comments*

*Comment:* One commenter suggested that the Proposed Categorical Exclusion not apply to: (1) All sites where mineral resources are present; (2) all sites where subsidence is addressed by placement of material into underground mine voids through tunnels, shafts, adits or entryways; (3) all sites where the AML projects impact surface or underground hydrology. No explanation was given why the exclusion should not apply to these project types.

*Response:* Almost all AML projects meet one of these three criteria, and their adoption would nullify the exclusion. However, even though mineral and hydrologic resources may be involved, the structure of the categorical exclusion will eliminate application to any proposal that will have significant or long term environmental impacts. Use of the categorical exclusion will not relieve the agency of the need to follow proper project planning and development, implementation actions, and required consultation and coordination procedures. Further, the exclusion will not be allowed when certain site criteria regarding floodplains and wetlands are not met, or when there are unresolved issues, or specialized mitigation is needed to protect sensitive resources, including hydrology. The Department believes there are sufficient controls on the exclusion to assure it is applied judiciously.

The placement of materials into underground mine voids through tunnels, shafts, adits or entryways was found to have no significant effects, and pose no serious threat to the environment. If the specific criteria are met, there is no reason to except this activity from the exclusion. Therefore, the suggested limitation is not accepted.

*Comment:* One commenter stated that SMCRA regulates only surface coal mining and therefore does not pertain to the surface management and reclamation of lands mined for hardrock and other non-coal minerals. Clarification was requested.

*Response:* While it is true that SMCRA only regulates the environmental impacts from the mining of coal, non-coal AML sites are eligible for reclamation funds through title IV of SMCRA when certain requirements are met. It is the intent of this exclusion to apply to AML coal and non-coal sites that meet the qualifying criteria.

*Comment:* One commenter suggested that the U.S. Bureau of Mines be furnished mineral information prior to any actions, specifically those involving backfilling, blasting or permanently sealing non-coal AML sites to insure that mineral data are not lost.

*Response:* This categorical exclusion action does not pertain to the collection of mineral resource data. The Department believes that such questions can best be addressed during direct discussions between OSM and the Bureau of Mines.

*Comment:* One commenter suggested that non-coal AML projects with insignificant impacts on health and safety, and the environment should not fall under the hazardous classification by EPA. By the same token, AML projects involving radioactive and other toxic and hazardous materials must be controlled by appropriate health, safety and environmental rules and regulations. Currently the non-coal AML projects are handled in the same manner as the coal projects, without any governing regulations for specific problems like exposure to radiation, etc.

*Response:* It is the intent of this rulemaking to cover both coal and non-coal projects with the exclusion. However, the proposed exclusion does not apply to projects involving toxic or hazardous wastes as defined by EPA because of the potential for serious health and safety hazards to workers, residents, and the environment. Also, Departmental Manual 516 DM 2 appendix 2 excepts any activity that threatens to violate a Federal, State, Tribal or local law or requirement imposed for the protection of the environment. It is not the intent of the Department to use this exclusion to modify EPA's definition of toxic or hazardous wastes. The presence of State or Federal laws governing the handling and disposal of toxic and hazardous wastes indicates the need for a more thorough NEPA review including evaluation of alternatives.

The State or Tribe or Federal entity conducting the reclamation must always abide by any appropriate State or Federal laws relating to toxic or hazardous substances, regardless of whether or not the project is covered under the categorical exclusion.

*Comment:* Most commenters supported the categorical exclusion. While one commenter stated that the anticipated time saving was small and that only minor projects would be eligible, another commenter stated that the exclusion would expedite the

planning and grant application process for a majority of the projects.

*Response:* The Department believes that the categorical exclusion will expedite the NEPA process on many of the less complex AML projects. Projects must still be evaluated for conflicts with sensitive resources such as wetlands and endangered species and they must still be made available for comment by government agencies and interested citizens and private organizations. The exclusion was not designed to capture a specified percentage of AML actions. Rather, the exclusion is structured to simplify the NEPA process or relatively straightforward AML projects that will not adversely affect important resources, have no more than negligible to moderate short or long-term environmental impacts, and have no unresolved issues or controversy associated with the proposed action. The Department recognizes that the exclusion will vary in applicability from State to State.

*Comment:* One commenter stated that the notice did not contain adequate supporting information to demonstrate that, as a class, AML projects do not have significant impacts on the environment. The commenter recommended expanding the supplementary information discussion in the notice to include information from the OSM review of the 649 environmental assessments that showed that the reclamation descriptions, reclamation design techniques, environmental impacts, and mitigating measures were virtually the same.

*Response:* OSM–EIS–11, prepared in November 1983, discusses a majority of the reclamation project types, techniques and impacts associated with the AML program. For the purposes of the categorical exclusion evaluation, the 649 projects varied in the composition of AML features being addressed during reclamation.

Projects may address up to five or more AML features at one location. In the 649 projects reviewed, 310 contained abandoned mine openings, 156 contained dangerous highwalls, 78 contained hazardous equipment, and 54 contained dangerous landslides. In addition, 47 projects addressed mine subsidence, 65 addressed dangerous piles or embankments, and 50 contained actions to abate the problems associated with flooding from sediment-clogged streams. Techniques used to address each problem type are described in OSM–EIS–11.

The Department is not proposing to exclude all AML projects from further compliance with NEPA. To the contrary, the Department has identified specific types of projects, reclamation actions, resource impacts, and consultation results that will necessitate the preparation of an environmental assessment. Even though the environmental assessments analyzed in preparation of the categorical exclusion identified no potentially significant environmental impacts, the Department recognizes that certain project types or actions may not yield such predictable results. In addition, the population of projects analyzed for the exclusion did not contain sufficient numbers of certain projects that the Department believes may have a higher probability of producing significant adverse impacts.

To be eligible for the exclusion, an AML project must still be subjected to the same consultation/coordination procedures required for all AML projects. In addition, the project must comply with public involvement requirements contained in approved State AML Reclamation Plans, and complete intergovernmental review requirements specified in Executive Order 12372. Consequently, and even though the project may meet all the conditions required for the exclusion, State, Federal, and local agencies/officials will have an opportunity to review the proposed action and to raise issues that, if left unresolved, would require the preparation of an environmental assessment.

For these reasons, the Department is not providing supplementary information in a revised notice concerning the reclamation descriptions, design techniques, environmental impacts or mitigating measures of AML projects.

*Comment:* One commenter requested that a discussion be provided on the common construction practices that provide effective mitigation and how their implementation would be assured absent an environmental assessment and a finding of no significant impact.

*Response:* Common construction practices that provide mitigation range from silt fences to protect against erosion and sediment, and watering roads to suppress dust, to the control of traffic at or near the site to facilitate mobilization and demobilization. Such practices vary from State to State, and are incorporated on site in response to State, Tribal, and local laws, and are not usually the result of a specific impact identified during a NEPA review. Further, preparation of an environmental assessment does not assure that common construction mitigation practices are actually implemented. For these reasons, the Department is not providing additional supplementary information in a revised notice regarding common construction practices that provide mitigation.

The Department also points out that eligibility for this exclusion does not require that projects utilize common construction mitigation practices. Rather, it eliminates projects from categorical exclusion where specialized mitigation techniques are needed to protect resources. Consequently, if project development processes identify an adverse impact that can only be addressed through specialized mitigation techniques, the Department is requiring that an environmental assessment be prepared. This will ensure that other reasonable alternatives are considered when completing the Federal action.

*Comment:* One commenter stated that the amount of information required to support a categorical exclusion, and the amount of time needed would still be significant and approximate that needed for an environmental assessment. The commenter further speculated that if OSM did not approve a categorical exclusion, the project would not stay on schedule.

*Response:* Application of a categorical exclusion does not relieve a State or Tribe from the required State and Federal consultation and coordination requirements, nor is it a substitute for project planning and development activities. At completion of these actions, the responsible official should readily be able to determine whether the exclusion applies. Completion of any exclusion documentation should take only a short period of time. By contrast, completion of an environmental assessment could take substantially longer, depending on the project. Further, if the exclusion is properly applied, and any documentation is properly completed, OSM can easily issue a determination. The rationale for a State or Tribal decision regarding whether to pursue a categorical exclusion or an environmental assessment should be clear prior to submittal of the appropriate document. Consultation with OSM in areas of uncertainty will help eliminate disagreements over the applicability of the exclusion to a particular site.

*Comment:* Another commenter suggested that as long as proper coordination occurs and permits are obtained the categorical exclusion should be allowed.

*Response:* Extending categorical exclusion status to sites based upon the completion of consultation and permitting activities is not appropriate. Even though proper coordination may have occurred, unresolved issues may

still exist with respect to resource use, alternative selection, or the appropriateness of mitigation efforts. In addition, the issuance of a permit by authorities regulating specific resources does not necessarily indicate that less than significant project impacts are anticipated. In the cases where unresolved issues exist or where project impacts require specialized mitigation, the preparation of an environmental assessment will assist project planners in the development of other reasonable alternatives and will ensure that final decisions are subject to public involvement.

*Comment:* Another commenter speculated that the majority of the AML projects would not be eligible for the exclusion.

*Response:* OSM believes that the number of projects eligible for this exclusion will be large, and that availability of the exclusion will make a meaningful reduction in the amount of time expended on NEPA documentation. Applicability of the exclusion will vary depending on the types of AML problems in a State or Tribe, and the projects being worked on from year to year.

*Comment:* Another commenter stated that many problems were being eliminated from the categorical exclusion because of health and safety issues and not environmental concerns.

*Response:* A project's potential impacts to the quality of the human environment is an integral part of the analysis under NEPA. Some problem types are eliminated from eligibility under the categorical exclusion because experience has shown that potential adverse impacts to people and property are more likely, and it is more difficult to construct a reclamation project while minimizing or eliminating the risks.

*Comment:* One commenter wondered if the categorical exclusion would add another step to the grant application process.

*Response:* The AML grant process would require submission of a categorical exclusion certification or an environmental assessment, but not both. States and Tribes are not required to complete the certification checklist if the exclusion is not applicable. However, use of the checklist may be desired by some as a planning tool. With proper coordination, and training, there should be few instances where a State or Tribal exclusion certification is not accepted by OSM.

*Comment:* One commenter states that subsidences, mine and refuse fires, and dangerous impoundments should not be ineligible for the categorical exclusion because projects involving these mine problems have been successfully carried out in the past 15 years with few noted problems. The commenter went on to suggest that a sample of these types of projects be reviewed to determine specific impacts and whether they should be included in the categorical exclusion.

*Response:* The Department's decision to except these types of projects from the categorical exclusion was based on very few environmental assessments available for analysis, agency experience with reclamation, and the higher potential for health and safety problems arising during reclamation. As additional data become available, the Department may revisit these problem types to see if an expansion of the categorical exclusion is supportable. Also see "subsidence" discussion for clarification of eligible actions.

*Comment:* One commenter suggested that the language of undisturbed non-commercial borrow and disposal sites be changed to borrow or disposal sites.

*Response:* The suggestion is accepted and all references to borrow and disposal sites have been changed to borrow or disposal sites.

*Emergencies*

*Comment:* A number of comments were received concerning the applicability of the exclusion to projects conducted under Federal and State-administered emergency reclamation programs. The comments ranged from general statements requesting that all or additional categories of AML projects declared emergencies pursuant to section 410 of the SMCRA be excluded from the NEPA process, to concerns that requiring preparation of an environmental assessment on emergency projects would result in delays during a time period when the regulatory authority must react quickly to abate health and safety threats.

*Response:* The Department understands the concern expressed by program officials that the preparation of an environmental assessment may result in delays associated with projects authorized under section 410 of the SMCRA. Under CEQ Regulations (40 CFR 1506.11), emergency actions with significant environmental impacts may be undertaken immediately. However, the Federal agency responsible for the action must limit the action being taken to that necessary to control the immediate impacts of the emergency and must consult with CEQ about alternative arrangements for NEPA compliance. Other actions remain subject to NEPA review.

It is important to note that actions eligible for categorical exclusion are eligible because they do not have significant environmental effects, not because those actions are taken under emergency circumstances. Actions taken in response to an emergency can have significant environmental effects. Actions that have significant environmental effects but that must be taken to respond to an emergency should be brought to the immediate attention of CEQ under 40 CFR 1506.11

The Department of the Interior (DOI) Manual (516 DM 5.8, Emergencies) addresses emergency situations by allowing Federal agencies to abate public health and safety problems when followed by consultation with the DOI Assistant Secretary, Solicitor, and Office of Environmental Affairs. The Federal agency and the Office of Environmental Affairs are responsible for consulting with CEQ.

The Department believes that the subject exclusion will be applicable to the majority of actions which qualify as "emergencies" under SMCRA section 410. For instance, assuming the additional limiting criteria are met, surface-filled pothole subsidences, single structure bore hole injection subsidences, certain qualified landslides, mine openings and shafts, and mine drainage problems all could be eligible for the exclusion. It may be possible to make arrangements with the appropriate State and Federal review agencies for specialized consultation to address emergency situations. Emergency actions not covered by the exclusion will require environmental assessments. Where the urgency of the situation does not allow time needed for determination of a categorical exclusion or preparation of an environmental assessment, procedures discussed in CEQ regulation 40 CFR 1506.11 and DOI Manual 516 DM 5.8 can be utilized.

OSM will continue to collect environmental impact information for grant and emergency projects and may be able to seek future expansions of the categorical exclusion with the proper supporting data.

*Small Projects*

*Comment:* One commenter suggested that the Department's previously proposed categorical exclusion for "small projects" which cost less than $10,000, have less than 1 acre of impact, and take less than 2 days to complete, be incorporated into the subject exclusion.

*Response:* The Department will not incorporate the specific language of the previously proposed "small project" exclusion. The language of the subject exclusion encompasses all "small project" types with the exceptions of

refuse and mine fires. The exclusion excepts mine and refuse fires because of the risk to workers and residents during reclamation, and the small number of mine and refuse fires in the data base available for analysis. In addition, stratification of the proposed exclusion for cost, acres, and duration would unduly complicate decisions made regarding its application in comparison to the limited additional coverage that would be provided.

*Mine and Refuse Fires*

*Comment:* One commenter suggested that mine and refuse fires be allowed in the exclusion because the purpose of their reclamation under the emergency program is to remove these threats as soon as possible. It was also stated that workers are required to wear breathing apparatus, and occupants of nearby buildings are evacuated if necessary.

*Response:* The Department will not modify the categorical exclusion to include mine and refuse fires. Imminent harm to public health or safety is not a standard for developing a categorical exclusion. A categorical exclusion is justified when it can be demonstrated that actions will have no significant impact on the environment. The practice of using breathing devices and evacuations is evidence of the uncertain nature of these types of reclamation projects, and the desirability of more detailed environmental analysis. Also see response under "Emergencies."

*Comment:* Another commenter pointed out that a refuse pile fire had been abated in a rural area, and therefore was not a threat to residences or businesses. It was suggested that States and Tribes be given the chance to prove there will be no impact from a mine or refuse fire reclamation project (thus qualifying for a categorical exclusion) before determining that an environmental assessment is needed. This same comment was also applied to mine void grouting, explosive gases, and impoundments.

*Response:* The Department will not modify the proposed exclusion language. Mine and refuse fires were excepted from the exclusion not only because of potential hazards to nearby residents; they were also excepted because of hazards to workers attempting to extinguish fires. Also, there was a small number of EAs available for analysis of potential impacts. Projects that fall within the parameters of the categorical exclusion have already been shown not to have significant impacts on the environment and thus are exempted from a detailed analysis of impacts.

*Dangerous Slides*

*Comment:* Two commenters suggested that dangerous slides should be eligible for the categorical exclusion to expedite the remedial action in the case of imminent danger. One commenter stated that abatement of dangerous slides removes the threat of damage, and that occupants will be evacuated, and structural damage caused by the abatement will be repaired if necessary.

*Response:* No change has been made in response to the comment regarding treatment of landslides in the categorical exclusion. Imminent harm to public health or safety is not an appropriate standard for seeking a categorical exclusion. The commenter's statement regarding relocation of residents, and repairs of damage caused by the abatement is evidence of the reclamation uncertainties exhibited in landslides involving structures. Also see "Emergencies" discussion.

*100 Acre Project Limit*

*Comment:* Two commenters questioned the 100 acre project size limit for the categorical exclusion. One stated that project areas often exceeded 100 acres, even though the impacted area is less. Another supposed that projects would be broken into segments of less than 100 acres to avoid preparing an EA. Another asked why 100 acres was selected.

*Response:* Analysis of the data shows only 4 percent of the projects exceeding 100 acres in size. Further, states and Tribes are not required to include more area within a project boundary than needed to accomplish the reclamation objectives. The Department does not believe it would benefit a State or Tribe to redraw a project's logical boundary from a planning, design and contracting standpoint, just so that it would fit the acreage limitation. Also, such actions are prohibited by NEPA and CEQ rules. Further, 100 acres was selected as the limit because data on projects in excess of this size was insufficient for analysis. The Department can revisit the size limitation in the future if additional data is developed, but will not modify the exclusion language at this time.

*Use of Explosives*

*Comment:* One commenter asked that the use of explosives in remote locations be allowed under the exclusion when blasting studies ensure minimum impact on health and safety and the environment. The commenter added that storage and handling of explosives, and blasting activities would have to be in accordance with current laws and regulations.

*Response:* The Department will not modify the categorical exclusion regarding the use of explosives. The fact that there are specific regulations governing the use of explosives and special studies to evaluate the impacts is indicative of the hazards associated with their use and the need for a full environmental analysis, including discussion of alternatives. Also, defining a range of parameters for explosives would unduly complicate the determination.

*Dangerous Impoundments*

*Comment:* One commenter stated that OSM should make an effort to allow some dangerous impoundments to be categorically excluded. The commenter said it does not seem fair to eliminate all dangerous impoundments. Another commenter said that pumping water from underground mine pools for use on other AML reclamation sites should not be automatically excluded.

*Response:* The Department will not modify the categorical exclusion, but does offer the following clarification. Dangerous impoundments were excepted from the categorical exclusion because of the high degree of uncertainty and risk associated with dewatering projects, which have led to property damage from flooding. However, it should be noted that all impoundments do not meet the definition of "dangerous impoundment" found in OSM Directive AML–1. AML water bodies not meeting the definition could still be eligible for categorical exclusion if the other criteria are met. The use of impounded surface and underground water on other AML projects could also be eligible for categorical exclusion if the activity meets the other criteria.

*Definitions*

*Comment:* Three comments were received indicating that the terms "specialized mitigation" and "unresolved issues" should be defined.

*Response:* The Department is not providing specific definitions of these terms, but does offer the following discussion to help establish some parameters for use in interpreting and applying the criteria. Specialized mitigation practices have generally been identified as those actions that are developed to address impacts that cannot be mitigated through standardized construction practices. Erosion and sediment control fencing and the watering of construction site roads to address dust problems are examples of practices that are generally required on all reclamation sites. The development of specialized mitigation

plans is for the most part determined by the severity of the potential impact and the requirements of State, Tribal, and Federal contracting practices. The determination that an action requires a specialized mitigation plan should be made on a project specific basis.

The existence of unresolved issues is an indication that the scope, chosen alternative, or anticipated impacts have not been accepted by persons, agencies, or groups potentially affected by the project. The preparation of an environmental assessment, in such cases, ensures that project developers consider the full range of alternatives and that the final decision is made with the appropriate level of public involvement pursuant to CEQ regulations (40 CFR 1506.6). The determination that an unresolved issue exists, and the severity of the issue, should be decided on a case by case basis.

*Comment:* One commenter was concerned that the lack of a definition could result in the interpretation that a section 404 permit (Clean Water Act) review process would constitute specialized mitigation.

*Response:* The Department finds that the lack of a detailed definition does not affect the categorical exclusion decision when a section 404 permit is required. In accordance with exceptions established by the Department (516 DM 2, appendix 2), sites involving wetlands will not be eligible for the categorical exclusion.

It is the responsibility of project managers to assure compliance with section 404 permitting requirements. Once a project site has been identified and State and Federal wetlands delineation criteria have been applied, project managers will know whether a section 404 permit will be required to proceed with the Federal action.

*Comment:* One commenter requested that the term "uncertainty" be defined. The commenter was concerned that the lack of a definition would give OSM broad powers to require an environmental assessment.

*Response:* The Department is not providing a definition for the term "uncertainty". Departmental requirements provide that actions having highly uncertain and potentially significant environmental effects will not be eligible for a categorical exclusion. This exception (516 DM 2 appendix 2, 2.4) ensures that Federal agencies consider the full range of alternatives and impacts in the cases where the proposed action's effects are "highly uncertain and potentially significant". The term will have to be applied on a site by site basis using the best judgment of the responsible State or Federal official. Training will be provided to assist proper application of the categorical exclusion. Federal agencies are responsible for the final decision relative to the impacts of a proposed action, and the Department expects OSM to require preparation of an EA or an EIS where there is disagreement concerning the environmental effects of a proposed project. Consequently, and in accordance with 40 CFR 1508.4, even though the action may fall within the criteria of an existing categorical exclusion, a Federal agency would prepare an environmental assessment if the action appears to have potentially significant or uncertain impacts.

*Wetlands*

*Comment:* One commenter suggested that projects with wetlands or floodplains that are considered under the issuance of a Corps of Engineers nationwide permit should be candidates for a categorical exclusion.

*Response:* The Department did not accept this suggestion. In accordance with DOI Manual 516 DM 2 appendix 2, actions that have adverse effects on wetlands or floodplains are not eligible for the categorical exclusion.

*Wildlife*

*Comment:* One commenter questioned the role of critical habitats of endangered species in application of the categorical exclusion. The commenter specifically asked if an environmental assessment would have to be prepared for a project that was to contain critical habitats after State or Federal agencies provided clearance on endangered species.

*Response:* In accordance with DOI exceptions to categorical exclusion (516 DM, appendix 2), projects involving impacts to critical habitats of endangered species will not be excluded from the preparation of an environmental assessment. Critical habitats are formally designated areas that are afforded protection under the Endangered Species Act. Consultation with the U.S. Fish and Wildlife Service for project impacts on endangered species should also yield information on potentially affected critical habitats. However, in the event that critical habitats are identified after clearance is provided by other State and Federal agencies, those habitats would prohibit the implementation of the categorical exclusion.

*Comment:* One commenter questioned the implementation of the categorical exclusion with respect to the conservation of bat species in North America. Of primary concern to the commenter was the ability for wildlife agencies to address the issue of bats and abandoned mines on a project by project basis. In addition, the commenter suggested that State-listed species or species of special concern that are currently lacking Federal threatened or endangered status be considered in the implementation of the exclusion.

*Response:* No changes are necessary to the proposed categorical exclusion. The exclusion is structured to ensure that actions adversely affecting threatened or endangered species, or designated critical habitat, would not be eligible for the categorical exclusion. In addition, if the proposed action results in wildlife impacts that require specialized mitigation procedures, or wildlife issues that remain unresolved, the preparation of an environmental assessment will be required. Finally, Departmental exceptions to categorical exclusions include those actions that adversely affect parks, recreation areas, wilderness areas, ecologically sensitive areas, wild and scenic rivers, and those actions that threaten to violate Federal, Tribal, State, and local laws or requirements imposed for the protection of the environment. Since the eligibility for a categorical exclusion will be determined in part upon the results of required consultation/coordination efforts, issued concerning wildlife resource agencies will be incorporated into the decision on each proposed action.

*Subsidence*

*Comment:* Two comments were received concerning restrictions on the exclusion's applicability to subsidence abatement projects. One commenter suggested that small subsidence projects that drill and grout beneath dwellings to a very limited extent should be excluded if they are declared to be emergencies. The suggestion was based upon the need to immediately address the potential for further structural damage and the commenter's belief that such projects were of limited impact. The other commenter proposed a similar suggestion that small, low-pressure stowing/flushing projects in remote areas and low pressure grouting projects should be eligible for the exclusion.

*Response:* The Department is modifying the exclusion criteria to clarify that subsidence abatement projects that address single structures are eligible for the exclusion. For the reasons cited under the discussion of comments relative to emergency reclamation projects, subsidence events cannot be excluded based solely upon

the existence of an emergency declaration. The subsidence abatement activities analyzed during the development of this exclusion varied from less than one-tenth (0.1) acre to more than 60 acres in size. These activities ranged from backfilling surface subsidence features to project area-wide grouting of multi-property/multi-structure sites to prevent the occurrence of future problems. All subsidence events, regardless of size or abatement technique, were identified as having no more than short or long-term negligible to moderate environmental impacts. The Department limited the eligibility of subsidence projects to essentially surface reclamation activities. This proposed limitation resulted from the small number of area-wide grouting projects reviewed that exceeded one acre in size (57 FR 37551) and OSM's understanding that the environmental impacts of such activities were less predictable than those of smaller pothole or single-structure subsidence projects. The Department maintains that such large area-wide grouting projects are complicated, involve the interests of multiple property owners, and require a considerable amount of time to develop. In reviewing the suggestions made by the commenters relative to small subsidence projects, the Department noted that the exception language prohibited the use of the exclusion on small grouting projects for single structure problems. Recognizing that the exception for area-wide projects was written so as to place these small grouting projects outside the overall exclusion, the Department has modified the language of the categorical exclusion accordingly. The Department intends to extend the categorical exclusion to projects that address only the surface expressions of subsidence (pothole subsidence), and to those projects that address the impacts to a single structure through surface filling or placement of fill in subsurface voids through drilled holes.

*Outline:* Chapter 6 (516 DM 6) Managing the NEPA Process, appendix 8—Office of Surface Mining Reclamation and Enforcement, 8.4 Categorical Exclusions.

Dated: February 17, 1993.

**Jonathan P. Deason,**

*Director, Office of Environmental Affairs.*

516 DM 6, Appendix 8

Office of Surface Mining Reclamation and Enforcement

*8.4 Categorical Exclusions*

* * * * *

B. * * *

(33) AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow or disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes to address more than one structure, and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

[FR Doc. 93-5427 Filed 3-9-93; 8:45 am]

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federal register

Wednesday
March 10, 1993

Part VI

# Department of Education

34 CFR Part 674 et al.
Federal Perkins Loan Program and Federal Family Education Loan Programs; Proposed Rule

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 674 and 682

RIN: 1840–AB50

### Federal Perkins Loan Program and Federal Family Education Loan Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Federal Perkins Loan Program and the Federal Family Education Loan (FFEL) Programs. The Secretary takes this action to put in place provisions of the Office of Management and Budget (OMB) Circular A–129 (Revised), "Managing Federal Credit Programs." This circular prescribes policies and procedures for managing Federal credit programs and sets standards for extending credit. As part of this program, OMB requires that all applicants for Federal loan programs certify whether they are delinquent on any Federal debts and, as appropriate, that applicants who are delinquent be denied loans.

DATES: Comments must be received on or before April 26, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Harold McCullough, Chief, Campus-Based Programs Section, Grants Branch, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4018, ROB–3), Washington, DC 20202–5447. Telephone (202) 708–4690.

A copy of any comments that concern information-collection requirements also should be sent to OMB at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, U.S. Department of Education, 400 Maryland Avenue, SW. room 4018, Washington, DC 20202–5541; the telephone number is (202) 708–4690. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC., 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: These proposed amendments revise the existing regulations for the Federal Perkins Loan Program and the Federal Family Education Loan Programs. In response to a growing concern about the Federal deficit and the management of Federal credit programs, OMB has instituted a governmentwide initiative for managing Federal credit programs. This initiative is described in OMB Circular A–129 (Revised), entitled "Managing Federal Credit Programs." For additional information concerning Circular A–129 (Revised), contact the Office of Management and Budget, EOP Publication, 725 17th Street, NW., New Executive Office Building, room 2200, Washington, DC 20503. The circular prescribes policies and procedures for managing Federal credit programs and sets standards for extending credit. As part of this initiative, OMB requires Federal agencies to modify loan-application forms to include a certification as to the applicant's delinquency status on any Federal debts. As a result, the Secretary is proposing to obtain information from applicants in the Federal Perkins Loan Program and the Federal Family Education Loan Programs about the status of any Federal debts that they owe.

The purpose of these regulations is to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary educations are important elements of the National Education Goals.

For the Federal Perkins Loan Program, the Secretary proposes to revise the description of an eligible student, found in 34 CFR 674.9, to require an applicant to certify, in order to be eligible to obtain a Federal Perkins Loan or Direct Loan, whether he or she is delinquent on any Federal debts. The Secretary further proposes to add a new provision in 34 CFR 674.11 to require an educational institution to deny a Federal Perkins Loan or Direct Loan to an applicant who fails to complete a certification regarding his or her delinquency status on any Federal debts. The Secretary also proposes to require an institution to deny a Federal Perkins Loan or Direct Loan to an applicant who certifies that he or she is delinquent in repayment of any Federal debts unless the institution determines and documents that the student is willing to repay that loan.

For the Federal Family Education Loan Programs, the Higher Education Amendments of 1992 require the Secretary, in cooperation with representatives of guaranty agencies, eligible lenders, and organizations involved in student financial assistance, to develop a common application form. Accordingly, 34 CFR 682.401(d)(3) requires guaranty agencies to use a common loan application approved by the Secretary. The Secretary will ensure that the form contains the certification requirement as well as the definition of delinquency on other Federal debt (as described in Circular A–129 (Rev.)). This certification must be collected for use by lenders in implementing the proposed provisions of 34 CFR 682.406(a)(1). The Secretary proposes to modify the conditions of reinsurance coverage in 34 CFR 682.406 to require a lender to maintain documentation in the borrower's file as to why an applicant received a loan despite delinquency on a Federal debt.

The lender's discretion to make a loan regardless of the delinquency status on other Federal debts does not supersede any other eligibility requirements for a Federal Perkins Loan, Direct Loan, or Federal Family Education Loan Programs borrower.

Under 28 U.S.C. 3201(e), an individual whose property is subject to a judgment lien for a debt to the United States generally is not eligible to receive any grant or loan made, insured, guaranteed, or financed by the United States, or to receive funds directly from the Government in any program (except funds to which the debtor is entitled as a beneficiary), until the judgment is paid in full or otherwise satisfied. However, any agency that makes such grants or loans may promulgate regulations to allow for waiver of that eligibility restriction. Although that topic is beyond the scope of this document, which is designed merely to implement OMB Circular A–129 (Revised) with respect to two specific credit programs, the Secretary intends to include regulations of more general applicability in a separate document implementing the provisions of § 3201(e).

### Federal Perkins Loan Program

*Student Eligibility (§ 674.9(f))*

The Secretary proposes that to be eligible to receive a Federal Perkins Loan or Direct Loan a student must file with the institution a completed certification as to delinquency about any Federal debts. The certification completed by the student will be used by the institution to determine whether the student is willing to repay that loan.

*Certification as to Delinquency (§ 674.11)*

Under the current regulations (34 CFR 674.9(e)), a student must be "willing to repay the loan" to be eligible to receive a Federal Perkins Loan or Direct Loan. The regulations further state that "[f]ailure to meet payment obligations on a previous loan * * * is evidence that the student is unwilling to repay the loan." As one means of determining

if a student is willing to repay a Federal Perkins Loan or Direct Loan, the Secretary proposes to require an institution to obtain a signed certification as to delinquency from each student applying for a loan. The certification statement would respond to this question: "Are you delinquent in repayment of any Federal debts?" The institution may obtain this signed certification from a student by a number of methods. For example, an institution may amend its financial aid application to include the certification or it may create a separate document. The Secretary proposes that the certification must be filed with the institution once for each award year.

The Secretary proposes that institutions must provide instructions for completing the certification that include examples of Federal debts that might be owed by the loan applicant. Examples of such debts include: delinquent taxes, audit disallowances, guaranteed and direct loans (housing, farm, business, and student loans), benefit overpayments, and other miscellaneous administrative debts. Also, the Secretary proposes that the institution must include the following definitions of "delinquency" in the certification instructions:

—For *direct and guaranteed loans:* A status in which the applicant is more than 30 days past due on a scheduled payment.

—For *grants:* A status in which the applicant has received a "Notice of Grants Cost Disallowance" but has not repaid the disallowed amount and has not resolved the disallowance within 30 days from the date of the notice.

—For *contracts and administrative debts:* A status in which the applicant's contract overpayments, fines, penalties, or other debts have not been repaid or resolved within 30 days after the day notification of the debt was mailed to the debtor or within 30 days of the payment due date in the case of contractual agreements.

The Secretary proposes that an institution must deny a loan if the student does not complete the certification as to delinquency. However, the institution should deny a loan on this basis only after reminding the student that the certification is required and affording the student another opportunity to complete it. If the student indicates that he or she is delinquent in the repayment of any Federal debts, the institution must deny a loan unless the institution determines and documents in the student's file that the student is willing to repay that loan. In making this determination, an institution may request that the student provide information regarding the delinquency.

*Federal Family Education Loan Programs*

*Conditions of reinsurance coverage (§ 682.406(a)(1))*

The Secretary proposes that when an applicant for a loan indicates that he or she is delinquent on a Federal debt, and the lender makes the loan, the lender must place in the applicant's file a satisfactory explanation as to why the delinquency did not make the applicant an unacceptable credit risk. The creation and maintenance of this documentation is required for the loan to be eligible for reinsurance.

*Executive Order 12291*

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations would not have a significant economic effect on a substantial number of small entities. The small entities affected by the regulations would be small higher education institutions participating in the Federal Perkins Loan and the Federal Family Education Loan Programs. The proposed regulations modify a definition used to determine the eligibility of applicants for Federal Perkins/Direct Loans and require the institution to add a certification to the Federal Perkins/Direct Loan application process. The proposed regulations also modify the conditions of reinsurance coverage in the Federal Family Education Loan Programs. The administrative costs associated with these changes would not be significant.

*Paperwork Reduction Act of 1980*

Section 674.11 of the Federal Perkins Loan regulations contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to OMB for its review (44 U.S.C. 3504(h)).

Annual public reporting burden for this collection of information is estimated to average .25 hours per response for 3,000 respondents. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information-collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

**Inivtation To Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, ROB–3, 7th and D Streets, SW., Washington, D.C. 20202–5447, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. To assist the Department in complying with the specific requirements of Executive Order 12291, the Paperwork Reduction Act of 1980, and the overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

*Assessment of Educational Impact*

The Secretary particularly requests comment on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 674*

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

*34 CFR Part 682*

Administrative practice or procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: February 12, 1993.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Numbers: 84.038 Federal Perkins Loan Program; 84.032 Stafford Loan Program; and 84.032 PLUS Program)

The Secretary proposes to amend Parts 674 and 682 of Title 34 of the Code of Federal Regulations as follows:

## PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for Part 674 continues to read as follows:

**Authority:** 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.9 is amended by removing "and" at the end of paragraph (d), removing the period at the end of paragraph (e), and adding in its place "; and ", and adding a new paragraph (f) to read as follows:

**§ 674.9 Student eligibility.**

* * * * *

(f) Has filed a certification as to delinquency and has otherwise met the requirements in § 674.11.

* * * * *

3. A new § 674.11 is added to read as follows:

**§ 674.11 Certification as to delinquency.**

(a) To receive a loan under the Federal Perkins Loan program for an award year, a student must first file with the institution a certification as to delinquency. In this certification, the student shall indicate whether he or she is delinquent in repaying any Federal debts.

(b) The Secretary considers the following certification to satisfy this requirement:

Certification as to Delinquency

Are you delinquent in repaying any Federal debt?

Yes_____No_____

Signature:_____

Date:_____

Social Security Number:_____

(c) The institution shall provide the student with instructions for completing the certification that include—

(1) The following examples of Federal debts that might be owed by the student:

(i) delinquent taxes;

(ii) audit disallowances;

(iii) guaranteed and direct loans (housing, farm, business, and student loans);

(iv) benefit overpayments; and

(v) other miscellaneous administrative debts.

(2) The following definitions of "delinquent":

(i) For *direct and guaranteed loans:* a status in which the applicant is more than 30 days past due on a scheduled payment;

(ii) For *grants:* a status in which the applicant has received a "Notice of Grants Cost Disallowance" but has not repaid the disallowed amount and has not resolved the disallowance within 30 days from the date of the notice; and

(iii) For *contracts and administrative debts:* a status in which the applicant's contract overpayments, fines, penalties, or other debts have not been repaid or resolved within 30 days after the day notification of the debt was mailed to the debtor or within 30 days of the payment due date in the case of contractual agreements.

(d) The institution shall deny a loan to a student who indicates that he or she is delinquent in repayment of any Federal debts unless:

(1) The debt is subject to the provisions of 34 CFR § 668.7 (d), (e), or (f); or

(2) The institution determines that the student is willing to repay that loan and documents the basis for that determination in the student's file.

(Authority: 20 U.S.C. 1087dd and 1091.)

## PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

**Authority:** 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.406 is amended by republishing paragraph (a) introductory text by revising paragraph (a)(1) to read as follows:

**§ 682.406 Conditions of reinsurance coverage.**

(a) A guaranty agency is entitled to reinsurance payments on a loan only if—

(1)(i) The lender exercised due diligence in making, disbursing, and servicing the loan as prescribed by the rules of the agency; and

(ii) If the borrower indicated a delinquency on a Federal debt on the loan application form, and the borrower was not otherwise ineligible under the provisions of § 668.7, the lender created and maintained satisfactory documentation in the borrower's file as to why the delinquency did not make the borrower an unacceptable credit risk;

* * * * *

[FR Doc. 93–5401 Filed 3–9–93; 8:45 am]

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March 10, 1993

Part VII

# Department of Transportation

**Coast Guard**

**46 CFR Part 15**
**Prince William Sound Pilotage; Rule**

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 91-218]

RIN 2115-AE24

## Prince William Sound Pilotage

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Section 4116(a) of the Oil Pollution Act of 1990 (OPA 90) amends 46 U.S.C. 8502(g) to give the Coast Guard discretion to designate certain sections of Prince William Sound, Alaska, on which a coastwise seagoing vessel is not required to be under the direction and control of a Federal pilot. This rule allows coastwise seagoing vessels to navigate in certain sections of Prince William Sound with two licensed officers instead of a Federal pilot. The Coast Guard is also amending its pilotage regulations in 46 CFR part 15 to reflect the amendment to 46 U.S.C. 8502(g) that imposes special pilotage requirements on vessels operating near the Port of Valdez on Prince William Sound. The Coast Guard expects that this rule will reduce the risk of oil spills in the waters of Prince William Sound and ensure the safety of pilots boarding and disembarking vessels in Prince William Sound.

EFFECTIVE DATE: April 9, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Paul Jewell, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6746, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

### Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Paul Jewell, Project Manager, and Joan Tilghman, Project Counsel, OPA 90 Staff.

### Regulatory History

On October 26, 1992 the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (57 FR 48554). The Coast Guard received three letters commenting on the proposal. A public hearing was not requested, and one was not held.

### Background and Purpose

Under the Federal pilotage statute (46 U.S.C. 8502), inspected coastwise seagoing vessels, not sailing under register, when underway and not on the high seas, must be under the direction and control of a Federal pilot while navigating the pilotage waters of Prince William Sound and its approaches. Section 4116(a) of OPA 90 amends 46 U.S.C. 8502 by allowing the Secretary to designate areas in Prince William Sound where this pilotage requirement does not apply. OPA 90 also amended Federal pilotage law by stating that pilots of vessels in the waters between 60° 49′ North latitude and the Port of Valdez must:

(1) Not be a member of the crew of that vessel; (2) be licensed by the State of Alaska; and (3) be operating under a Federal license.

Sea and weather conditions pose significant dangers to pilots during boarding operations at the entrance to Prince William Sound. Consequently, the local Captain of the Port (COTP) allows a vessel to navigate in certain sections of Prince William Sound without a pilot abroad as long as there are two licensed deck officers on the bridge. The legislative history states Congress' intent to codify existing practice, balancing pilot safety and environmental protection.

### Discussion of Comments and Changes

Of the three comments received, two comments supported the proposed rule because the rule recognizes the value of bridge teamwork and represents a good navigation practice.

The third comment raised several issues and suggested changes to the rule. First, the comment stated that the Coast Guard should focus on improving the Vessel Traffic Service (VTS) in Prince William Sound because that system was proven lacking in the Exxon Valdez casualty. This concern was discussed in the NPRM, which noted a number of measures that the Coast Guard is taking to improve the safety of navigation in Prince William Sound. Some of these actions are directed specifically at improving the quality of the Prince William Sound VTS. These actions are in addition to the action being taken in this rulemaking.

The comment also suggested that the rule should clearly specify that two licensed deck officers must be on the bridge, rather than simply two licensed officers. The Coast Guard agrees and has substituted the term "licensed deck officers" for "licensed officers" in the final rule.

Further, the comment stated that the eastern boundary in Prince William Sound should be 146° 30′ West, rather than 146° West, longitude to prevent vessels from using the more restricted waters near Middle Ground Shoal. The Coast Guard does not agree. The Alaska State pilot station for Cordova is near 146° West longitude and using that longitude as the eastern boundary will allow a vessel to remain in deep, unrestricted water and embark a pilot at the pilot station for Cordova.

The comment also questioned the conclusion in the Federalism assessment that this rulemaking does not conflict with State law, arguing that the proposed rule conflicts with an Alaska State law requiring a State-licensed pilot for oil tankers over 50,000 deadweight tons. The Federal pilotage law applies to U.S.-flag tankers in coastwise trade only. Under 46 U.S.C. 8501, State pilotage jurisdiction does not extend to vessels in coastwise trade. Since the rulemaking applies only to U.S. vessels in coastwise trade, the Federal requirement does not conflict with State law.

Finally, the comment stated that two officers on the bridge are not better than one officer. The comment argued that a single bridge officer is appropriate, as long as the sole officer is well-rested and competent. The comment further noted that there is no guarantee that the Coast Guard would improve safety by applying any new rule governing the manning of foreign tankers in Prince William Sound. The comment stated that the Coast Guard lacks the means to ensure the competency of the foreign officers, nor does the Coast Guard enforce the limits on work hours for crew on foreign flag tankers as required by OPA 90.

This rule applies only to some U.S. flag tankers. For foreign tankers, the manning, training, qualification, and watchkeeping standards for the crew are generally regulated by the flag State or determined by international agreement. Therefore, addressing those issues is beyond the scope of this rulemaking. However, section 4106(a) of OPA 90 requires the Secretary to evaluate those standards. That project has been initiated.

This rule ensures that if there is no Federal pilot aboard a U.S. coastwise seagoing vessel in a specified section of Prince William Sound, then there would be at least two licensed officers on the bridge to navigate. The Coast Guard also has published another NPRM under the requirements of OPA 90 that proposes to require at least two officers on the bridge of tankers over 1,600 gross tons. If that proposal is adopted, all tankers over 1,600 gross tons in certain U.S. waters will be required to navigate with at least two licensed deck officers on the bridge. In pilotage waters, at least one officer should devote undivided attention to the navigation of the tanker while another assists and deals with other necessary functions of the watch.

In fact, navigating with two licensed officers on the bridge when in pilotage waters is already a common maritime practice on most existing tankers. If the Second Officer on the Bridge rule becomes final, only non-tankers would be permitted to operate with a single licensed deck officer on the bridge when in Prince William Sound.

**Regulatory Evaluation**

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 FR 11040; February 26, 1979).

Because the rule codifies existing practice, the Coast Guard expects no new costs to be associated with this rule. The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is not necessary.

*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). "Small entities" also include small not-for-profit organizations and small governmental jurisdictions. 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 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 the rule does not have sufficient federalism implications to warrant the preparation of the Federalism Assessment. This rule clarifies when and where a Federal pilot is required on coastwise seagoing vessels underway in Prince William Sound. This rule does not apply to vessels that the State of Alaska requires to carry a State licensed pilot. It also does not require a State licensed pilot to procure a Federal license, nor does it affect Alaska's authority to require a State licensed pilot. Therefore, this rule will not preempt any State of Alaska statute or regulation.

*Environment*

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation because the rule is administrative in nature. This rule codifies existing practice in Prince William Sound by allowing coastwise seagoing vessels to navigate in certain sections of the Sound with two licensed officers in lieu of a Federal pilot. The Coast Guard has determined that the rule will not have any significant environmental impact. A categorical exclusion determination is available in the docket for inspection where indicated under "ADDRESSES."

**List of Subjects in 46 CFR Part 15**

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 15 as follows:

## PART 15—[AMENDED]

1. The authority citation for part 15 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 3703, 8502; 49 CFR 1.45, 1.46.

2. In § 15.812, the introductory text of paragraph (a) is revised and paragraph (f) is added to read as follows:

**§ 15.812 Pilots.**

(a) Except as specified in paragraph (f) of this section, the following vessels, when underway and not sailing on register, must be under the direction and control of a pilot:

* * * * *

(f) In Prince William Sound, Alaska:

(1) Vessels subject to this section operating from 60° 49′ North latitude to the Port of Valdez must be under the direction and control of a Federally licensed pilot who—

(i) Is operating under the Federal license;

(ii) Holds a license issued by the State of Alaska; and

(iii) Is not a member of the crew of the vessel.

(2) Vessels subject to this section must navigate with either two licensed deck officers on the bridge or a Federally licensed pilot when operating South of 60° 49′ North latitude and in the approaches through Hinchinbrook Entrance and in the area bounded—

(i) On the West by a line one mile west of the western boundary of the Traffic Separation Scheme;

(ii) On the East by 146° 00′ West longitude;

(iii) On the North by 60° 49′ North latitude; and

(iv) On the South by that area of Hinchinbrook Entrance within the territorial sea bounded by 60° 07′ North latitude and 146° 31.5′ West longitude.

* * * * *

Dated: March 2, 1993.

**A.E. Henn,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93–5240 Filed 3–9–93; 8:45 am]

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March 10, 1993

Part VIII

# Department of Transportation

Coast Guard

46 CFR Part 25

Emergency Position Indicating Radio Beacons; Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87-016a]

RIN 2115-AC69

## Emergency Position Indicating Radio Beacons for Uninspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The "EPIRB's On Uninspected Vessels Requirements Act" amended the shipping laws of the United States by requiring uninspected commercial vessels to have the number and type of alerting and locating equipment, including emergency position indicating radio beacons (EPIRBs), prescribed by regulation. As a result, the Coast Guard is amending the uninspected vessel regulations by requiring EPIRBs to be carried on all uninspected commercial vessels, except uninspected passenger vessels, operating on the high seas and on the Great Lakes beyond three miles from the coastline. By implementing this law, the regulations will improve Coast Guard search and rescue activities during emergency situations. Some editorial revisions to the regulations are also being made.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Survival Systems Branch, (202) 267-1444. Normal office hours are from 8 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

### Drafting Information

The principal persons involved in drafting these regulations are Mr. Robert Markle, Office of Merchant Marine Safety, Security and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

### Regulatory History

On April 19, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Emergency Position Indicating Radio Beacons for Uninspected Vessels" (CGD 87-016a) in the **Federal Register** (55 FR 14922). The Coast Guard received 125 letters commenting on the proposal. A public hearing was not requested and one was not held.

### Background and Purpose

On August 17, 1988 the Coast Guard published a final rule in the **Federal Register** (53 FR 31004) revising 46 CFR 25.26 to require the carriage of EPIRBs on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. That rule was published under the authority of section 16 of the "Coast Guard Authorization Act of 1986" (Pub. L. 99-640, 100 Stat. 3545). Under that rule, the affected vessels are required to have a Category 1 406 MHz Satellite EPIRB on board after May 17, 1990. On April 19, 1990, the Coast Guard published a notice in the **Federal Register** (55 FR 14920) indefinitely suspending the compliance date for this EPIRB requirement only for uninspected fishing vessels which did not have installed berthing or galley spaces. The suspension was to remain in effect until a rule for a manually operated, manually launched 406 MHz Satellite EPIRB could be developed and published.

Public Law 100-540, known as the "EPIRB's On Uninspected Vessels Requirements Act" (102 Stat. 2719, October 26, 1988), amended 46 U.S.C. 4102 by revising paragraph (e) to require uninspected commercial vessels operating on the high seas and on the Great Lakes beyond three miles from the coastline to carry the number and type of alerting and locating equipment, including EPIRBs, prescribed by regulation.

This final rule applies to all uninspected commercial vessels, but excludes commercial fishing industry vessels with galleys and berthing facilities and uninspected passenger vessels which remain subject to the requirements of 46 CFR 25.26-1. EPIRB requirements for uninspected passenger vessels, as well as visual distress signal requirements for uninspected vessels not already required to carry them, will be proposed in a future supplemental notice of proposed rulemaking (SNPRM) under docket number CGD 87-016b. Commercial fishing industry vessels with galleys and berthing facilities are already required to carry EPIRBs as a result of the final rule published on April 19, 1990.

### Discussion of Comments and Changes

*General Comments*

In response to the NPRM, the Coast Guard received 89 comments during the open comment period and received 36 comments after the comment period had closed. The comments received after the closing date did not raise any additional issues. Except as discussed below, all comments received in response to the NPRM are addressed in this preamble.

Comments were received from an association representing the tug and barge industry, a maritime hull and cargo surveyors corporation, and interested parties that did not identify their affiliation. Comments were received from the Radio Technical Commission for Maritime Services (RTCM) and the National Transportation Safety Board (NTSB). Additionally, twenty-four individual commercial fishermen and four commercial fishing associations submitted comments to this docket. These commercial fishermen represented themselves as small "day boats" operating between 3 to 10 miles from shore and rarely beyond 20 miles from shore.

The RTCM, one manufacturer of 406 MHz Satellite EPIRBs, one supplier of marine electronics, and the NTSB made comments in support of the proposed rule as written. The NTSB also stated that the 406 MHz Satellite EPIRB "* * * will not only increase safety of uninspected commercial operations significantly, but will reduce search and rescue costs."

As discussed previously, alternative proposals for uninspected passenger vessels will be made in a future SNPRM to be published under docket CGD 87-016b. The SNPRM will address the seventy-two comments received from the charterboat industry which expressed opposition to the proposed rule requiring 406 MHz Satellite EPIRBs on uninspected vessels under 100 gross tons carrying six or less passengers for hire. In general, these comments questioned the need for EPIRBs on charter boats due to the limited nature of their operations (primarily day trips in good weather) and the safety record of these vessels. The Coast Guard remains concerned that vessels carrying passengers for hire have the best feasible safety equipment; however, the comments raise issues of whether a blanket requirement for these vessels to carry EPIRBs is appropriate. In order to proceed with a final rule establishing EPIRB requirements for other vessels, uninspected passenger vessels have been excluded from the final rule and will be addressed separately.

*Specific Comments*

Many comments raised a concern about the high cost of purchasing the 406 MHz Satellite EPIRB. The cost of this EPIRB has dropped steadily since its introduction. To help keep costs down, several commercial fishing associations have made arrangements with major distributors of EPIRBs to make large volume purchases. The Coast Guard anticipates that bulk purchase orders through associations and a competitive market will operate to further reduce the cost of the EPIRBs.

The phase-in period allowed before all affected vessels will be required to have the 406 MHz Satellite EPIRB on board should also serve to reduce costs, at least in the near term. The Coast Guard expects the cost of the required EPIRB to be less than the cost cited in some of the comments. Additionally, vessels which already have a 121.5/243.0 MHz EPIRB aboard will be able to continue to use that EPIRB to temporarily satisfy this requirement for an extended period, provided that the EPIRB is self-buoyant and is capable of transmitting a signal while floating. The EPIRB will also have to be one manufactured on or after October 1, 1988, in order to meet the Federal Communications Commission (FCC) regulatory requirement at 47 CFR 80.1053(a)(8). The current cost of an EPIRB meeting this requirement is approximately $250. The current cost of a 406 MHz Satellite EPIRB is about $1350.

One comment stated that a manufacturer's lobby exists which supports the expensive 406 MHz Satellite EPIRB requirement. In fact, the 406 MHz Satellite EPIRB is part of the Global Maritime Distress Safety System (GMDSS), a new international radiocommunications system which is being introduced worldwide during the 1990s. The creation and introduction of the GMDSS has been actively supported by the United States in several international forums. The satellite EPIRB system itself has been in development since 1972 as part of a U.S./U.S.S.R. treaty to use satellites to improve alerting of search and rescue forces. (The government of the Russian Federation, as the successor state to the U.S.S.R., continues to honor this treaty). This system was intended to reduce the number of false alarms and give near-pinpoint location of distress alerts.

The comment also stated that the required Coast Guard approved safety equipment does not work and will not hold up in a marine environment. The comment blames the manufacturers' lobby for the laws that require the purchase of inferior products at inflated prices. The Coast Guard and FCC recognize that exposure of electronic equipment to the marine environment can be extremely detrimental. With this in mind, the RTCM developed a standard for the manufacture of the 406 MHz Satellite EPIRB. This standard incorporates rigorous environmental tests that include long term exposure to salt fog, extreme vibrations, and long term drift. These tests were developed to ensure that the 406 MHz Satellite EPIRB will provide successful service throughout its life expectancy. The FCC requires U.S. type accepted 406 MHz satellite EPIRBs to meet the RTCM standard.

One comment requested to continue using the Class A 121.5/243.0 MHz EPIRB until the 406 MHz Satellite EPIRB became more readily available. The requirement to have a 406 MHz Satellite EPIRB will become effective one year after the date of publication of this final rule. However, those vessels with a 121.5/243.0 MHz EPIRB manufactured after October 1, 1988 and installed on board before April 26, 1993 will not be required to have the new 406 MHz Satellite EPIRB on board until February 1, 1998. The NPRM proposed a phase-in period of six years after publication of the final rule. This final rule was originally expected to be published about June 1991 (55 FR 44781, October 29, 1990), resulting in a deadline date for carriage of 406 MHz Satellite EPIRBs of June 1997. The February 1, 1998, date provides an additional seven months beyond the originally projected deadline date. Complete implementation of the GMDSS is scheduled for February 1, 1999.

One comment was in the form of a request for a variance of the rule to allow the carriage of a Category 2 406 MHz Satellite EPIRB for a boat manufactured in accordance with the level flotation requirements of 33 CFR part 183. The Category 1 406 MHz Satellite EPIRB is a fully automatic, float-free device that is mounted on the outside of a vessel in a manner so that if the vessel sinks quickly or unexpectedly, the device will float free, activate, and alert authorities to the distress. In contrast, the Category 2 406 MHz Satellite EPIRB is manually operated, manually launched, and depends upon a person on the vessel to launch the device.

The Coast Guard requirement for level flotation construction in 33 CFR part 183 applies only to recreational vessels 20 feet in length and under. However, the Coast Guard agrees with the comment, and therefore is incorporating revisions in the rule which would allow a boat with sufficient inherently buoyant material to keep the flooded boat afloat to carry either a Category 1 or Category 2 406 MHz Satellite EPIRB to meet the requirement. To qualify, the vessel must be manufactured with and certified as having sufficient flotation material to keep the boat afloat. This requirement must be substantiated by a certification by the manufacturer that the construction of the vessel includes inherently buoyant material which will prevent the boat from sinking. The only mounting restriction for the Category 2 406 MHz Satellite EPIRB is that it be mounted at or near the principal steering station of the vessel.

Comments received from the owners of commercial fishing vessels requested clarification of what constitutes an installed galley and berthing facility. The Coast Guard suspended compliance with the EPIRB requirement for vessels without installed galley and berthing facilities so that the Coast Guard could consider a less expensive alternative for these vessels. The suspension was intended to remove the requirement for smaller vessels involved in day fishing operations. During the suspension period, reports indicated that there were inconsistent interpretations of the suspension guidelines and vessel outfitting. Coast Guard Boarding Officers especially encountered difficulty in making determinations as to whether or not a vessel had a galley and installed berthing on smaller vessels equipped with a day couch, ice box, and a small alcohol stove. In order to reduce this problem, this final rule simply requires vessels under 11 meters (36 feet) in length to carry either a Category 1 or Category 2 406 MHz Satellite EPIRB. Vessels 11 meters or more in length are required to carry a Category 1 406 MHz satellite EPIRB. Some vessels over 11 meters in length do not have a galley or installed berthing, and have not been required to carry 406 MHz satellite EPIRBs until now. This final rule also allows these vessels to continue to use an existing, qualified 121.5/243 MHz EPIRB until February 1, 1998.

For purposes of this regulation, length is defined as the length listed on a vessel's Certificate of Documentation or Certificate of Number. Clarification of the definition of berthing space and galley has been added to the final rule to reduce inconsistent interpretations for vessels 11 meters or more in length. A berthing space is a space that is intended to be used for sleeping. Generally, a berthing space has installed bunks and mattresses. This does not include day couches, sleeping bags, blankets, or convertible tables. A galley is a space that provides for the extended storage and preparation of food. This does not include small alcohol or propane stoves with limited cooking capability, or ice chests or similar devices that are intended for the keeping of small quantities of food for short durations. In no case should a galley determination be made solely on the quantity of food and beverage available (e.g., 10 sandwiches and two six-packs of soda). This change in the final rule will reduce the confusion over this issue and provide the kind of regulatory certainty needed by industry

and the Coast Guard. After February 1, 1998, there will no longer be any need for these definitions, and they can then be removed.

Many comments addressed a need to exempt vessels from the EPIRB requirement for various reasons (i.e., high density fisheries, geographic location, safety record, etc.). Title 46 U.S.C. 4103 provides the Secretary of the department under which the Coast Guard operates the authority to exempt vessels, including uninspected commercial vessels, from safety equipment requirements. This authority has been delegated in 49 CFR 1.46 to the Commandant of the Coast Guard who, in turn, redelegated that authority to District Commanders. Exemption provisions have been added to this final rule providing for case-by-case exemptions upon application to the cognizant Coast Guard District Commander.

The term "high seas" is used in the statute and in the final rule. This term is not defined by the statute. The Coast Guard has defined high seas by regulation in 33 CFR 2.05–1(a); that is, waters which are neither territorial seas nor internal waters of the U.S. or of another country. Territorial seas, with respect to the U.S., are defined in 33 CFR 2.05–5(a) as those waters within the belt, three nautical miles wide, that is adjacent to its coast and seaward of the territorial sea baseline. The baseline generally follows the coastline. The President's Proclamation 5928 of December 27, 1988 (54 FR 777, January 9, 1989) extended the territorial sea to twelve nautical miles from the baseline for the purposes of international law; however, that proclamation did not affect domestic law. Accordingly, the meaning of high seas as used in the final rule is not altered and remains as those waters beyond a line three nautical miles seaward of the Territorial Sea Baseline as defined in 33 CFR 2.05–10.

In order to accommodate the various changes and to ensure the regulations are easily understood, subpart 25.26 was reorganized and revised.

**Regulatory Evaluation**

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation was prepared and placed in the rulemaking docket.

The final evaluation uses a cost estimate of $1350 for each of the approximately 20,000 uninspected vessels that are affected by this rule. This revised cost estimate is based on currently advertised prices of Category 1 406 MHz Satellite EPIRBs in the United States and is believed to be higher than the actual cost to vessel owners since prices for these EPIRBs are continuing to drop. In addition, many of the vessels will be able to comply with this rule by purchasing Category 2 EPIRBs, reducing costs even further. Approximately 7,500 of the affected vessels will have to install Category 1 or Category 2 406 MHz Satellite EPIRBs within a year at a total cost of $10 million. The remainder will replace their existing EPIRBs over a six-year period at a cost adjusted to 1993 dollars of about $11 million. Over a 10-year period, the total present-value adjusted cost of the regulation, including maintenance and replacement costs, is estimated to be about $26 million.

Although the number of lives that may be saved through mandatory EPIRB requirements cannot be predicted, economic research indicates that $2.5 million per statistical life saved is a reasonable estimate of peoples willingness to pay for safety. The saving of only one or two lives per year for the next 10 years justifies the cost of these rules.

However, more tangible benefits can be identified in the reduction of search and rescue costs. Many unsuccessful searches for overdue vessels are conducted annually that cost millions of dollars before being abandoned. As an example of an extreme case, the unsuccessful search for the fishing vessel AMAZING GRACE took several weeks and cost the Coast Guard and other federal agencies over $12 million. The vessel was never located. In contrast, a number of searches for pleasure, charter, and fishing vessels were expedited as a result of these vessels carrying EPIRBs voluntarily. The savings to the government as a result of elimination or significant reduction of only three or four large-scale searches would justify the cost of these rules alone, even without considering the lives that may be saved by more timely location of vessels in distress.

*Small Entities*

Generally, uninspected vessel operators are considered to be small entities in that they are typically not part of large diversified corporations, and generally own no more than one or two vessels. The $1350 cost is not considered significant by comparison to the cost of most vessels, or any of the associated equipment necessary to properly and safely operate most of these vessels. Furthermore, this cost is one-half of the $2700 estimate used in the NPRM, reflecting price reductions which have occurred since the publication of the NPRM. As recognized by the phaseout period for existing EPIRBs in this final rule, EPIRBs have a long useful life when properly maintained. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have 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 analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. In this final rule the Coast Guard is amending the uninspected vessel regulations by requiring emergency position indicating radio beacons (EPIRBs) to be carried on all uninspected commercial vessels, except uninspected passenger vessels, operating on the high seas and on the Great Lakes beyond three miles from the coastline. Since this rule affects specific vessels outside of State waters, the Coast Guard intends to preempt State action addressing the same subject matter.

*Environment*

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. These regulations have been developed to enhance the safety of personnel at sea and clearly do not have an environmental impact. A Categorical Exclusion Determination is available for inspection or copying in the rulemaking docket where indicated under "ADDRESSES."

The Coast Guard environmental assessment (EA) for this rulemaking was prepared in accordance with Commandant Instruction M16475.1B, the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190), and the Council of Environmental Quality Regulations of July 1, 1986 (40 CFR parts 1500–1508). This rulemaking is intended primarily to reduce search and rescue efforts and is expected to have no environmental impact. Therefore, the Coast Guard has placed a Finding of No

Significant Impact (FONSI) in the public docket.

**List of Subjects in 46 CFR Part 25**

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 25 as follows:

## PART 25—REQUIREMENTS

1. The authority citation for part 25 continues to read as follows:

**Authority:** 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

2. Subpart 25.26 is revised to read as follows:

**Subpart 25.26—Emergency Position Indicating Radio Beacons**

Sec.

25.26–1 Definitions.
25.26–5 Commercial fishing industry vessels.
25.26–10 Uninspected passenger vessels.
25.26–20 Other manned uninspected commercial vessels.
25.26–30 121.5/243.0 MHz EPIRBs.
25.26–50 Servicing of EPIRBs.
25.26–60 Exemptions.

**Subpart 25.26—Emergency Position Indicating Radio Beacons (EPIRB)**

**§ 25.26–1 Definitions.**

As used in this subpart:

*Berthing space* means a space that is intended to be used for sleeping and is provided with installed bunks and mattresses.

*EPIRB* means an Emergency Position Indicating Radiobeacon which is Type Accepted by the Federal Communications Commission under requirements in 47 CFR parts 2 and 80.

*Galley* means a space that provides for the preparation and extended storage of food. This does not include small alcohol or propane stoves with limited cooking capability, or ice chests or similar devices that are intended for keeping small quantities of food for short durations.

*High seas* means the waters beyond a line three nautical miles seaward of the Territorial Sea Baseline as defined in 33 CFR 2.05–10.

*Length* means the length listed on a vessel's Certificate of Documentation or Certificate of Number.

*Uninspected passenger vessel* means a vessel which, when used for commercial service, is used solely to carry passengers for hire or to provide non-emergency assistance to boaters (assistance towing), and which is not inspected by the Coast Guard under any other 46 CFR subchapter.

**Note:** As an example, a vessel on a voyage involving catching fish which are to be sold, is a commercial fishing industry vessel for the purposes of the EPIRB regulations in this section, even if there are passengers on board during the voyage.

**§ 25.26–5 Commercial fishing industry vessels.**

(a) The owner of a fishing vessel, a fish processing vessel, or a fish tender vessel, 11 meters (36 feet) or more in length, except for vessels described in paragraph (b) or (c) of this section, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes unless it has on board a float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float-free if the vessel sinks.

(b) After March 10, 1994, the owner of a fishing vessel, fish processing vessel, or a fish tender vessel less than 11 meters (36 feet) in length, or 11 meters or more in length which has a builder's certification that the vessel is constructed with sufficient inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes, unless it has installed in a readily accessible location at or near the principal steering station—

(1) A manually activated Category 2 406 MHz EPIRB; or

(2) A float-free, automatically activated Category 1 406 MHz EPIRB; or

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

(c) After March 10, 1994, the owner of a fishing vessel, fish processing vessel, or a fish tender vessel 11 meters (36 feet) or more in length that does not have installed galley and berthing facilities, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes unless it has on board—

(1) A float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks; or

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

**§ 25.26–10 Uninspected passenger vessels.**

An uninspected passenger vessel is not required to carry an EPIRB.

**§ 25.26–20 Other manned uninspected commercial vessels.**

(a) After March 10, 1994, the owner of a manned uninspected commercial vessel 11 meters (36 feet) or more in length, other than a vessel under § 25.26–5 or § 25.26–10 or under paragraph (b) of this section, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes, unless it has on board—

(1) A float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks; or

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

(b) After March 10, 1994, the owner of a manned uninspected commercial vessel less than 11 meters (36 feet) in length, or 11 meters or more in length which has a builder's certification that the vessel is constructed with sufficient inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes, unless it has installed in a readily accessible location at or near the principal steering station—

(1) A manually activated Category 2 406 MHz EPIRB; or

(2) A float-free, automatically activated Category 1 406 MHz EPIRB; or

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

**§ 25.26–30 121.5/243.0 MHz EPIRBs.**

A 121.5/243.0 MHz EPIRB manufactured after October 1, 1988, may be used to meet certain requirements of § 25.26–5 and § 25.26–20, if the EPIRB is operable and was installed on the vessel on or before April 26, 1993. The EPIRB must be a Class A EPIRB, or a Class B EPIRB which is watertight, self-buoyant, and stable in a floating position to properly transmit a distress signal.

**§ 25.26–50 Servicing of EPIRBs.**

(a) The owner of each vessel required to have an EPIRB under this subpart shall ensure that each EPIRB on board is tested and serviced as required by this section.

(b) The EPIRB must be tested immediately after installation and at least once each month thereafter, unless it is an EPIRB installed in a Coast Guard approved inflatable liferaft that is tested annually during the servicing of the liferaft by an approved servicing facility. The test shall be conducted in accordance with the manufacturer's instructions, using the visual or audio indicator on the EPIRB. If the EPIRB is not operating, it must be repaired or replaced with an operating EPIRB.

(c) The battery of the EPIRB must be replaced—

(1) Immediately after the EPIRB is used for any purpose other than being tested; and

(2) Before the expiration date that is marked on the battery.

**§ 25.26–60 Exemptions.**

(a) A skiff or work boat is not required to carry an EPIRB if—

(1) Its "mother ship" is required to carry an EPIRB under this subpart; and

(2) When not in use, the skiff or work boat is carried on board the mother ship.

(b) Each Coast Guard District Commander may, on a case-by-case basis, grant exemptions from the carriage requirements of EPIRBs in this subpart for certain geographic areas within the boundaries of his or her own district if the District Commander determines that an EPIRB will not significantly enhance the overall safety of the vessel and crew. Exemptions may be limited to specific time periods. Exemptions granted under this paragraph must be:

(1) Issued in writing by the cognizant Coast Guard District Commander for each individual application and

(2) For geographic locations and may be limited to specific time periods.

Dated: January 28, 1993.

**R. C. North,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93–5241 Filed 3–9–93; 8:45 am]

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federal register

Wednesday
March 10, 1993

Part IX

# Federal Trade Commission

16 CFR Part 308

**Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992; Proposed Rule**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 308

### Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On October 28, 1992, the President signed into law the Telephone Disclosure and Dispute Resolution Act of 1992 ("Telephone Disclosure Act" or "the Act"). Title I of the Telephone Disclosure Act directs the Federal Communications Commission (FCC) to prescribe regulations, within 270 days of enactment, establishing requirements for common carriers offering pay-per-call services. Titles II and III of the Telephone Disclosure Act direct the Federal Trade Commission (FTC or Commission) to prescribe regulations, within 270 days of enactment, governing the advertising and operation of pay-per-call services, as well as billing and collection procedures for such services. This notice announces the proposed rule drafted by the Federal Trade Commission pursuant to the Telephone Disclosure Act.

All persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning this proposal. In addition, following the period for written comments, Commission staff plans to conduct a Public Workshop-Conference to afford Commission staff and interested parties an opportunity to explore and discuss issues raised during the comment period.

**DATES:** Written comments must be submitted on or before April 9, 1993. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions to this comment period or any additional periods for written comment or rebuttal comment.

Notification of interest in representing an affected, interested party at the Public Workshop-Conference must be submitted on or before March 25, 1993. A list of affected interests appears in Section D of this Notice.

The Public Workshop-Conference will be held on April 22 and 23, 1993, 9 a.m. until 5 p.m.

**ADDRESSES:** Written comments should be submitted in 20 copies to the Office of the Secretary, room 159, Federal Trade Commission, Washington, DC 20580. (However, individuals filing comments need not submit multiple copies.) Submissions should be captioned: "Proposed Telephone Disclosure Rule," FTC File No. R311001.

Notifications of interest in the Public Workshop-Conference should be submitted in writing to Heather McDowell, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

The Public Workshop-Conference will be held in the Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** David Torok, (202) 326–3140, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

#### Section A. Background

Congress based its enactment of the Telephone Disclosure Act, Public Law No. 102–556, upon a number of findings concerning the development of the pay-per-call services industry. Specifically, Congress made the following findings, set forth in section 1 of the Act:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

Based upon the above findings, Congress directed both the FCC and the FTC to issue regulations governing different aspects of this industry. Regulations to be enacted by the FCC will define the obligations of common carriers with respect to the provision of pay-per-call services. Pay-per-call services can be offered only through the use of certain telephone number prefixes and area codes designated by the FCC for that purpose. Common carriers that assign the designated numbers to providers of pay-per-call services must require by contract or tariff that each such provider comply with regulations prescribed by the FTC pursuant to titles II and III of the Telephone Disclosure Act and terminate the contract of any provider that the common carrier knows (or reasonably should know) to be in violation of the FTC rule.

The Telephone Disclosure Act prohibits common carriers from disconnecting a telephone subscriber's local or long distance telephone service because of nonpayment of charges for any pay-per-call service. In addition, they must offer telephone subscribers the option of blocking access from their telephone numbers to all, or certain specific, prefixes or area codes used by pay-per-call services. Common carriers that assign prefixes or area codes designated for pay-per-call services to those engaged in soliciting charitable contributions must obtain proof of the tax-exempt status of any organization for which contributions are solicited.

Pursuant to the Act, common carriers must prohibit the use of 800 telephone numbers (or any other telephone number advertised or widely understood to be toll free) in a manner that results in any of the following: the

calling party being assessed a charge for the call; the calling party being connected to a pay-per-call service; the calling party being charged for information conveyed during the call (in the absence of a pre-existing agreement or disclosure of a credit card number during the call); or the calling party being called back collect for the provision of audio information or voice conversation services.

Common carriers that offer billing and collection services to a provider of pay-per-call services must ensure that a subscriber is not billed for pay-per-call services that the carrier knows (or reasonably should know) were provided in violation of the FTC regulations issued pursuant to title II of the Telephone Disclosure Act. In addition, the common carrier must establish a local or toll-free telephone number to answer questions and provide information on telephone subscribers' rights and obligations with regard to their use of pay-per-call services and to provide callers the name and mailing address of any provider of pay-per-call services offered by the common carrier. Furthermore, a written disclosure statement must be provided to all telephone subscribers within 60 days of the issuance of final regulations by the FCC. This statement will set forth the rights and obligations of the subscriber and the carrier with respect to the use of and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option.

In the telephone bill itself, the common carrier that provides billing must display charges for pay-per-call services in a part of the bill that is identified as not related to local and long distance telephone charges. For each pay-per-call service charge, the bill must show the type of service, the amount of the charge, and the date, time and duration of the call. In addition, the bill must show the toll-free number established to answer consumers' questions with regard to pay-per-call services. Finally, the FCC rule must establish procedures to ensure that common carriers afford refunds to subscribers who have been billed for pay-per-call services found to have violated any of the rules promulgated pursuant to the Telephone Disclosure Act or any other Federal law.

Title II of the Telephone Disclosure Act directs the FTC to prescribe regulations governing the conduct of the providers of pay-per-call services with respect to advertising and the actual operation of such services. The statute requires that disclosure of the cost of a pay-per-call service be made both in advertising and in an introductory disclosure message (or preamble) that must be played before the caller incurs any charge for the call. Advertisements for pay-per-call services that offer a prize or award must disclose the odds of receiving the prize or award. In the case of a pay-per-call service that provides information about a Federal program, both the preamble and any advertisement must disclose that the service is not authorized, endorsed, or approved by any Federal agency.

Pay-per-call services, and advertisements for such services, cannot be directed to children under 12, unless the service is a bona fide educational service. Advertisements directed to individuals under the age of 18, and the preambles to all pay-per-call services, are required to state that persons under 18 must have the consent of a parent or guardian to use such services. Broadcast advertisements may not emit electronic tones that can automatically dial a pay-per-call number. Moreover, pay-per-call services cannot be provided through an 800 telephone number, or any other number widely understood to be toll free.

Requirements for billing statements that are imposed upon the common carriers are also imposed upon the providers of pay-per-call services. Moreover, such providers are liable for refunds to consumers who have been billed for pay-per-call services found to have violated the regulations prescribed pursuant to the Telephone Disclosure Act or any other Federal law. In addition, the Commission is authorized to prescribe other regulations it deems necessary to prevent abusive practices in this industry or to prevent evasion of these requirements.

Title II of the Telephone Disclosure Act gives the FTC limited jurisdiction over common carriers for purposes of this title.[1] Specifically, common carriers will be required to make available to the Commission certain records and financial information relating to the arrangements between the carrier and providers of pay-per-call services.

Enforcement actions for violations of the rule prescribed pursuant to title II will be handled by the FTC in the same manner as for other rules with respect to unfair or deceptive acts or practices under section 5 of the FTC Act.[2] In addition, however, title II authorizes the attorneys general of the States to enforce compliance with the FTC rule by instituting Federal court enforcement actions, after serving prior written notice upon the Commission when feasible.

Title III of the Telephone Disclosure Act directs the FTC to prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. These requirements will be similar to those imposed for the resolution of credit disputes under the Truth in Lending Act and the Fair Credit Billing Act.[3] Unlike title II of the Telephone Disclosure Act, title III does not set forth specific provisions to be incorporated into the required regulations. However, with respect to telephone-billed purchases, the Commission has been directed to consider the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

The Commission will treat the rule promulgated pursuant to title III as a rule issued under Section 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(a)(1)(B)) and enforced pursuant to Section 5 of the FTC Act (15 U.S.C. 45). For purposes of title III, communications common carriers will be subject to the jurisdiction of the Federal Trade Commission.

Section B of this notice discusses the proposed rule that the Commission has drafted pursuant to the Telephone Disclosure Act.

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[1] In general, common carriers are not subject to the jurisdiction of the FTC Act, 15 U.S.C. 45(a)(2).

[2] 15 U.S.C. 45. The Telephone Disclosure Act provides that the rule issued under title II shall be treated as a rule issued under § 18(a)(1)(B) of the FTC Act (15 U.S.C. 57a(a)(1)(B)).

[3] 15 U.S.C. 1601 *et seq.*

**Section B. Discussion of the Proposed Rule**

*Section 308.1 Scope of Proposed Rule*

Section 308.1 sets forth the scope of the proposed regulations. They are proposed in implementation of titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992.

*Section 308.2 Definitions*

Section 308.2 defines the following terms used in the proposed regulations: bona fide educational service, Commission, pay-per-call services, person, presubscription or comparable arrangement, program-length commercial, provider of pay-per-call services, reasonably understandable volume, slow and deliberate manner, and sweepstakes.

The proposed rule defines the term "pay-per-call services" as it is defined in the Telephone Disclosure Act—by reference to section 228 of the Communications Act of 1934.[4] The service provided may be audio-information, audio entertainment, conversation with another person, or any other service for which the charges are assessed on the basis of the completion of the call. The caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call. The call is accessed through use of a 900 telephone number or other prefix or area code designated by the FCC for such services. However, the term does not include directory services provided by a common carrier or local exchange carrier; and service for which the charge is tariffed; or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of the service. The proposed rule defines "provider of pay-per-call services" as the individual or entity that is selling the service provided through the pay-per-call service.

The term "presubscription or comparable arrangement" has not been defined by statute or by the FCC. The definition proposed in this rule would limit such arrangements to a contractual agreement established prior to the initiation of pay-per-call services between the consumer and the provider. It makes clear that no action taken during the course of a call to a pay-per-call service can be construed as creating such a contractual agreement. The definition of this term is important to the effectiveness of the proposed rule, since any telephone transaction pursuant to a "presubscription or comparable arrangement" is not afforded the protection of these regulations.

The term "bona fide educational service" describes the one permitted exception to the prohibition against pay-per-call services, and advertisements for such services, directed to children under the age of 12. The proposed definition is narrowly drawn, defining such services in terms of the content of the educational or instructional service itself. The exception to the prohibition is intended to be limited to those programs serving a truly educational or instructional purpose.

The terms "reasonably understandable volume" and "slow and deliberate manner" apply to oral disclosures that must be made either in broadcast advertising or in telephone preambles. They are defined so as to insure that such disclosures will be intelligible to the receiving audience and, at a minimum, are spoken at the same audible level and no faster then the primary message of the advertisement or the pay-per-call service.

*Section 308.3 Advertising of Pay-Per-Call Services*

Section 308.3 of the proposed rule sets forth the requirements for advertising pay-per-call services. Sections 308.3 (a) through (h) are each based on requirements of the Telephone Disclosure Act.

Each section that mandates a disclosure requires that the disclosure be presented clearly and conspicuously. While there are certain minimum standards that are applicable to all disclosures in advertisements, the definition of "clear and conspicuous" in some sections provides further requirements for those specific disclosures. All audio disclosures, in broadcast advertising or telephone solicitations, must be delivered in a "slow and deliberate manner" and a "reasonably understandable volume," as those terms are defined in § 308.2 (h) and (i). Unless a more stringent standard is specified, the visual portion of television disclosures must appear on the screen for sufficient time to allow consumers to read it. Disclosures in television advertisements must always appear at least once simultaneously in both the audio and video portions of the advertisement. The proposed rule, however, contains an exception for advertisements that are 15 seconds or shorter, and would not require an audio disclosure only if the pay-per-call number is not stated in the audio portion. Print and video disclosures must be of a color or shade that readily contrasts with the background of the advertisement. In print advertisements, disclosures must always be parallel with the base of the advertisement and in at least 12-point type. In addition, required disclosures must always appear in the same language as that principally used in the advertisement. Finally, the proposed rule provides that with respect to each disclosure, nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be made in any advertisement, nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosure. This provision is intended to ensure that advertisers do not attempt to circumvent the "clear and conspicuous" requirements, either through the conveyance of other information or through the manner in which the disclosures are made.

Over and above these minimum standards, there are specific additional size and placement requirements that vary according to the type of information being disclosed. This approach represents an effort to display most prominently the information that has the greatest importance for consumers, while at the same time reducing the potential cost burdens on the pay-per-call service providers.

1. Cost of the Call

Section 308.3(a) describes the requirements for disclosing the costs of a call to a pay-per-call number. These requirements are the same as those for disclosure of costs in the preamble to the pay-per-call service itself. Advertisers must disclose the total cost of a call if there is a flat fee charged. If the call is billed on a time-sensitive basis, the advertisement must disclose the cost per minute and any minimum charges. If the duration of the program can be determined in advance, the advertisement must state the total cost for the complete program. If the duration of the program cannot be determined in advance, because it involves a live conservation or is dependent upon options selected by the caller, the advertisement must disclose that the length of the call if subject to the caller's discretion, unless it is otherwise clear from the advertisement that such is the case.

If the call is billed on a variable rate basis, that is, if the rate will change depending on options chosen by the caller, the advertisement must state the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

[4] 47 U.S.C. 228. This section was added by title I of the Telephone Disclosure Act.

The advertisement must disclose any other fees that will be charged for the service (for instance, computer time charges). If the caller may be transferred to another pay-per-call number, the advertisement must also disclose the cost of the other call, in accordance with the above.

In television advertising, the cost must be disclosed in both the audio and video portions of the advertisement. The video portion must appear on the screen simultaneously with and for the same duration as the video display of the pay-per-call number. Each letter and numeral of the video portion of the cost disclosure must be at least as large as each letter and numeral of the pay-per-call number to which it is adjacent.

In print advertisements, the disclosure must be placed adjacent to each presentation of the pay-per-call telephone number. As in televisions advertisements, each letter and numeral of the disclosure must be at least as large as each letter and numeral of the pay-per-call number.

In radio advertisements, the cost disclosure must be made at least once, and must be delivered immediately following the first presentation of the pay-per-call number. In any program-length radio commercial, the cost must be disclosed each time the pay-per-call number is given.

2. Sweepstakes; Games of Chance

Section 308.3(b) addresses pay-per-call services that advertise sweepstakes, including games of chance. The proposed rule incorporates the requirements of the Telephone Disclosure Act that such advertisements clearly and conspicuously disclose the odds of winning a prize, award, service, or product at no cost or at reduced cost, or the factors that will determine the odds, if the odds are not calculable in advance (e.g., if the odds depend on how many times the game is played). The proposed rule limits the application of the odds disclosure requirement to those situations where the prize, etc., is offered through a sweepstakes or game of chance. In addition, the proposed rule requires a disclosure that no purchase (*i.e.*, no call to the pay-per-call service) is required to participate, along with a disclosure of a free alternative method of entry and instructions on how to enter.[5] The proposed rule also requires that the advertisement disclosure the scheduled termination date of the game.

In television advertisements, each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. There are no additional requirements for print or radio disclosures, beyond the minimum standards described above.

3. Federal Programs

Section 308.3(c) treats advertisements for pay-per-call services that provide information on Federal programs,[6] but that are not sponsored or endorsed by any Federal agency. The proposed rule requires that the advertisement clearly and conspicuously disclose, at the beginning, that the pay-per-call service is not authorized, endorsed, or approved by any federal agency.

In television advertisements, each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. In both television and radio advertisements, the disclosure must begin within the first fifteen (15) seconds of the advertisement.

In print advertisements, the disclosure must appear within the top one-third of the advertisement.

4. Prohibition on Advertising to Children

Section 308.3(d) tracks the language contained in the Telephone Disclosure Act by prohibiting a provider of pay-per-call services from directing advertisements for such services at children under the age of 12, unless the service is a bona fide educational service (as defined in § 308.2(a)).

For purposes of the proposed rule, advertisements directed to children under 12 are defined, in § 308.3(d)(2), both by the type of medium in which they appear, as well as by the nature and content of the advertisement. Advertisements directed to children under 12 are presumed to include the following: Advertisements appearing in publications directed to children (*e.g.*, children's books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed to children (*e.g.*, children's programming as defined by the FCC,[7] animated programs, and after-school specials directed to children); advertisements broadcast during or immediately adjacent to radio programs directed to children; advertisements appearing on a commercially prepared video directed to children; and advertisements or promotions appearing on product packaging directed to children. In addition, any advertisement, regardless of placement, that is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like, will also be presumed directed to children under the age of 12. However, § 308.3(d)(3) provides that the presumption contained in § 308.3(d)(2) may be rebutted with competent and reliable evidence demonstrating that the receiving audience is composed predominantly of individuals aged 12 or older.

5. Advertising to Individuals Under 18

Section 308.3(e) requires a clear and conspicuous parental permission disclosure in all pay-per-call advertisements directed primarily to individuals under the age of 18, and describes the requirements for such a disclosure. For purposes of the proposed rule, advertisements directed to individuals under 18 are defined, in § 308.3(e)(5), in terms of a presumption based on the medium in which the advertisement is placed, as well as by the nature and content of the advertisement itself.

Advertisements directed primarily to individuals under 18 include the following: Advertisements appearing in publications directed primarily to individuals under 18 (*e.g.*, certain books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed primarily to individuals under 18 (*e.g.*, mid-afternoon weekday television shows); advertisements broadcast on radio stations directed primarily to individuals under 18; and advertisements appearing on a commercially-prepared video directed primarily to individuals under 18. Finally, any advertisement, regardless of placement, that is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like will be presumed to

[5] Offering a free method of entering a sweepstakes or game of chance is necessary to avoid violation of the Federal law prohibiting commercial lotteries, 18 U.S.C. 1301.

[6] An example would be a service providing on-line computer access to the Federal Register or the Congressional Record.

[7] The FCC defines "children's programming" as "programs originally produced and broadcast for an audience of children 12 years old and under." (Policy and Rules Concerning Children's Television Programming, Report and Order, April 9, 1991, Docket No. 90-570.) Thus, the FCC definition relates to children 12 years old and under, while this rule prohibits pay-per-call services and advertisements for such services directed to children under the age of 12. Nevertheless, the FCC's definition should provide a useful benchmark. Moreover, to the extent that the FCC's definition includes individuals not covered by the Telephone Disclosure Act, an advertiser may submit competent and reliable evidence, such as audience composition data, to show that the audience is predominantly composed of children aged 12 and older.

be directed primarily to individuals under the age of 18. However, § 308.3(e)(6) provides that the presumption contained in § 308.3(e)(5) may be rebutted with competent and reliable evidence demonstrating that the receiving audience is composed primarily of individuals aged 18 or older.

The standard required to demonstrate that the receiving audience is composed primarily of individuals aged 18 or older is different from the standard required to demonstrate that the receiving audience is composed predominantly of individuals aged 12 or older (as described in section 4, above). These different standards ("primarily" versus "predominantly") are based on the specific language differences in the Telephone Disclosure Act. While the Act prohibits advertisements for pay-per-call services "directed" at children under 12, it provides that advertising "directed primarily" to individuals under 18 must have a parental permission disclosure. Thus, the Commission contemplates that in order to rebut the presumption that an advertisement is directed primarily to individuals under 18, the advertiser would need only to show that more than half of the receiving audience is 18 or older. At that point, the advertisement would not appear to be "directed primarily" to those under 18. In contrast, the Commission contemplates that in order to rebut the presumption that an advertisement is directed to children under the age of 12, the advertiser would have to show that something more than two-thirds to three-quarters of the audience is 12 years of age or older. The Commission recognizes the potential difficulties raised by these provisions, and accordingly has framed specific questions for comment on them.

In television or videotape advertisements, the video disclosure concerning parental permission must be adjacent to the largest presentation of the pay-per-call number, and each line of the video portion of the disclosure must occupy at least one-tenth of the vertical field of the television screen. In any program-length commercial (*i.e.*, 15 minutes or longer), the video disclosure must appear simultaneously with and for the same duration as each presentation of the pay-per-call number.

In print advertisements, the disclosure must be adjacent to the largest presentation of the pay-per-call number. In any program-length radio commercial, the disclosure must be delivered immediately preceding each delivery of the pay-per-call number.

6. Prohibition Against Electronic Tones in Advertising

Section 308.3(f) reiterates the language of the Telephone Disclosure Act by prohibiting providers of pay-per-call services from using advertisements that emit electronic tones that can automatically dial a pay-per-call telephone number.

7. Telephone Solicitations

Section 308.3(g) addresses telephone messages that solicit calls to pay-per-call services. Such messages might be accessed through an 800 telephone number, for example,[8] or through any regular long distance or local telephone exchange.[9] The proposed rule requires that the message disclose the cost of the pay-per-call service in accordance with the requirements for cost disclosures set out in § 308.3(a)(1).

8. Toll-free Telephone Numbers

Section 308.3(h) prohibits advertisements for pay-per-call services from referring to an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, if callers to that number may be connected to an access number for, or transferred to, a pay-per-call service.

*Section 308.4 Special Rule for Infrequent Publications*

As provided in the Telephone Disclosure Act, § 308.4 allows an exemption from the cost disclosure requirements of § 308.3(a) for advertisements for pay-per-call services that appear in certain publications that are printed once a year, or less frequently, such as a yellow pages directory. Instead of the cost disclosures required by § 308.3(a), advertisements for pay-per-call services in this type of publication can include a clear and conspicuous disclosure that a call to the pay-per-call service may result in a substantial charge above the long-distance charge. In order to qualify for this exemption, the publication must be: (1) widely distributed; (2) printed annually or less frequently; and (3) one that has an established and written policy of not publishing specific prices in advertisements.

*Section 308.5 Pay-Per-Call Service Standards*

Section 308.5 sets forth the various requirements and prohibitions that apply to the actual operation of pay-per-call services. As required by the Telephone Disclosure Act, each pay-per-call telephone message must be preceded by an introduction or preamble, for which the caller is not charged, that discloses various facts relevant to the consumer's decision whether to complete the call and incur the charge for the service. These disclosures are set forth in § 308.5(a).

First, the preamble must identify the name of the provider of the pay-per-call service and describe the service that is offered.[10] Thus, the consumer will have some idea of what he or she will receive for the charge, and some minimal identifying information about the entity he or she is calling.

Second, the preamble must disclose the cost of the call, in the same specific manner and detail required for this information in advertisements.

Third, the preamble must state that charges for the call will begin at the end of the preamble, after a clearly discernible signal or tone, and that the caller may avoid any charge for the call by hanging up at or before the sound of the tone.

Fourth, the preamble must state that anyone under the age of 18 must have parental permission to make the call. Finally, if the pay-per-call service provides information about a Federal program, but is not operated or authorized by any Federal agency, the preamble must state that the service is not authorized, endorsed, or approved by any Federal agency.

The caller must be able to hang up at or before the end of the introductory message without incurring any charge. Therefore, § 308.5(b) states that the provider is prohibited from charging a caller any amount whatsoever if the caller hangs up within five seconds after the conclusion of the preamble. This gives the consumer sufficient time, after hearing the complete preamble message and the signal or tone indicating the end of the preamble, to make the decision to

[8] The proposed rule prohibits the providing of pay-per-call services through 800 telephone numbers. Thus the caller could not be connected or transferred to a pay-per-call service after calling an 800 telephone number. However, there would be no prohibition against using an 800 telephone number to advertise a pay-per-call service so long as no direct connection or transfer to the service could be made.

[9] The Telephone Consumer Protection Act of 1991, 47 U.S.C. 227, would ban all computer-generated calls to homes unless such a call is made for emergency purposes or the subscriber consents in advance to it. The Act became effective December 20, 1992. However, the United States District Court for the District of Oregon granted a preliminary injunction against enforcement. *Moser v. FCC*, No. 92-1408-AS (D. Or. Dec. 22, 1992). If the statute is sustained against challenge, computer-generated calls to homes could not be used to solicit calls to a pay-per-call service.

[10] The statute requires description of the service, but not identification of the pay-per-call provider. However, requiring identification of the provider is consistent with current FCC regulations that govern the interstate transmission of pay-per-call services by common carriers. 47 CFR 64.711(b)

disconnect and to do so without incurring any charge for the call.

The Telephone Disclosure Act gives the Commission discretion to exempt from the preamble requirement pay-per-call services provided at "nominal" charges, as defined by the Commission. This exemption provision recognizes that below a certain minimal level, it may not be cost effective for the provider to offer the service if all of the disclosures required by § 308.5(a) must be included in a preamble for which the caller cannot be charged. Therefore, § 308.5(c) creates an exemption to the preamble requirement when the total cost of the pay-per-cost service (whether billed as a flat rate or on a time-sensitive basis) is $2.00 or less.[11]

In addition, the Act gives the Commission discretion to allow pay-per-call providers to create a mechanism whereby frequent callers to a particular service can bypass the preamble during subsequent calls. However, the Act further states that any such bypass mechanism must be disabled following a price increase, and remain disabled for a period of time sufficient to give frequent callers adequate notice of the price change. Therefore, § 308.5(d) states that pay-per-call service providers that offer frequent callers the option of activating a bypass mechanism to avoid the preamble will not be in violation of § 308.5(a), provided that any such bypass mechanism is disabled for no less than 30 days after the institution of a price increase or a change in the nature of the service offered.

In addition to the preamble message, the Telephone Disclosure Act imposes various other requirements and prohibitions upon the providers of pay-per-call services, and these also have been incorporated into § 308.5 of the proposed rule. Section 308.5(e) prohibits pay-per-call service providers from billing consumers any amount in excess of the amount described in the preamble and from billing for any services provided in violation of the Commission's rule.[12]

Section 308.5(f) requires that providers of pay-per-call services stop the assessment of time-based charges immediately upon disconnection by the caller. However, the Commission recognizes that time-sensitive billing is accomplished in one-minute increments, and that any portion of a minute will be billed as a full minute.

Section 308.5(g) imposes a ban on pay-per-call services directed to children under the age of 12, similar to the ban on advertisements for such services that are directed to children under 12. Pay-per-call services that are produced or designed for children under 12, in light of the subject matter, content, language, featured personality, characters, tone, or message, are presumed to be covered by the prohibition, regardless of when or where they are advertised. Moreover, any service advertised in the manner described in § 308.3(d)(2) (which defines those advertisements presumed to be directed to children under 12) is presumed to be a pay-per-call service itself directed to children under 12. Both presumptions may be rebutted, however, with evidence that recipients of the service are predominantly individuals aged 12 or older.

Section 308.5(h) of the proposed rule prohibits the use of an 800 telephone number (or any other telephone number advertised or widely understood to be toll free) for pay-per-call services. Thus, for example, callers to an 800 number cannot be connected to an access number for, transferred to, or otherwise billed for a pay-per-call service. The provision is a companion to § 308.3(h), which prohibits providers of pay-per-call services from referring in advertisements to an 800 telephone number, if callers to that number are connected or transferred to a pay-per-call service.[13] It should be noted, however, that any service for which charges are assessed pursuant to a "presubscription or comparable arrangement," as defined in § 308.2(e), would still be permitted in connection with a call to an 800 telephone number, since this category of service has been removed from the definition of "pay-per-call services" contained in § 308.2(c).

Under § 308.5(i) of the proposed rule, pay-per-call service providers are obligated to ensure that any billing statement for their charges displays the pay-per-call service charges in a part of the bill identified as not being related to the consumer's local and long distance telephone charges. For each pay-per-call service charge, the bill must specify the type of service, the amount of the charge, and the date, time, and duration of the call.[14]

Finally, § 308.5(j) of the proposed rule makes pay-per-call service providers liable for refunds to consumers who have been billed and have paid for services pursuant to programs found to have violated the regulations prescribed by the FTC or any other Federal rule or law. This provision will facilitate the redress of consumers who have been injured by charges from pay-per-call service providers that have engaged in illegal practices.

*Section 308.6 Access to Information*

The Telephone Disclosure Act gives the Commission authority to require that common carriers that provide telephone services to providers of pay-per-call services make available to the Commission any records and financial information maintained by the carrier relating to the arrangements (other than for the provision of local exchange service) between the carrier and any provider of pay-per-call services. Section 308.6 of the proposed rule incorporates this requirement as set forth in the statute.[15]

*Section 308.7 Billing and Collection for Pay-Per-Call Services*

Section 308.7 of the proposed rule sets forth the requirements for billing and collection of pay-per-call services, including procedures for correcting billing errors with respect to telephone-billed purchases. The Telephone Disclosure Act mandates that these requirements be substantially similar to those prescribed under the Truth in Lending Act and the Fair Credit Billing Act, 15 U.S.C. 1601, *et seq.*, to resolve credit billing disputes. Thus, many of the requirements in § 308.7 are

[11] Current FCC regulations for common carriers contain an exemption for programs with a flat-rate charge of $2.00 or less. 47 CFR 64.711(a).

[12] Title I of the Act imposes a similar requirement upon common carriers that bill for pay-per-call services. The carrier must ensure that a telephone subscriber is not billed for any services that the carrier knows, or reasonably should know, were provided in violation of regulations issued by the FTC pursuant to title II of the Act.

[13] A similar provision in title I of the Act, 47 U.S.C. 228(c)(6), requires common carriers to prohibit by tariff or contract the use of an 800 telephone number (or any other number advertised or widely understood to be toll free) for the provision of pay-per-call services. This provision appears to prohibit any use of an 800 or other toll-free number that results in the calling party being charged for the call in the absence of a preexisting agreement or disclosure of a credit or charge card number during the call.

[14] Title I of the Telephone Disclosure Act imposes the same requirements upon common carriers that offer billing and collection services to pay-per-call service providers. In addition, the common carrier must disclose on the billing statement a toll-free telephone number that the subscriber can call for further information, including the name and mailing address of any provider of pay-per-call services offered by that carrier.

[15] In addition, title I of the Act lists certain categories of information that common carriers must make available on request to Federal and State agencies and other interested persons. These include: (A) a list of the telephone numbers for each of the pay-per-call services carried; (B) a short description of each such service; (C) a statement of the total cost or the cost per minute and any other fees for each such service; (D) a statement of the pay-per-call service's name, business address, and business telephone number; and (E) such other information as the FCC considers necessary for the enforcement of its regulations and other applicable Federal statutes and regulations.

reformulations of provisions in Regulation Z, 12 CFR part 226, the implementing regulation of the Truth in Lending Act, or of comments in the Official Staff Commentary on Regulation Z, issued by the Board of Governors of the Federal Reserve System. 12 CFR part 226, Supplement I.

1. Definitions

Section 308.7(a) defines the terms applicable to billing and collection: billing entity, billing error, customer, preexisting agreement, providing carrier, telephone-billed purchase, and vendor.

The term "telephone-billed purchase" is defined as it is in the Telephone Disclosure Act. It applies to any purchase involving the use of a telephone that is consummated solely as a result of the completion of the call or the subsequent entry of a number or access code using a rotary or touch tone telephone, or by comparable action. The term does not apply to any purchase by a caller pursuant to a preexisting agreement (such as presubscription) with the vendor, nor to any service that the FCC determines by rule is closely related to the provision of telephone service and is subject to billing dispute resolution procedures required by Federal or State law. Also exempt are sales transactions that are otherwise subject to billing dispute resolution procedures required by Federal law (*e.g.*, credit card purchases under the Fair Credit Billing Act).

The term "preexisting agreement" is used in the Telephone Disclosure Act but is not defined. The proposed definition would equate the term with a "presubscription or comparable arrangement," defined in § 308.2(e) of these regulations.

The term "billing entity" also is used in the statute but is not defined. The proposed rule defines the term to apply to any person—whether a common carrier, vendor, third-party biller, or other person—who sends a billing statement to a customer for a telephone-billed purchase. The term would also apply to any person who assumes responsibility for receiving and responding to billing error complaints or inquiries, even if that person does not send billing statements to customers.

The Telephone Disclosure Act's definition of "customer" is broadened to cover any person who is billed for a telephone-billed purchase, whether or not that person placed the call or received the goods or services in question. This would give these persons the billing error rights accorded to other "customers" under the statute.

The proposed definition of "providing carrier" is virtually identical to the definition in the Telephone Disclosure Act. It applies to any common carrier whose telephone lines are used to transmit a telephone-billed purchase, regardless of whether the common carrier has a contractual arrangement with the vendor.

"Vendor" is defined as it is in the statute. The term applies to the person who sells the goods or services that are the subject of the telephone-billed purchase.

"Billing error" is defined by the Telephone Disclosure Act to encompass a number of situations that result in the reflection of a mistake or inaccuracy on a billing statement for a telephone-billed purchase about which a customer might complain or seek clarification. The billing errors described in the Act closely resemble those described in the Fair Credit Billing Act's definition of "billing error." 15 U.S.C. 1666(b). The proposed rule expands upon the Act's definition of "billing error" in the following two provisions.

First, § 308.7(a)(2)(i) of the proposed rule includes in the definition of billing error "a reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer *who was billed for the purchase*" (emphasis added). The clause "who was billed for the purchase" is added to the definition to make clear that the "customer" who has the right to assert this billing error is the customer who was billed for the purchase, not the customer who attempted to acquire the goods or services.[16]

Second, § 308.7(a)(2)(viii) of the proposed rule adds a section to the definition of "billing error." In this section, a billing error is defined to include the failure to display charges for a telephone-billed purchase on a billing statement in the manner prescribed by § 308.5(i) of the proposed rule, *i.e.*, by segregating them from other telephone charges and specifying the type of service, the amount of the charge, and the date, time, and duration of the call.

[16] The Telephone Disclosure Act defines a "customer" to mean "any person who acquires or attempts to acquire goods or services in a telephone-billed purchase," whether or not that person is the one billed for the purchase. In some cases, the person who is billed for the purchase is not the person who made or attempted to make the telephone-billed purchase. This can occur, for example, when a telephone number has been reassigned, and the new recipient is billed for pay-per-call transactions attributable to the previous subscriber who held that telephone number.

2. Initiation of a Billing Review

Section 308.7(b) sets forth the steps a customer must take to properly notify a billing entity of a billing error. The customer must give notice of the error within 60 days after the sending of the first billing statement that disclosed the charge for the telephone-billed purchase. The procedure is patterned after the Fair Credit Billing Act process used to correct credit billing errors. However, unlike the procedure with credit billing errors, the rule as proposed would not require written notice to initiate review of a telephone-billed purchase.

Section 308.7(c) of the proposed rule requires the billing entity to disclose on or with the billing statement whether the customer may provide oral or written notice of the billing error. If the billing entity permits oral notice, the proposed rule establishes a presumption that a customer who orally communicates any notice of a billing error to a billing entity properly initiated a billing review in accordance with the prescribed procedures. This presumption would not apply if the billing entity required its customers to provide written notice to initiate a billing review, and the billing entity disclosed this requirement on or with the billing statement.

3. Responding to a Billing Error Notice

Section 308.7(d) explains the procedure a billing entity must follow to respond to a customer's billing error notice. The billing entity must first acknowledge the customer's notice in writing within 30 days after receiving it. Written notice may consist of a single sentence on the customer's billing statement (*e.g.*, "Your dispute is acknowledged."). An acknowledgment need not be sent if the billing entity resolves the billing error within the 30-day period. In order to resolve a billing error, the billing entity must either correct the problem and credit the customer's account for the amount alleged to be in error, or send an explanation to the customer, after conducting a reasonable investigation, stating by the billing entity believes that no billing error occurred or that a different billing error occurred from the one asserted by the customer.

The billing entity has the option of correcting a billing error without conducting an investigation. If it chooses this option, the billing entity must inform the customer, either orally or in writing, that the error has been corrected and that removal of the disputed charge from the customer's account does not prevent a vendor or

providing carrier who might have a financial interest in the disputed charge from attempting to collect it. The billing entity must provide the customer with the name, address, and telephone number of any such vendor or carrier.

If the billing entity elects to investigate the customer's allegation of a billing error, it must contact any persons who might have documents or other information to support or refute the customer's assertions. If the customer's alleged billing error was that goods or services ordered were never received, the billing entity would not be permitted to deny the validity of the billing error unless its investigation confirmed that the goods or services were actually delivered. There will be a presumption that goods or services were in fact delivered where a vendor or providing carrier can produce business documents showing the date and place of delivery. After conducting the investigation, the billing entity must provide the customer with an explanation if it does not agree that a billing error occurred as alleged by the customer. The billing entity must give the customer a written explanation of its determination, and any supporting documents, if the customer request such documentation.

The billing entity is required to complete all of the actions outlined above, in responding to a customer's billing error complaint, within 90 days from its receipt of the billing error notice. After it has completed its actions, the billing entity must notify the appropriate vendor or providing carrier of its decision if it is determined that any disputed amount is in error. If the billing entity determines that a disputed amount is not in error, it must notify the customer in writing of the time when payment of the disputed amount is due. The customer must be given at least 20 days from the date of this notice to pay the disputed amount. Additionally, the customer must be told in writing that continued failure to pay the disputed amount might subject the customer to collection action or being reported to a credit reporting agency.

Section 308.7(e) excuses the billing entity from following the prescribed response to a billing error notice if the customer agrees that there is no error and withdraws the complaint before the time limit expires for the billing entity to have completed its course of action.

Section 308.7(f) limits the billing entity's obligation to respond to a customer's billing error complaint to the procedures set forth in § 308.7(d). Once the billing entity follows the prescribed procedures, it will not have to continue to respond in the same manner to subsequent assertions by the customer of the same billing error.

4. Restrictions on Collection Action During Billing Review

Section 308.7(g) sets forth the customer's right to withhold payment of any disputed amount after having provided notice of a billing error. No one may try to collect this amount from the customer until the billing entity has completed its billing review and given the customer 20 days thereafter to pay any disputed amount found not to be in error. The billing entity may continue to display the disputed charge on the customer's billing statement during the billing review, so long as the statement discloses that payment of the disputed amount is not required. There is no restriction on the billing entity's right to collect any undisputed charges on the customer's bill.

5. Limitations on Charges for Conducting a Billing Review

A customer may not be assessed any charge for initiating a billing review if a billing error is found to have occurred or if the billing entity elects to credit the customer's account for the alleged error without conducting an investigation. Section 308.7(h) does not prohibit a billing entity, providing carrier, or vendor from imposing a charge when no billing error has occurred, but it does limit the amount of such a charge. Inasmuch as the Telephone Disclosure Act grants the customer billing-error rights with respect to telephone-billed purchases, any such charges may be considered unreasonable, and therefore impermissible, to the extent that they are found to have a chilling effect on customers' good faith assertions of their rights under this section.

6. Restrictions on Credit Reporting

Section 308.7(i) of the proposed rule sets forth restrictions on the reporting of pay-per-call delinquencies to third parties, *e.g.*, credit bureaus. It forbids anyone from reporting or threatening to report adverse information to a third party concerning the customer's withholding payment of any disputed amount until the billing entity has completed its billing review and given the customer an additional 20 days in which to pay any disputed amount found not to be in error. Reporting that the customer's account is delinquent or overdue is prohibited, but a simple statement that the amount or account is in dispute is not considered adverse information.

If the customer reasserts the billing error within 20 days after receiving word of the billing entity's disposition of the matter, a billing entity, providing carrier, vendor, or other agent may not report the customer's account as being delinquent unless that person also reports that the matter is in dispute. In addition, any such person making the report must inform the customer in writing of the name and address of each person to whom it reported the delinquency. Once the dispute has been settled, any person who reported adverse information concerning the customer's account must provide the recipients of that information with written notice of the settlement.

Section 308.7(i) does not prohibit the reporting of adverse information concerning any undisputed portion of the customer's account that remains unpaid.

7. Forfeiture Penalty

Section 308.7(j) imposes a forfeiture sanction upon any billing entity, providing carrier, vendor or other agent that fails to comply with the billing dispute requirements of the proposed rule. Any such person who fails to comply with its responsibilities under the proposed rule with respect to any billing error properly asserted by the customer forfeits the right to collect from the customer the amount alleged to be in error, regardless of whether a billing error has in fact occurred. The amount required to be forfeited under this provision may not exceed $50 per transaction. Any attempt by any person to collect an amount that the person should forfeit under this subsection may be considered to undermine the rights provided to customers under these regulations and, hence, to be a violation of the FTC Act, as provided by the Telephone Disclosure Act.

8. Notification of Returns and Crediting of Refunds

Section 308.7(k) sets forth requirements that any vendor who is not the billing entity must follow to give the customer a prompt credit or refund for returned goods or a forgiven debt. If the customer is to be given a cash refund, the vendor must mail or deliver it to the customer within seven business days after acknowledging that a refund is due. If a credit is to be applied to the customer's account, the vendor must transmit a credit statement to the billing entity within seven days after acknowledging that a credit is due. The vendor must transmit the credit statement to the billing entity through its normal channels for processing telephone-billed purchases. The billing entity is given three business days after receiving the credit statement to credit the customer's account, and the credit

shall be reflected on the customer's next billing statement.

9. Customer's Right to Assert Claims or Defenses

Section 308.7(l) makes any billing entity or providing carrier who attempts to collect charges from a customer for a disputed telephone-billed purchase subject to any claims or defenses that the customer may lawfully assert against the vendor with respect to that purchase. The customer's rights under this provision are not dependent on the customer's assertion of a billing error pursuant to § 308.7(b). However, the customer must first have made a good faith attempt to settle the dispute with the vendor, or the providing carrier (other than the billing entity) if the vendor is not readily accessible. Any determination of what claims or defenses are valid as to the vendor must be made under state or other applicable law. The billing entity or providing carrier cannot be liable under this provision for any amount greater than the amount of the telephone-billed purchase, plus any related charges for which the customer has been billed.

10. Prohibition on Retaliatory Actions

Section 308.7(m) makes it unlawful to accelerate the customer's debt or to restrict or terminate the customer's access to pay-per-call services to penalize the customer for exercising in good faith any billing error rights accorded by these regulations. This does not constitute an absolute prohibition on all actions that might effectively limit a customer's access to pay-per-call services. For example, if a vendor or providing carrier regularly suspends a customer's access to pay-per-call services when that customer's outstanding debt exceeds a certain dollar amount, that vendor or providing carrier would not be prohibited from applying any disputed amount towards that outstanding debt. The determining factor is whether the action was motivated, or reasonably appears to have been motivated, by a desire to retaliate against the customer for asserting his or her billing error rights.

11. Notice of Billing Error Rights

Section 308.7(n) requires a billing entity to provide its customers with written notice of their pay-per-call billing rights at least once per calendar year. If the billing entity is not a common carrier, it must send the notice to each customer (whether that customer is an old, current, or new customer) with the first billing statement for a telephone-billed purchase mailed or delivered to that customer after the effective date of the regulations. Thereafter, the billing entity must ensure that the customer receives the notice at least once during each subsequent calendar year in which that customer receives a bill for a telephone-billed purchase.

Billing entities that are common carriers have the option of sending the annual statement to only those customers whom they have billed for a telephone-billed purchase, or they may elect to send the annual statement to all of their customers who receive telephone service of any kind. If they choose the former approach, they must follow the procedure set forth in § 308.7(n)(1)(i). If they opt for the latter, they must comply with § 308.7(n)(1)(ii), which requires the billing entity to send the annual statement to all of its customers within 60 days after the effective date of the regulations. The billing entity must then send the notice at least once each following year to all of its customers at intervals of not less than six months nor more than 18 months.

The annual statement would inform the customer how to initiate a billing review and would explain the presumption that applies if the customer is permitted to provide oral notice. The annual statement would also describe the procedure the billing entity must follow to respond to a billing error notice and to investigate the alleged billing error. Additionally, the annual statement would disclose the customer's right to withhold payment of any disputed amount and the restrictions placed on collection and adverse reporting of the disputed amount. Finally, this statement would tell the customer about the forfeiture penalty.

Instead of sending the annual statement, the billing entity may choose to send an abridged pay-per-call billing rights summary to its customers with each billing statement. Like the annual statement, the alternative summary statement informs the customer how to initiate a billing review, including the presumption applying to oral notice, but it does not explain the procedure the billing entity must follow to respond to and investigate a billing error complaint. Also, the alternative summary contains an abbreviated statement of the customer's rights with respect to the collection and adverse reporting of any disputed amount, and does not mention the forfeiture penalty.

12. Multiple Billing Entities

A telephone-billed purchase may involve more than one billing entity if the person responsible for responding to and investigating billing error complaints and inquiries is someone other than the person who sends the billing statements to customers. In this event, the billing entities must decide who between or among them will be responsible for making any required disclosures and for complying with the other requirements of these regulations. Where a particular disclosure is required, a single complete disclosure must be made by a single billing entity, rather than partial disclosure from several billing entities.

If the customer sends notice of a billing error to a billing entity other than the one designated to receive such notice, that billing entity must either transmit that notice to the appropriate billing entity within 15 days or promptly provide the customer with the name, address, and telephone number of the appropriate billing entity.

13. Multiple Customers

Under § 308.7(p), disclosures may be made to any customer primarily liable on a joint account. Disclosure responsibilities are not satisfied by giving disclosures only to an authorized user of the account who is not a principal obligor.

*Section 308.8 Severability*

This section provides that if any rule provision is stayed or held invalid, the other provisions will remain in effect.

**Section C. Invitation to Comment**

Before adopting this proposed rule as final, consideration will be given to any written comments submitted to the Secretary of the Commission on or before April 9, 1993. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**Section D. Public Workshop-Conference**

The FTC staff will conduct a Public Workshop-Conference to discuss written comments received in response to the Notice of Proposed Rulemaking. The purpose of the conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly areas of significant controversy or divergent opinions that are raised in the written comments. The conference is not intended to achieve a consensus of

opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. Commission staff will consider the views and suggestions made during the conference, in conjunction with its consideration of the written comments, in formulating its final recommendation to the Commission concerning the proposed rule.

Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the proposed regulations. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rulemaking proceeding. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views will not be accepted during the conference. The discussion will be transcribed and the transcription placed on public record.

To the extent possible, Commission staff will select parties to represent the following affected interests: advertisers, alternative billing and collection providers, local exchange carriers, interexchange (long distance) carriers, consumers, providers of pay-per-call services, service bureaus, state law enforcement and regulatory authorities, and any other interests that may be identified and deemed appropriate.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment during the 30-day comment period.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest within fifteen days of publication of the Notice of Proposed Rulemaking.
3. The party's attendance would promote a balance of interests being represented at the conference.
4. The party's attendance would promote the consideration and discussion of a variety of issues raised in the rulemaking proceeding.
5. The party has expertise in activities affected by the proposed regulations.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The number of parties selected will not be so large as to inhibit effective discussion among them.

A neutral, third-party facilitator will be retained for the conference. It will be held over the course of two consecutive days, on April 22 and 23, 1993. Parties interested in participating and authorized to represent an affected interest at the conference must notify Commission staff within 15 days of publication of the Notice of Proposed Rulemaking. Prior to the conference, parties selected to represent an affected interest will be provided with copies of written comments received in response to this notice.

### Section E. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.26(b)(5), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

### Section F. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this document because it is believed that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

The Telephone Disclosure Act requires the Commission to issue regulations, not later than 270 days after the date of enactment, relating to the operation of, advertising for, and billing and collection for pay-per-call services. Any economic costs imposed on small entities are, in many instances, specifically imposed by statute. Where they are not, efforts have been made to make the proposed rule's requirements flexible, in part to minimize any unforeseen burden on small entities, as described elsewhere in this notice. In any event, based on information currently available to the Commission staff, it is anticipated that the proposed regulations, as a whole, will result in few, if any, independent additional costs. To ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small entities. Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission hereby certifies under the Regulatory Flexibility Act (at 5 U.S.C. 605(b)) that the proposed regulations will not have a significant economic impact on a substantial number of small entities. This notice serves as certification to that effect for the purposes of the Small Business Administration.

### Section G. Paperwork Reduction Act

Questions 32 and 37 solicit comments on the need for and scope of possible recordkeeping requirements that, if adopted, would constitute "collections of information" as defined under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. See 44 U.S.C. 3502 and 5 CFR 1320.7. Such requirements would entail the maintenance of certain records under the sections of the proposed rule regarding Commission access to such information (§ 308.6) and billing and collection for pay-per-call services (§ 308.7). If, on the basis of comments received, it is determined that such recordkeeping requirements may be appropriate, OMB review will be sought pursuant to the provisions of that Act.

### Section H. Effective Date

The Telephone Disclosure Act directs the Commission to "prescribe" the regulations required under the Act within 270 days of enactment. An

effective date for these rules will be announced by the Commission when it publishes these regulations in final form.

**Section I. Questions on the Proposed Rule**

The Commission is seeking comments on various aspects of the proposed rule. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should be itemized according to the numbered questions in this Notice.

*Section 308.2 Definitions*

1. Are the definitions of the following terms, included in the proposed rule in § 308.2, clear, meaningful, and appropriate:

a. "Presubscription or comparable arrangement;"
b. "Program-length commercial;"
c. "Provider of pay-per-call services;"
d. "Reasonably understandable volume;"
e. "Slow and deliberate manner;" and
f. "Sweepstakes"?

2. The proposed rule defines the statutory term "bona fide educational service," which delimits the only pay-per-call services and related advertising that may be directed to children under the age of 12, in terms of the content of the service offered.

a. Is this definition clear, meaningful, and appropriate? What are the advantages and disadvantages of defining the term in this manner? Is the definition as drafted sufficiently narrow so as not to allow the exception to swallow the rule?

b. Would it be useful for the definition to include, as an additional standard for determining whether a program is a "bona fide educational service," the nature of the party offering the service? If so, what are the indicia of a bona fide educational organization? How should an organization or individual who offered such services be described so that it: (1) would include only those having a legitimate connection to education; and (2) would not be overly restrictive?

c. Are there other approaches to defining the term "bona fide educational service" that would be more useful?

*Section 308.3 Advertising of Pay-Per-Call Services*

3. Section 308.3(a) of the proposed rule requires that the disclosure of the cost of the call occur in conjunction with every display of the pay-per-call number in television advertisements and print advertisements. Would such a requirement be appropriate for radio advertisements also? Does the proposed rule provide adequately for disclosing to consumers the charges for the call, before they make the call? This section requires that every letter and numeral of the cost of the call be in the same type as the pay-per-call number. What are the advantages and disadvantages of this requirement? Does this specification result in disclosures that are larger than necessary to be "clear and conspicuous"? Is there a more appropriate measure for ensuring that the disclosure is "clear and conspicuous"? What costs, if any, are likely to arise from requiring cost disclosures of this, as opposed to some other, definite size?

4. Section 308.3(a)(ii) of the proposed rule requires that if a call is billed on a time-sensitive basis (*i.e.*, per minute charges instead of a flat fee), the advertisement must state the cost per minute and the total charge if the caller stays on the line for the full period of a fixed-length program (*i.e.*, a program whose duration can be determined in advance). If the duration of the program cannot be determined in advance (*e.g.*, calls involving a live conversation, or dependent upon options selected by the caller), the advertisement must disclose that the length of the call is subject to the caller's discretion, unless it is otherwise clear from the context that such is the case. Is it necessary and appropriate to require advertisers to disclose, if it is not clear from the context, that the length of the call is subject to the caller's discretion? Absent such a disclosure, will consumers know that there is no set time in which a complete program may be heard? Is further guidance required as to when it will be clear from the context that the caller determines the length of the call? Are there preferable, alternative ways to alert consumers that there is no set time in which a complete program may be heard and, consequently, that there is no maximum charge?

5. Sections 308.3 and 308.5 require, in the case of calls billed on a time-sensitive basis, that both pay-per-call service advertisements and preambles disclose either the maximum charge for the call in the case of programs whose duration can be determined in advance, or disclose that the length of the call is subject to the caller's discretion in the case of programs where it is not clear from the context that the duration cannot be determined in advance. To what extent is it unnecessarily duplicative or costly to require these disclosures in both advertisements and preambles?

6. Under §§ 308.3 (a) through (c), (e) of the proposed rule, in the case of television advertisements that are 15 seconds or less in length, if the pay-per-call number is presented only in the video portion, the disclosures are required to be made only in the video portion of the advertisement, instead of in both the audio and video portions. Does this requirement provide for adequate disclosures to consumers?

7. Section 308.3(b)(1) of the proposed rule requires that pay-per-call services that advertise prizes, awards, services, or products at no cost, or for a reduced cost, disclose the odds of winning the prize, award, service or product. In addition, if the odds are not calculable in advance, the factors used in determining the odds must be disclosed. The proposed rule limits the application of this provision to sweepstakes, including games of chance. Are there other types of promotions, such as lotteries, or games of skill, that should be subject to this provision? Is the proposed rule sufficiently clear as to the types of promotions subject to the rule? In addition to the required disclosures, what would be the advantages and disadvantages of additionally requiring that:

a. Advertisements for games of chance disclose limitations on the game-of-chance program's availability, such as geographical restrictions, time-of-day availability, or touch-tone phone requirements?

b. Advertisements for games of chance disclose the name, city, state, and customer service phone number of the promoter or provider of the pay-per-call service?

c. Advertisements for games of chance disclose the value of the prize? If such a disclosure were required, should "value" be based on the cost of the prize to the promoter, on the retail value of the prize, or on some other measure?

d. Promoters of games of chance have a "reasonable basis" for the disclosed odds of winning?

8. Section 308.3(b) requires disclosure of a free alternative method of entry and instructions on how to enter a game of chance in all advertisements. Absent a free method of entry, the game might be an illegal lottery. To the extent that criminal penalties would already attach for violation of the lottery laws, is this provision necessary and appropriate? If so, what would be the advantages and disadvantages of allowing pay-per-call service providers the option of disclosing the alternative method of entry and the instructions on how to enter in the pay-per-call service preamble instead of in the television or radio advertisement. Would informing

consumers of the free method of entry only during the preamble provide adequate notice to consumers of that option?

9. Section 308.3(b) requires that the odds of winning in games of chance be disclosed in all advertisements, including radio and television advertisements. Are the required disclosures of the odds of winning sometimes too complex or lengthy (for instance, where many different prizes are to be awarded) to be practical in television and radio advertisements? If so, what would be the costs and benefits of limiting the required disclosures of the odds of winning for television and radio advertisements to apply to those prizes exceeding a specified value, such as $25.00, $50.00, $75.00, or $100.00? What would be the advantages and disadvantages of allowing game promoters to aggregate prizes having a value of less than $5.00, $25.00, $50.00, or some other value, into one category for the purposes of disclosing odds of winning? What would be the advantages and disadvantages of allowing pay-per-call service providers the option of disclosing the odds in the pay-per-call service preamble instead of in the television or radio advertisements?

10. The proposed rule sets forth detailed requirements for disclosures in television, radio and print advertising with respect to placement, size, length and timing of the disclosures. What are the advantages and disadvantages of each particular requirement? Are there any modes of advertising in which the requirements would not be feasible? In addition, please comment on the following:

a. Are the size requirements, in particular those requiring disclosures to be one-tenth of the vertical field of the television screen, feasible for television advertisements?

b. Would it be useful for the rule to be more specific with respect to certain disclosures? For instance, is the requirement that disclosures be at least 12-point type sufficiently specific, or should the rule require a certain type style as well?

c. Are there any modes of print advertisements in which use of 12-point type for the cost or other disclosure would not be feasible or adequate (e.g., a matchbook or a billboard)? If so, how should the rule implement the statute's disclosure requirement in such advertisements?

d. Are particularized specifications for the placement, size, length and timing of disclosures necessary to ensure clarity of the disclosures, or would a more general standard (e.g., clear and conspicuous) be equally or more effective?

11. The statue bans directing advertisements for pay-per-call services (except those qualifying as "bona fide educational services") to children under the age of 12. To implement this requirement, the proposed rule, in § 308.3(d)(2), defines the phrase "advertisements directed to children under 12" in terms of a rebuttable presumption.

a. Is this definition clear, meaningful, and appropriate?

b. Is it useful for the definition to be in the form of a rebuttable presumption? What are the advantages and disadvantages of defining the phrase in this manner?

c. Does the definition provide sufficient guidance as to the standard and type of evidence required to rebut the presumption?

d. Is the rebuttable presumption defined too narrowly? Should pay-per-call providers be permitted to use forms of evidence other than evidance relating to audience composition to demonstrate that an advertisement is not directed to children under 12? For example, should evidence such as subject matter, visual content, age of models, language, characters, tone, or message be permitted to rebut the presumption that an advertisement is directed to children under the age of 12? What are the advantages and disadvantages of allowing reliance on such evidence to rebut the presumption? Would this standard provide sufficient guidance as to the type of evidence required to rebut the presumption?

12. The statute bans directing advertisements "primarily to individuals under the age of 18" unless they disclose that before calling the service the caller must obtain permission from a parent or guardian. To implement this requirement, the proposed rule, in § 308.3(e)(5), defines the phrase "advertisements directed primarily to individuals under 18" in terms of a rebuttable presumption.

a. Is this definition clear, meaningful, and appropriate?

b. Is it useful for the definition to be in the form of a rebuttable presumption? What are the advantages and disadvantages of defining the phrase in this manner?

c. Does the definition provide sufficient guidance as to the standard and type of evidence required to rebut the presumption?

13. The proposed rule contains two rebuttable presumptions. To rebut the presumption that an advertisement is directed to children under 12, an advertiser must show that the audience is predominantly composed of individuals 12 or older, while to rebut the presumption that an advertisement is directed primarily to individuals under 18, an advertiser must show that the audience is primarily composed of individuals 18 or older. The Commission contemplates that in order to rebut the presumption that an advertisement is directed primarily to individuals under 18, an advertiser would need only to show that more than half of the receiving audience is 18 or older. At that point, the advertisement would not appear to be "directed primarily" to those under 18. In contrast, the Commission contemplates that in order to rebut the presumption that an advertisement is directed to children under the age of 12, an advertiser would have to show that significantly more than half—perhaps two-thirds to three-quarters—of the audience is 12 years of age or older.

a. Is the use of the words "predominantly" and "primarily" clear, meaningful and appropriate to implement the statutory requirements? If not, are there other words or phrases that would more accurately describe those percentages? Is the rule's reliance on percentage of audience composition appropriate? If not, are there measures that could be used more effectively?

b. Is it appropriate to interpret the statutory ban on advertisements of non-excepted pay-per-call services to children under the age of 12 as prohibiting pay-per-call service advertisements if one-quarter to one-third of the receiving audience is composed of children under 12? Is this cut-off too low? Is it too high? If the percentages chosen are believed not to be appropriate, please submit any data, including data on audience composition and demography, on how often such a requirement would affect advertisements on television, cable, radio and in magazines. Based on available data (either cited or submitted), is there a percentage of audience composition that would reflect accurately a "children's audience?"

14. The proposed rule also bases its definitions of "advertisements directed to children under 12" and "advertisements directed primarily to individuals under 18" on the medium in which the pay-per-call advertisements appear and the nature and content of the advertisements themselves. In relying, in part, on content to define advertisements directed to a particular age group, does the definition sweep too broadly? If the definition were not based on advertising content, would the rule provide sufficient guidance as to the type of

advertisement that would be presumed to be directed to a particular age group?

15. The proposed rule sets forth detailed requirements for disclosures in television, radio and print advertising with respect to placement, size, length and timing of the disclosures. What are the advantages and disadvantages of this type of disclosure requirement? Are the specifications appropriate across-the-board, or are there instances in which they are unnecessarily overboard or, alternatively, not stringent enough? Should the proposed rule set forth a performance standard instead? For example, should providers of pay-per-call services be given the option of demonstrating, through tests, market surveys, or other evidence, that the required disclosures are reasonably understood by the receiving audience? What are the advantages and disadvantages of a performance standard? What performance standard should be applied to demonstrate that the disclosures are reasonably understood? Would it be preferable to set forth a performance standard while offering a safe harbor [17] to firms that choose to comply with detailed requirements such as those contained in the proposed rule? Alternatively, would it be preferable to require simply that the disclosures be "clear and conspicuous" and to structure the detailed requirements for placement, size, length, and timing as safe harbors?

16. Section 201(a)(2)(J) of the Telephone Disclosure Act states that the Commission may prescribe additional standards to prevent abusive practices.

a. A number of abusive practices have come to the Commission's attention in the course of its investigations of 900-number services. What would be the advantages and disadvantages, including the costs to pay-per-call service providers, if the rule required providers of pay-per-call services that advertise a service or product through a pay-per-call number to disclose in the advertisement all of the material terms, conditions, and obligations upon which receipt or retention of the service or product is contingent? These conditions could include the number of calls necessary to receive the service or product, if more than one; a clear and accurate description of the service or product; the full cost of obtaining or using the service or product; any requirement that the caller disclose personal information, such as the caller's Social Security number or income level; and any other information material to the caller's ability to take advantage of the offer of the service or product by calling the pay-per-call number.

b. Is a provision requiring disclosure of some or all of these conditions needed to prevent deceptive practices in the advertising of pay-per-call services, particularly in light of the Commission's ability to seek injunctive relief and consumer redress for such practices under § 13(b) of the Federal Trade Commission Act? If so, are there other material terms, conditions, or obligations that are imposed upon consumers by some pay-per-call providers that should specifically be named in a disclosure requirement? If such disclosure requirements are necessary, what are the relative costs and benefits of allowing the disclosures to be made in the preamble rather than in advertising?

c. Does the fact that the statute provides for enforcement by state law enforcement agencies as well as by the Federal Trade Commission render use of a nonspecific term such as "all material terms" without further definition so vague as to risk generating confusion over what terms should be included? Are there any particular advantages or disadvantages to including such a provision in the rule?

*Section 308.4 Special Rule for Infrequent Publications*

17. The proposed rule, in § 308.4, provides an exemption, with respect to cost disclosures, for advertisements that appear in "infrequent publications."

a. Is the definition of "infrequent publications" contained in § 308.4(b) clear, meaningful and appropriate? What are the advantages and disadvantages of such an exemption? Is it an appropriate exemption?

b. The proposed rule requires that the publication must have a written policy of not publishing specific prices in advertisements in order to qualify as an "infrequent publication." Is this a necessary requirement, or would it be sufficient if a publication has an established, but unwritten, policy of not publishing prices?

c. If any additional material terms (such as those described in question 16 above) are required by the rule, should infrequent publications be exempted from disclosure of any of those terms?

*Section 308.5 Pay-Per-Call Service Standards*

18. Under the preamble requirements set forth in § 308.5(a) of the proposed rule, a provider of pay-per-call services must disclose certain information in a preamble to the pay-per-call service.

a. Is it useful and appropriate to require a provider of pay-per-call services to identify its name during the preamble? Is it necessary to include this information in the preamble given the fact that common carriers providing billing and collection services for pay-per-call service providers will be required, pursuant to proposed FCC regulations, to establish a local or toll-free telephone number to provide to callers the name and mailing address of any provider of pay-per-call services offered by that carrier?

b. Should a provider of pay-per-call services also be required to identify its address, or city and state, in the preamble? Should this identifying information also be required in the billing statements, discussed in § 308.5(i) of the proposed rule?

19. Are the preamble cost disclosure requirements for calls billed on a time-sensitive and variable rate basis, set forth in §§ 308.5(a)(2) (ii) and (iii) of the proposed rule, sufficient and appropriate?

20. Section 308.5(a)(4) of the proposed rule requires that the preamble to each pay-per-call service inform the caller that anyone under the age of 18 must have the permission of a parent or legal guardian in order to complete the call. Should the rule mandate specific language, or provide safe harbor language, for this portion of the message? If yes, what language might effectively communicate to individuals under the age of 18 that they must have permission prior to calling a pay-per-call service.

21. The proposed rule, in § 308.5(b), prohibits the provider of pay-per-call services from charging a caller for the pay-per-call service if the caller hangs up at any time prior to five seconds after the end of the preamble.

A. Is this prohibition useful and appropriate?

B. What are the costs and benefits of this requirement, and to whom would they accrue?

C. Is five seconds a sufficient length of time to assure that consumers who hang up at the end of the preamble will not be billed for the call?

d. The proposed rule does not preclude the pay-per-call service from beginning its program immediately following the signal or tone that indicates the conclusion of the preamble, even though billing to the caller cannot begin until five seconds after that signal or tone. Should the rule require 2 or 3 seconds of silence between the preamble and the program to indicate to consumers that this is the appropriate time to exercise their discretion to hang up if they so choose?

[17] A "safe harbor" provides an example of a disclosure that satisfies the requirements of the rule.

22. Section 308.5(c) of the proposed rule exempts from the preamble requirements pay-per-call services with a nominal charge of $2.00 or less, whether billed on a flat rate or on a time-sensitive basis. What are the advantages and disadvantages of such an exemption? Is such an exemption useful and appropriate? Is a $2.00 fee level appropriate for this exemption? Should the exemption amount be adjusted periodically to reflect inflation? To assist the Commission in its evaluation of the suitability of setting the nominal charge at the $2.00 level, information is requested in the following areas:

a. Currently, what is the cost of including a preamble in a pay-per-call service program? How will the proposed rule affected this cost?

b. In 1992, for the industry as a whole, what were the total number of calls placed to pay-per-call services? In what proportion of these calls did the callers hang up during the preamble? Has this proportion increased or decreased over time, and why?

c. Is there a relationship between the cost of the call and the proportion of callers who hang up during the preamble? Are callers more likely to hang up during the preamble of more expensive calls?

d. Is information available on the reasons callers hang up during the preamble? If so, do the reasons differ according to the cost of the call? That is, are the reasons for hanging up during the preamble of a nominally-priced call different from the reasons for hanging up during an expensive call? Please explain.

e. Is information available on the proportion of callers who hang up during the preamble because they discover that the cost of the call exceeds what they had initially anticipated?

f. In what proportion of calls are charges contested? Is there a relationship between the cost of a call and the likelihood that its charges will be contested? Why do callers contest charges? Do the reasons differ according to the cost of the call? If the call is more expensive, are callers more likely to contest charges?

g. What is the relationship between the demand for pay-per-call services and the price of those services? To what extent can increases in the cost of the preamble be passed on to consumers, in the form of higher charges?

h. What is the current distribution of pay-per-call services in terms of the cost of the call? For example, what proportion of calls cost less then $1.00; $1.00 to $1.99; $2.00 to $2.99; $3.00 to $3.99; $4.00 to $4.99; $5.00 to $5.99; and $6.00 or more?

23. Section 308.5(d) of the proposed rule exempts from the preamble requirements pay-per-call services that offer frequent callers or regular subscribers the option of activating a bypass mechanism.

a. What are the advantages and disadvantages of such an exemption? Is such an exemption useful and appropriate?

b. The proposed rule requires this bypass mechanism to be disabled for a 30-day period after the institution of a price increase or a change in the nature of the service offered. Is this period of time sufficient? Is it too long? What other possible changes to the preamble should trigger disabling of the bypass mechanism? Is there a more efficient mechanism to ensure that frequent callers are informed of such material changes in the preamble?

c. Is it possible for common carriers to rate calls differentially when the preamble has been bypassed, so that billing to the caller can begin once the bypass has been triggered?

24. Should the rule exempt from the preamble requirements of § 308.5(a) data services, *i.e.*, pay-per-call services that transmit data from one computer to another, with no individual present to receive the information in the preamble? What would be the advantages and disadvantages of such an exemption? What is an appropriate and useful definition of such "data services?"

25. Should the provider of pay-per-call services be required to disconnect automatically a call after one full cycle of the pay-per-call program?

26. Should a provider of pay-per-call services be required to include a beep tone or other appropriate signal during a live interactive group program so that callers will be altered to the passage of time or accrued charges?

27. In order to address the potential problem of the billing of pay-per-call services through the use of fraudulent billing tapes, should the rule include a requirement that all billing for pay-per-call services be based on the call detail records provided by the certified carrier of the call?

28. Are there other ways in which the requirements of the proposed rule might be circumvented by providers of pay-per-call services? If so, what additional provisions might the Commission adopt in order to prevent such circumvention?

29. Should service bureaus be required to monitor all pay-per-call services that operate on their equipment to assure that such pay-per-call services comply with the provisions of this rule? Should service bureaus be held liable for violations of some or all of the provisions of the rule by pay-per-call services which operate on their equipment? What costs would arise from such requirements?

30. Should the rule include protection against the unauthorized use of a consumer's telephone to call pay-per-call services? Is it technically feasible to require all consumers to have an access code or PIN number which they must dial before being able to access any pay-per-call service? What are the advantages and disadvantages or costs to requiring such an access code? Is such a requirement useful and appropriate?

31. The Commission has been authorized to prescribe additional standards deemed necessary to prevent abusive practices or to prevent evasion of the rule. What specific additional standards might be desirable, or necessary, to prevent such practices, or to prevent evasion of the requirements and prohibitions set forth in this rule? What are the costs and benefits of these additional standards?

*Section 308.6 Access to Information*

32. Section 308.6 of the proposed rule requires common carriers that provide telephone services to any provider of pay-per-call services to make available to the Commission, upon written request, certain records and financial information concerning the arrangements between such carrier and the provider of pay-per-call services. Should the rule include a list of the types of records which common carriers must maintain for this purpose? If so, what information should be included in this listing? Should the final rule indicate the length of time such records must be maintained?

*Section 308.7 Billing and Collection for Pay-Per-Call Services*

33. Is the term "preexisting agreement" as used in § 304(1)(A) of the Telephone Disclosure Act synonymous with "presubscription or comparable arrangement" as defined in § 308.2(d) of the proposed rule?

34. To be considered a "billing error" under § 308.7(a)(2)(i), a telephone-billed purchase must not have been "made by the customer nor made from the telephone of the customer who was billed for the purchase."

a. Should a customer be permitted to assert as a "billing error" a telephone-billed purchase that was not made by that customer but made by another resident of the customer's household using the customer's telephone?

b. Should the answer differ depending on whether the person making the purchase is a minor?

c. What if the purchase was made from the customer's telephone by someone other than a member of the customer's household?

d. What if the purchase was made from outside of the customer's residence by someone other than a member of the customer's household who charged the call to the customer's telephone?

35. a. Section 308.7(b) of the proposed rule would not require the customer to provide written notice of a billing error. Any method of notification would be acceptable. Should written notification be specifically required? What are the advantages and disadvantages of requiring written notification?

b. Section 308.7(d)(1) of the proposed rule would require a billing entity to acknowledge the customer's billing error notice in writing. What are the advantages and disadvantages of requiring written acknowledgement? If written notification were not required how would compliance be verified?

c. Section 308.7(d)(3)(ii) of the proposed rule would require the billing entity to notify the customer in writing of the time when payment is due and to warn the customer in writing that a failure to pay might be reported to a credit reporting agency or subject the customer to a collection action. What is the economic impact on providing carriers and billing entities of requiring written notification?

36. Section 308.7(h) of the proposed rule allows a billing entity, providing carrier, or vendor to charge its customers for investigating billing errors. Should the rule provide an absolute prohibition on charges related to billing errors? How might such a prohibition affect the incidence of frivolous billing error complaints?

37. Section 308.7 of the proposed rule does not require billing entities, providing carriers, or vendors to maintain records with respect to the billing and collection of pay-per-call services.

a. Should the rule include a record retention provision?

b. Are there reasons why billing entities, providing carriers, or vendors should not be subject to record retention requirements similar to those imposed upon creditors under the Truth in Lending Act and Fair Credit Billing Act? (12 CFR 226.25).

c. What are the current record retention policies and practices of billing entities, providing carriers, and vendors with respect to billing, customer complaints and inquiries, collection activity, and related actions?

d. Are records currently retained for a sufficient period of time to demonstrate compliance with § 308.7? What would be the costs and benefits of any additional requirements that might be needed? What would be the economic impact on billing entities, providing carriers, and vendors of such additional record retention requirements?

e. If record retention is not required, how could compliance be verified?

f. What has been the experience of state and local law enforcement agencies with respect to record retention requirements? Have such requirements been useful? If yes, how? If no, why not? What types of enforcement issues could arise if record keeping were not required?

38. Should there be a provision limiting customer liability for unauthorized calls to pay-per-call services? If "yes," how could one determine whether a call to a pay-per-call service was "unauthorized"? Would use of an access code or PIN number assist in such a process?

39. The use of third-party billers is increasing in the pay-per-call industry. The practices of some of those third party billers may not offer the same billing protection to consumers that are currently offered by the common carriers. Identify any protections now offered to consumers by the common carrier that are neither presently offered by third-party billers, nor required by the proposed rule. Should the proposed rule be modified to include such additional protections? What costs might arise from doing so?

*Other*

40. Are there new types of services, other than 900 number line services, that may fall within the statutory definition of "pay-per-call services" and hence fall under these regulations? Will the proposed disclosure requirements be appropriate and/or feasible for such new types of services?

41. What kinds of technological changes may be anticipated in the near future in the area of pay-per-call services? Will the proposed disclosure requirements be appropriate and/or feasible after these technological changes are implemented?

42. As already noted in section F, comment is also invited on the effect of the proposed rule with regard to costs, profitability, competitiveness, and employment of small business entities.

43. What will be the impact of the proposed rule on non-profit organizations?

44. In addition, to the extent not otherwise addressed by the questions above, are there any regulatory alternatives that would reduce any adverse economic impact of the proposed rule, yet fully implement the Telephone Disclosure Act?

45. What are the aggregate costs and benefits of the proposed rule? Are there any provisions in the proposed rule that are not necessary to implement the statute or that impose costs not outweighed by benefits? Who will benefit and who will bear the cost? Can we expect either the costs or benefits of the rule to dissipate over time?

**List of Subjects in 16 CFR Part 308**

900 telephone numbers, Pay-per-call services, Trade practices.

Accordingly, it is proposed that chapter I of 16 CFR be amended by adding a new part 308 to read as follows:

## PART 308—REGULATIONS UNDER THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.

308.1 Scope of regulations in this part.
308.2 Definitions.
308.3 Advertising of pay-per-call services.
308.4 Special rule for infrequent publications.
308.5 Pay-per-call service standards.
308.6 Access to information.
308.7 Billing and collection for pay-per-call services.
308.8 Severability.

**Authority:** 15 U.S.C. 5711–14, 5721–24.

### § 308.1 Scope of regulations in this part.

This rule implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711–14, 5721–24.

### § 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service that provides information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call services* has the meaning provided in § 228 of the Communications Act of 1934, 47 U.S.C. 228.[1]

[1] Section 228 of the Communications Act of 1934 states that:

(1) The term "pay-per-call services" means any service—(A) in which any person provides or purports to provide—

(i) audio information or audio entertainment produced or packaged by such person;

(ii) access to simultaneous voice conversation services; or

(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e) *Presubscription or comparable arrangement* means a contractual agreement established prior to the initiation of a pay-per-call service between a provider of pay-per-call services and a consumer. No action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating such a contractual agreement.

(f) *Program-length commercial* means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(g) *Provider of pay-per-call services* means any person who sells a pay-per-call service.

(h) *Reasonably understandable volume* means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(i) *Slow and deliberate manner* means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(j) *Sweepstakes,* including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

**§ 308.3 Advertising of pay-per-call services.**

(a) *Cost of the call.* (1) The provider of pay-per-call services shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time-sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the duration of the program can be determined in advance, the advertisement shall also state the total cost for the complete program. If the duration of the program cannot be determined in advance (because it involves a live conversation or is dependent upon options selected by the caller), the advertisement shall state that the length of the call is subject to caller discretion, unless it is otherwise clear from the context that such is the case.

(iii) If the call is billed on a variable rate basis, the advertisement shall state, in accordance with §§ 308.3(a)(1) (i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) If the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ 308.3(a)(1) (i), (ii), (iii), and (iv).

(2) The disclosures in § 308.3(a)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(a), disclosures shall be made "clearly and conspicuously" as follows:

(i) In a television or videotape advertisement, the disclosures shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. The video disclosure shall appear adjacent to each video presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be at least as large as each letter or numeral of the pay-per-call number to which it is adjacent, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for the duration of the presentation of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement and shall be placed adjacent to each presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be at least as large as each letter or numeral of the pay-per-call number to which it is adjacent. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In any program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number. The disclosure shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosures.

(b) *Sweepstakes; games of chance.* (1) The provider of pay-per-call services that advertises a prize or award or a service or product at no cost or for a reduced cost, in connection with the offering of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. The advertisement shall clearly and conspicuously disclose that no purchase (i.e., no call to the pay-per-call service) is required to participate, and shall also disclose a free alternative method of entry and instructions on how to enter. The advertisement shall also disclose the scheduled termination date of the offer of the prize, award, service, or product.

(2) The disclosures in § 308.3(b)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(b), disclosures shall be made "clearly and conspicuously" as follows:

(i) In a television or videotape advertisement, the disclosures shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a

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(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) which is accessed through the use of a 900 telephone number or other prefix or area code designated by the [Federal Communications] Commission in accordance with subsection (b)(5) [47 U.S.C. 228(b)(5)].

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliates, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

reasonably understandable volume. Each line of the video disclosure shall occupy at least one-tenth of the vertical field of the television screen, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for sufficient time to allow consumers to read the disclosure.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement, in at least 12-point type, and of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosures.

(c) *Federal programs.* (1) The provider of pay-per-call services that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(2) The disclosures in § 308.3(c)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(c), disclosures shall be made "clearly and conspicuously" as follows:

(i) In a television or videotape advertisement, the disclosures shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. The disclosure shall begin within the first fifteen (15) seconds of the advertisement. Each line of the video disclosure shall occupy at least one-tenth of the vertical field of the television screen, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for sufficient time to allow consumers to read the disclosure.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement and shall appear in the top one-third of the advertisement. Each letter of the disclosure shall be in at least 12-point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosures.

(d) *Prohibition on advertising to children.* (1) The provider of pay-per-call services shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(2) For the purposes of this regulation, advertisements directed to children under 12 shall be presumed to include the following:

(i) Advertisements appearing in publications, including, but not limited to, books, magazines and comic books, that are directed to children under 12;

(ii) Advertisements appearing during or immediately adjacent to television programs, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school specials, that are directed to children under 12;

(iii) Advertisements broadcast during or immediately adjacent to radio programs directed to children under 12;

(iv) Advertisements appearing on the same video as a commercially-prepared video directed to children under 12;

(v) Advertisements or promotions appearing on product packaging directed to children under 12; and

(vi) Any advertisement, regardless of when or where it appears, that is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(3) The presumption contained in § 308.3(d)(2) may be rebutted with competent and reliable audience composition data or other competent and reliable evidence demonstrating that the receiving audience is composed predominantly of individuals aged 12 or older.

(e) *Advertising to individuals under the age of 18.* (1) The provider of pay-per-call services shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) The disclosure in § 308.3(e)(1) shall be made in the same language as that principally used in the advertisement.

(3) For purposes of § 308.3(e), clear and conspicuous shall mean the following:

(i) In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement, except that in an advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, no audio presentation of the disclosure is required. When required, the audio disclosure shall be made at least once, and shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. The video disclosure shall appear adjacent to the largest presentation of the pay-per-call number. Each line of the video disclosure shall occupy at least one-tenth of the vertical field of the television screen, shall be of a color or shade that readily contrasts with the background, and shall appear on the screen for sufficient time to allow consumers to read the disclosure. In any program-length commercial, the video disclosure shall appear simultaneously with and for the duration of each presentation of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be parallel with the base of the advertisement and shall be placed adjacent to the largest presentation of the pay-per-call number. Each letter of the disclosure shall be in at least 12-point type. The disclosure shall be of a color or shade that readily contrasts with the background of the advertisement.

(iii) In a radio advertisement, the disclosure shall be delivered in a slow and deliberate manner and in a reasonably understandable volume. In any program-length commercial, the disclosure shall be delivered immediately preceding each delivery of the pay-per-call number.

(4) Nothing contrary to, inconsistent with, or in mitigation of, the above-required disclosures shall be used in any advertisement in any medium; nor shall any audio or video technique be used that is likely to detract

significantly from the communication of the disclosures.

(5) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall be presumed to include the following:

(i) Advertisements appearing in publications, including, but not limited to, books, magazines and comic books, that are directed primarily to individuals under 18;

(ii) Advertisements appearing during or immediately adjacent to television programs, including, but not limited to, mid-afternoon weekday television shows, that are directed primarily to individuals under 18;

(iii) Advertisements broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Advertisements appearing on the same video as a commercially-prepared video directed primarily to individuals under 18; and

(v) Any advertisement, regardless of when or where it appears, that is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(6) The presumption contained in § 308.3(e)(5) may be rebutted with competent and reliable audience composition data or other competent and reliable evidence demonstrating that the receiving audience is composed primarily of individuals aged 18 or older.

(f) *Electronic tones in advertisements.* The provider of pay-per-call services is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

(g) *Telephone solicitations.* The provider of pay-per-call services shall ensure that any telephone message that solicits calls to the pay-per-call service discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ 308.3(a)(1) (i) through (v).

(h) *Referral to toll free telephone numbers.* The provider of pay-per-call services is prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll free, if callers to that number may be connected to an access number for, or may otherwise be transferred to, a pay-per-call service.

**§ 308.4 Special rule for infrequent publications.**

(a) In lieu of the cost disclosures required by § 308.3(a), the provider of any pay-per-call service that advertises in a publication that meets the requirements set forth in § 308.4(b) may include in any advertisement in such publication for such pay-per-call service, a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge above the long-distance charge.

(b) The publication referred to in § 308.4(a) must be:

(1) Widely distributed;

(2) Printed annually or less frequently; and

(3) One that has an established and written policy of not publishing specific prices in advertisements.

**§ 308.5 Pay-per-call service standards.**

(a) *Preamble message.* The provider of pay-per-call services shall include, in each pay-per-call message, an introductory disclosure message ("preamble") in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the provider of the pay-per-call service and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state the cost per minute and any minimum charges; if the duration of the program can be determined in advance, the preamble shall also state the total cost for the complete program; if the duration of the program cannot be determined in advance (because it involves a live conversation or is dependent upon options selected by the caller), the preamble shall state that the length of the call is subject to caller discretion, unless it is otherwise clear from the context that such is the case;

(iii) If the call is billed on a variable rate basis, the preamble shall state, in accordance with §§ 308.5(a)(2) (i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin at the end of the preamble, after a clearly discernible signal or tone, and that the caller may avoid any charge for the call by hanging up at or before the sound of the tone;

(4) Informs the caller that anyone under the age of 18 must have the permission of a parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) *No charge to caller for preamble message.* The provider of pay-per-call services is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to five seconds after the signal or tone indicating the end of the preamble described in § 308.5(a).

(c) *Nominal cost calls.* The preamble described in § 308.5(a) is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is $2.00 or less.

(d) *Bypass mechanism.* The provider of pay-per-call services that offers to frequent callers or regular subscribers to such services the option of activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § 308.5(a), *provided that* any such bypass mechanism shall be disabled for a period of no less than 30 days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

(e) *Billing limitations.* The provider of pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for those services and from billing for any services provided in violation of any section of this rule.

(f) *Stopping the assessment of time-based charges.* The provider of pay-per-call services shall stop the assessment of time-based charges immediately upon disconnection by the caller.

(g) *Prohibition on services to children.* The provider of pay-per-call services shall not direct such services to children under the age of 12, unless such service is a bona fide educational service. A pay-per-call service directed to children under the age of 12 shall be presumed to include the following:

(1) Any pay-per-call service, regardless of when or where it is advertised, which is produced or designed for children under the age of 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like. This presumption may be rebutted with competent and reliable evidence that

recipients of the service are predominantly individuals aged 12 or older.

(2) Any pay-per-call service that is advertised in the manner set forth in § 308.3(d)(2), unless that presumption is rebutted in accordance with § 308.3(d)(3).

(h) *Prohibition concerning toll free numbers.* The provider of pay-per-call services is prohibited from providing such services through an 800 number or other telephone number advertised as or widely understood to be toll free.

(i) *Disclosure requirements for billing statements.* The provider of pay-per-call services shall ensure that any billing statement for such provider's charges shall:

(1) Display any charges for pay-per-call services in a portion of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(2) For each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and duration of the call.

(j) *Refunds to consumers.* The provider of pay-per-call services shall be liable for refunds to consumers who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call programs that have been found to have violated any provision of this rule or any other Federal rule or law.

**§ 308.6 Access to information.**

Any common carrier that provides telephone services to any provider of pay-per-call services shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

**§ 308.7 Billing and collection for pay-per-call services.**

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) *Billing entity* means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(2) *Billing error* means any of the following:

(i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

(ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.

(viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(i).

(3) *Customer* means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.

(4) *Preexisting agreement* means a "presubscription or comparable arrangement," as that term is defined in § 308.2(e).

(5) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error.

(6) *Telephone-billed purchase* means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;

(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(7) *Vendor* means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(b) *Initiation of billing review.* A customer may initiate a billing review with respect to a telephone-billed purchase by providing, no later than 60 days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase,[2] notice to that billing entity in which the customer:

(1) Sets forth or otherwise enables the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicates the customer's belief that the statement contains a billing error and the type, date, and amount of such error; and

(3) Sets forth the reasons for the customer's belief, to the extent possible, that the statement contains a billing error.

(c) *Disclosure of method of providing notice; presumption if oral notice is permitted.* A billing entity shall clearly and conspicuously[3] disclose on each billing statement or on other material accompanying the billing statement the method (oral or written) by which the customer may provide notice to initiate review of a billing error in the manner set forth in § 308.7(b). If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of § 308.7(b).

(d) *Response to customer notice.* A billing entity that receives notice of a billing error as described in § 308.7(b) shall:

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[2] If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period begins to run from the time the goods or services are delivered or, if not delivered, should have been delivered, if such time is later than the time the billing statement was transmitted.

[3] The standard for "clear and conspicuous" as used in this section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. See 12 CFR part 226, Supplement I, Comment 226.5(a)(1)–1.

(1) Send a written acknowledgement to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than thirty (30) days after receiving the notice, unless the action required by § 308.7(d)(2) is taken within such 30-day period; and

(2)(i) Correct the billing error and credit the customer's account for any disputed amount and any related charges, notify the customer of the correction and that removal of the charge does not prevent the vendor, its agent, or the providing carrier, as applicable, from electing to pursue collection of the charge, and provide the names, mailing addresses, and business telephone numbers of the vendor and providing carrier, as applicable, that are the subject of the telephone-billed purchase; or

(ii) Transmit an explanation to the customer, after conducting a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier),[4] setting forth the reasons why it has determined that no billing error occurred or that a different billing error occurred from that asserted, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness.

(3) The action required by § 308.7(d)(2) shall be taken no later than two complete billing cycles of the billing entity (in no event later than ninety (90) days) after receiving the notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.7(d)(2), the billing entity shall:

(i) If it is determined that any disputed amount is in error, promptly notify the appropriate providing carrier or vendor, as applicable, of its disposition of the customer's billing error and the reasons therefor; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, which time shall be at least twenty (20) days after the date of such notification, and promptly notify the customer in writing that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action.

(e) *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of § 308.7(d) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct.

(f) *Limitation on responsibility for billing error.* After complying with the provisions of § 308.7(d), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(g) *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity, providing carrier, or vendor may not try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.7(d). The billing entity, providing carrier, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.7(d).

(h) *Charges for initiating billing review.* If a billing error occurred, whether as alleged or in a different amount or manner, the billing entity, providing carrier, or vendor may not impose on the customer any charge related to the billing review (including charges for documentation or investigation). If it is determined that no billing error occurred, any charges imposed must be reasonable in light of the costs involved in conducting the billing review and must not be of such an amount as to discourage customers from asserting their rights under this section.

(i) *Restrictions on credit reporting—*(1) *Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer twenty (20) days thereafter to make payment.

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under § 308.7(i)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to § 308.7(i)(2) to all persons to whom such matter was initially reported.

(j) *Forfeiture of right to collect disputed money.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ 308.7 (c), (d), (g), (h), or (i) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.7(b)(2), to be in error, and any late charges or other related charges thereon, up to $50 per transaction.

(k) *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within three (3) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(l) *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims

[4] If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable investigation and determines that the goods or services were actually delivered as agreed or that the information was correct. There shall be a rebuttable presumption that goods or services were actually delivered to the extent that a vendor or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered.

(other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

(m) *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this section.

(n) *Notice of billing error rights.*—(1) *Annual statement.* (i) A billing entity shall mail or deliver the billing rights statement set forth below with the first billing statement for a telephone-billed purchase mailed or delivered to a customer after the effective date of these regulations. Thereafter, the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months.

(ii) A billing entity that is a common carrier may comply with § 308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement set forth below to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.

**Your Pay-Per-Call Billing Rights**

*Keep This Notice For Future Use*

This notice contains important information about your rights and our responsibilities under the Telephone Disclosure and Dispute Resolution Act.

*Notify Us in Case of Errors or Questions About Your Bill*

If you think you have been incorrectly billed for a 900 [or other pay-per-call] number telephone call, or if you need more information about a 900 [or other pay-per-call] number transaction appearing on your bill, let us know as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You must call us at the telephone number [or write us at the address] listed on your bill and give us the following information:

Your name and telephone number.
The dollar amount of the suspected error.
Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If we specify that you must notify us in writing, and you do not, we are not obligated to respond to your complaint or inquiry. If we permit you to call in your billing error and a question arises about whether you properly notified us, we will assume you did, unless we can show you did not.

*Your Rights and Our Responsibilities After We Receive Your Notice*

We must acknowledge your notice within 30 days, unless we have corrected the error or notified you of the results of our investigation by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. You have the right to request a written explanation if we find that the bill was correct.

After we receive your notice, you do not have to pay any questioned amount, and no one may try to collect it, until we are finished investigating. We can continue to bill you for the amount you question, and you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any charges related to any questioned amount. If we didn't make a mistake, you may have to pay late charges, and you will have to make up any missed payments on the questioned amount. In any case, we will send you a statement of the amount you owe and the date it is due.

After we have completed our investigation, if you fail to pay the amount that we think you owe, we may report you as delinquent. However, if you do not agree with our explanation and let us know within 20 days, we must tell anyone we report you to that you still dispute your bill. We must tell you the name of anyone we reported you to. We must also tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

(2) *Alternative summary statement.* As an alternative to § 308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement substantially similar to the following:

**Pay-Per-Call Billing Rights Summary**

*In Case of Errors or Questions About Your Bill*

If you think your 900 [or other pay-per-call] number telephone bill is wrong, or if you need more information about a 900 [or other pay-per-call] number call billed to your account, let us know as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. Call us at the telephone number [or write us at the address] listed on your bill and give us the following information:

Your name and telephone number.
The dollar amount of the suspected error.
Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

Unless we tell you to notify us in writing, you may call in your billing error. Should any question arise about whether you properly notified us, we will assume you did, unless we can show you did not.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, no one can report you as delinquent or take any action to collect the amount you question.

(o) *Multiple billing entities.* If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need be given, and the billing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them. The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of § 308.7(d). If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in § 308.7(b), that billing entity shall either: (1) promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or (2) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in § 308.7(d) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(p) *Multiple customers.* If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

**§ 308.8 Severability.**

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

**Statement of Commissioner Deborah K. Owen in the Matter of Telephone Disclosure and Dispute Resolution Rulemaking**

*File No. R311001*

March 3, 1993

I have voted to issue the proposed rule in this matter for public comment, even though I am particularly troubled by the fact that the proposed rule would impose a size requirement for cost disclosures that may be larger than necessary to meet the "clear and conspicuous" standard of the statute. According to the proposed rule, each letter or numeral of the disclosure must be at least as large as each letter or numeral of the pay-per-call number. This is twice the size of the disclosures mandated by our orders concerning pay-per-call numbers directed at children. There, each line must be half the size of the number, a requirement which, presumably, also meets a "clear and conspicuous" standard. Although I agreed to some provisions of the proposed rule for purposes of public comment, and although other provisions may be the best we can do with what we currently know, I do not believe that the size specifications for cost disclosures were appropriate, based on available evidence. However, I am hopeful that the public comment will provide more enlightenment on this (and other subjects) so that any necessary modifications can be made.

[FR Doc. 93–5432 Filed 3–9–93; 8:45 am]

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Wednesday
March 10, 1993

Part X

# Department of Labor

## Wage and Hour Division

29 CFR Part 825
Implementation of the Family and Medical Leave Act of 1993; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215-AA85

## Implementation of the Family and Medical Leave Act of 1993

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor is publishing this notice to obtain early public comment on issues to be addressed in regulations implementing the Family and Medical Leave Act of 1993, Public Law 103-3 (107 Stat. 6; February 5, 1993). A subsequent notice will be published as an interim final rule inviting comment on the regulatory provisions to implement the Act. As soon as possible after review of the comments received, a final rule will be published.

DATES: Comments must be submitted by March 31, 1993. Commenters are encouraged to submit comments before that date, and as soon as possible. Any comments received after that date will be made part of the rulemaking record and fully considered in the subsequent rulemaking, but may not be fully considered in interim implementing regulations that must be published by the date set forth in the Act.

ADDRESSES: Submit written comments to the Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219-8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Family and Medical Leave Act (the Act or FMLA) was enacted into law on February 5, 1993. Title I of the Act, which establishes entitlements and responsibilities of non-Federal and certain Federal employees and employers relating to the granting of unpaid leave for certain family and medical reasons, will be administered and enforced by the Wage and Hour Division of the Department of Labor's Employment Standards Administration.

Similar provisions in title II of the Act affecting most Federal employees are to be administered by the U.S. Office of Personnel Management (OPM). Certain Federal employees and some entities, such as the U.S. Postal Service and Postal Rate Commission, are covered by title I of the Act, administered by the Department of Labor. Separate regulations implementing title II of the Act will be published by OPM. FMLA requires OPM to model its regulations implementing title II after the DOL regulations implementing title I, to the extent appropriate. The Department has been working with OPM to coordinate our respective rulemaking efforts. DOL will make available to OPM public comments received by DOL relevant to issues arising under title II for OPM's use in its rulemaking, to ensure consistency in implementing the law. As OPM is planning to issue its implementing regulations on an interim basis with provision for comment, those commenters with an interest in issues particular to title II of the FMLA are also encouraged to comment upon the OPM regulation upon its publication in the **Federal Register**.

The Act requires the Department of Labor to prescribe regulations implementing title I and title IV not later than 120 days after the date of enactment, by June 4, 1993. The leave provisions of title I are effective six months after the date of enactment, on August 5, 1993, except where a collective bargaining agreement (CBA) is in effect on that date, in which event the leave provisions take effect on the date of termination of such CBA or 12 months after the date of enactment, whichever is earlier. The Department of Labor's implementing regulations will address a variety of issues arising from the law, clarifying rights and responsibilities as warranted.

The Department of Labor fully expects to meet its obligations to publish implementing regulations in accord with the statutory timeframe and, in this context, is fully committed to taking every possible step to encourage and obtain public input to the rulemaking process. The purpose of this notice is, therefore, to solicit comments from all interested individuals and groups as early as possible in the development of the regulations.

There will, of course, be additional opportunity for public comment in conjunction with further rulemaking action by the Department. However, to guide the rulemaking process as it is undertaken and to maximize opportunity for the public to participate, we strongly encourage the early submission of any ideas, comments, or concerns which should be considered in the course of developing the regulations. Commenters are specifically encouraged to identify any issues which they believe need to be addressed in the implementing regulations and, as appropriate, offer their views, with supporting rationale, as to how such issues should be addressed by the regulations.

Commenters are also invited to submit any data relating to the economic impact of the Act. The Department intends to treat the interim final rule as a major rule for purposes of the Regulatory Impact Analysis requirements of Executive Order 12291, and will undertake to implement the statute so as to maximize benefits and minimize burdens on both employees and employers consistent with the purposes of the Act.

### Summary of the Act and Regulatory Issues

Titles I and IV of the Act are summarized below. Where appropriate, regulatory issues will be guided by the Congressional Committee reports and legislative history of the FMLA. However, additional guidance is needed on a number of issues. Key issues which have arisen to date, and on which public comment is particularly solicited, are listed below, after the discussion of the pertinent statutory provision. Commenters are also specifically encouraged to identify any and all other issues which they believe need to be addressed in the implementing regulations and, as appropriate, offer their views, with supporting rationale, as to how such issues should be addressed by the regulations.

*Section 101 Definitions*

1. Section 101(2) of the Act defines "eligible employee" as an employee who has been employed by the employer for at least 12 months and for at least 1,250 hours of service, defined in accordance with "hours worked" principles under the Fair Labor Standards Act, within the preceding 12-month period.

Eligible employees do not include employees at a worksite where the employer employs fewer than 50 employees, provided the total number of employees within a 75-mile radius of the worksite is less than 50. The legislative history makes it clear that

"worksite" is to be defined in accordance with regulations under the Worker Adjustment and Retraining Notification Act (WARN), 20 CFR part 639. The term "worksite" is intended to be construed in the same manner as a "single site of employment," the term used in the WARN regulations. These regulatory provisions address questions concerning employees at temporary worksites, such as many construction workers or workers employed by temporary help agencies, as well as workers such as truck drivers and airline employees who have no fixed worksite.

How should the 75-mile radius be measured?

It should be noted that eligible employees covered by title I do not include Federal employees covered by title II of the Act, administered by OPM. Although most Federal employees are covered by title II, certain employees such as employees of the U.S. Postal Service and the Postal Rate Commission are covered by title I. The scope of title I as applied to these Federal employees will be set forth in the implementing regulations.

2. Section 101(4) of the Act defines "employer" as: "* * * any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year * * *."

The terms "commerce" and "industry or activity affecting commerce" are broadly defined in accordance with the Labor Management Relations Act. The remainder of the definition is based on title VII of the Civil Rights Act of 1964, which has been construed to refer to the number of employees on the employer's payroll at a given point in time, including part-time employees and employees on leave. Further, issues have arisen regarding how leased employees, employees of franchises, and other loosely related business operations, e.g., related but separate corporate entities, should be counted for this purpose.

Is any distinction required between full-time employees and part-time or shift-work employees when determining if the employer meets the 50-employee threshold in 20 weeks each year?

Questions arise both under this provision and the definition of eligible employee regarding the point at which the 50-employee threshold must be met—e.g., when an employee gives notice to the employer of a request to take leave, or when the employee begins to take the leave.

Should the same procedures for counting employees be used in determining covered employers and eligible employees? When do FMLA's obligations and leave entitlements begin to apply to an employer that reaches a workforce of 50 employees? At what point would an employer that drops below the 50-employee threshold no longer be covered?

What is the effect of the number of employees going below the threshold if an employee has requested FMLA leave or the leave has commenced? How, if at all, should the regulations address the effect of an employer manipulating employment levels for the purpose of avoiding FMLA obligations, e.g., lay-offs or employee transfers to avoid coverage under the Act?

The term employer also includes: "(I) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; and (II) any successor in interest of an employer; and (III) includes any 'public agency' as defined in section 3(x) of the Fair Labor Standards Act * * *."

The definition of "public agency," as cited above, does not include a 50-employee coverage limitation. Yet it appears that the 50-employee/75 mile limit must be met for employees of public agencies to be "eligible."

Should individual "public agencies" of a State or local government be considered separate employers for purposes of determining whether an employee meets the 50 employees/75 miles test required to be an eligible employee?

In this regard, it should be noted that public employers are so considered under the Fair Labor Standards Act regulations, at 29 CFR 553.102, governing determination of whether volunteers are performing services "for the same public agency" that employs them.

Does the 50 employee count apply to local educational agencies as defined in section 108?

3. Section 101(6) of the Act defines "health care provider" as: "* * * (A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; (B) or any other person determined by the Secretary to be capable of providing health care services." The Department is researching other potentially relevant regulations and consulting with Federal health-care agencies regarding these statutory terms.

Should the term health care provider encompass any and all health care specialties licensed under State law to practice (e.g., doctors of dental surgery, optometry, podiatric medicine, etc.)? How should the Department's regulations define and/or delimit others "capable" of providing health care services, particularly for non-traditional providers of health-related services? Should, for example, registered or practical nurses, chiropractors, acupuncture practitioners, etc., be included? Should there be a limitation to those licensed by the State or certified by a national organization? Should those who give care to persons who obtain treatment for a serious medical condition through faith alone, such as certified Christian Science practitioners, be included?

4. Section 101(9) of the Act defines "Reduced Leave Schedule" as "* * * a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee."

How should "workweek" or "workday" be defined as these terms relate to part time employees and their "usual number of hours" or to employees whose work schedules vary significantly from week to week?

5. Section 101(11) of the Act defines "serious health condition" as: "* * * an illness, injury, impairment, or physical or mental condition that involves: (A) Inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider." The statutory language does not define "serious health condition" in terms of the duration of an illness.

Should there be a minimum duration of an illness for it to be considered a "serious health condition"? Should the Department's regulations define "continuing treatment by a health care provider" in (B) above? If so, how? Should, for example, substance abuse programs, psychotherapy, etc., be included?

6. Section 101(12)(B) defines "Son or Daughter" as one who is 18 years of age or older and incapable of self-care because of physical or mental disability.

What meaning, if any, should the regulations give to the term "incapable of self-care because of mental or physical disability"?

*Section 102 Leave Requirement*

1. An eligible employee is entitled to up to 12 workweeks of leave during "any 12-month period" for: the birth of a son or daughter, and to care for the son or daughter; placement of a son or daughter for adoption or foster care; to care for a spouse, son, daughter, or parent of the employee with a serious health condition; or because of the employee's own serious health

condition "that makes the employee unable to perform the functions of the position of such employee." Entitlement to leave for birth or placement for adoption expires one year after the date of birth or placement.

How should "any 12-month period" be defined? Should it be based on the 12 months preceding the request for or commencement of the leave, the calendar year, a future leave year chosen by the employee or employer, or should the employer have the discretion to designate the "12-month period" for the particular employee, for an entire worksite, or for all of its employees? In the case of leave for birth or adoption, is it necessary that the leave be concluded by the one-year expiration date, or only that the leave commence by that date? Are there other possibilities?

2. Leave can be taken "intermittently or on a reduced leave schedule" in certain circumstances. If it is for birth or adoption, the employer and employee must both agree. If it is to care for one's ill family member or because of one's own serious health condition, such leave may be taken "when medically necessary."

Should the question of whether such leave is "medically necessary" be left solely to the determination of the health care provider, or should the term be defined in the regulations?

An employee who must be absent from time to time in order to receive medical treatment is considered temporarily "unable to perform the functions of his or her position," and is therefore eligible for leave, on an intermittent basis, for the time necessary to receive the treatments. Where such leave is forseeable based on planned medical treatment, the employer may require the employee to transfer temporarily to an alternative position with equivalent pay and benefits that better accommodates the recurring periods of leave. The term "reduced leave schedule" is defined in section 101(9) of the Act, whereas "leave taken intermittently" is not.

Is there a need to separately define "intermittent" leave? If so, how should it be defined? If an employee is "unable to perform the functions of his or her position" due to a medical condition, but could perform some aspects of his or her job, or another job consistent with the medical limitations, may the employer reassign the employee to a different or differently-structured position with equal pay and benefits, thereby eliminating the need for such leave? Would the employee continue to be entitled to FMLA leave in such circumstances?

Section 102(b)(1) further provides that leave taken intermittently or on a reduced schedule basis shall not reduce the amount of leave available beyond the amount of leave actually taken.

What does the entitlement of "up to 12 weeks" of leave mean for employees who work part-time or schedules that vary or fluctuate and who take leave "intermittently or on a reduced leave schedule"?

3. Section 102(c) of the Act, in part, provides: "Except as provided in subsection (d) [discussed below], leave granted under subsection (a) may consist of unpaid leave. Where an employee is otherwise exempt under [the Department of Labor's regulations, at 29 CFR part 541, governing eligibility for exemption as a bona fide executive, administrative, or professional employee under section 13(a)(1) of the Fair Labor Standards Act], the compliance of an employer with this title by providing unpaid leave shall not affect the exempt status of the employee * * *."

Under 29 CFR part 541, to be exempt under FLSA section 13(a)(1) an employee must (among other things) be paid "on a salary basis." Deductions from the salary for partial day absences are not allowed under most circumstances. This subsection of the FMLA provides that where an employee is otherwise exempt under FLSA—i.e., meets the duties and salary amount requirements and is otherwise paid "on a salary basis"—the provision of unpaid leave for partial day absences (i.e., intermittent leave or leave on a reduced leave schedule) will not affect the employee's exempt status under FLSA section 13(a)(1).

Further, title IV of FMLA, sections 401 and 402 provide, in part, that nothing in FMLA shall be construed to supersede or diminish any State or local law, any collective bargaining agreement, or any employment benefit program or plan that provides greater rights or benefits than the rights established under FMLA. Section 403 states that nothing in FMLA shall be construed to discourage employers from adopting or retaining leave policies more generous than policies that comply with the requirements of the Act.

In light of these provisions, is there sufficient basis in the statute and its legislative history, and—if so—would it be appropriate to interpret section 102(c) of the FMLA to provide that granting unpaid leave intermittently or on a reduced leave schedule for family or medical reasons shall not affect the 541-exempt status of employees in situations which are not strictly required by FMLA, such as:

(A) An employee is provided unpaid leave, but is *not* an "eligible employee" as defined by FMLA—e.g., an employee of a large (covered) employer with multiple locations which applies the same leave policies at all its facilities, where the employee in question is employed at a worksite at which fewer than 50 employees are employed within 75 miles?

(B) The employer is not a covered employer as defined by FMLA?

(C) The employer provides unpaid leave on more generous terms or for other reasons than FMLA requires, in order to comply with State or local laws with higher standards?

(D) The employer voluntarily provides unpaid leave on more generous terms than required by FMLA in localities where no other State or local law has been enacted concerning family or medical leave?

4. The Act specifies circumstances for the substitution of certain types of paid leave. Thus, an employee may elect or an employer may require an employee to substitute accrued paid vacation leave, personal leave, or family leave for FMLA leave taken because of birth, adoption, or to care for an ill family member. Similarly, an employee may elect or an employer may require an employee to substitute accrued paid vacation leave, personal leave, or medical or sick leave for FMLA leave to care for an ill family member or because of the employee's own serious health condition, except that: "Nothing in this title shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave." It should be noted that certain kinds of paid leave can be substituted for certain types of family and medical leave while others cannot. For example, an employer might have a policy to grant paid sick leave to an employee who must care for a child with a contagious disease. Absent the contagious condition, however, the employer does not authorize paid sick leave to be used for the care of a sick child.

What is the relationship between paid and unpaid leave for FMLA purposes when an employee does not elect and the employer does not require full substitution of other paid leave? For example, where an employer provides paid sick leave, an employee fully uses 12 weeks of unpaid FMLA leave without substitution of paid leave, could the employee then take paid sick leave immediately after the FMLA leave?

A number of questions arise concerning these provisions, including:

(A) Does the proviso concern situations or illnesses, for example, for which the employer would not otherwise provide paid leave? Would an employer, for example, be permitted to deny the substitution of paid sick leave to care for an ill family member because that is not provided under the sick leave plan? How would such an interpretation affect the explicit provision permitting substitution of such leave?

(B) What is the relationship between sick or disability leave, and leave for the birth of a child? The provision does not mention substitution of sick leave in such a situation, yet clearly there is a period of disability following birth.

(C) If an employee requests paid leave for a planned absence (or, conversely, if the employer desires the employee to use accrued leave benefits), and the employee has accrued sufficient leave to cover the time off, should the employee or the employer determine whether the leave is FMLA leave? Should the employee or the employer, or either, determine whether the leave to be taken is FMLA leave for which accrued paid leave may be substituted?

(D) It has become the practice of some employers to eliminate distinctions on types of leave taken by employees (e.g., vacation, sick, personal, etc.,) and simply provide one category of paid leave designated as "paid time off," which may be used for any purpose permitted by the employer's paid leave policies. How should "paid time off" be treated under sections 102(d)(2) (A) and (B)?

5. Where leave is foreseeable based on birth or adoption, an employee must provide the employer with at least 30 days' notice before the leave begins, unless it is not possible because the birth or adoption affords less notice, in which case the employee must provide notice "as is practicable." When leave is foreseeable based on planned medical treatment (of a family member or for the employee's own treatment), the employee is also required to give 30 days' notice, where possible, or notice as is "practicable," and is required to: "Make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider * * *".

What, if any, regulatory guidance should be issued to clarify "notice as is practicable"? What form, if any, should the notice to the employer of need for leave take? What is the effect on the eligibility for unpaid leave if an employee fails to provide notice of intent to take leave that is "foreseeable" under section 102(e)(1)? In this regard, in more general terms, what are the consequences when an employee fails to meet any of his/her statutory obligations under the Act? What if the failure is not material or willful, or is due to an employee's lack of knowledge of his or her obligations or to circumstances beyond the employee's control?

6. If a husband and wife are employed by the same employer, they are together entitled to only a total of 12 workweeks of leave if the leave is taken because of birth or adoption, or to care for a sick parent. Under section 102(f), this limitation would not apply to leave taken by an employee for the employee's own serious health condition.

Would the same limitation apply to spouses employed by the same employer but at different locations, either: (a) Within a 75-mile radius? or, (b) beyond a 75-mile radius?

*Section 103 Certification*

1. An employer may require a certificate from the health care provider to justify leave to care for an ill family member or because of one's own serious health condition. The employee is required to provide such certification to the employer in a timely manner. If the employer has reason to doubt the validity of the certification, the employer may require a second opinion by a health care provider designated or approved by the employer (but not employed by the employer) and at the employer's expense. In the case of conflicting opinions, the employer may require a third and binding opinion from a health care provider jointly approved by the employer and employee, and at the expense of the employer.

How should "in a timely manner" in providing requested certification be defined? Should a regulatory process be developed to resolve any disputes between an employer and an employee over who should provide the third, binding medical opinion should one be necessary? If so, what type of process should be used?

2. An employer may require recertification "on a reasonable basis."

Should "reasonable basis" be defined? Under what circumstances can such recertifications be required by an employer, and who pays for any costs which may be associated with such recertification?

*Section 104 Employment and Benefits Protection*

1. Except as provided below, an employee who takes covered leave is entitled on return from leave to be restored to the same position the employee held when the leave commenced, or: "To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." A number of questions arise concerning the meaning of "equivalent position."

For example, does the position have to be "equivalent" geographically, i.e., at the same worksite or within the same commuting area? To what extent must the duties of the position be equivalent, as stated in the legislative history?

The Department expects to obtain guidance on these issues from case law under title VII, the Equal Pay Act, and the Veterans Reemployment Rights Act, and include such guidance in the FMLA regulations.

2. Section 104(a)(2) of the Act provides that the taking of leave under FMLA "shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced." However, a restored employee is not, by virtue of this section, entitled to: "(A) The accrual of any seniority or employment benefits during any period of leave; or (B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave."

The legislative history explains that this latter provision is intended to make clear that if, for example, an employee would otherwise be laid off during the leave period, there is no more entitlement to restoration than if the employee had been working at the time of the lay-off. (The Department will be examining experiences under similar provisions in State laws and will look to ongoing relationships typically maintained at the workplace between employers and employees during similar leaves of absence.)

What, if any, regulatory guidance is required to interpret or implement this provision? Under this provision, if an employer has, for example, a group life insurance plan which requires all or a portion of the premiums to be paid by the employees, must coverage be continued during FMLA-required leave and, if so, who must pay the premiums? Can employers be required to afford employees the opportunity to continue life insurance (paying both employer and employee premiums) during the leave? (This question is especially significant because of the possibility of an individual dying during medical leave.) If the employee and/or employer portion of the premiums must continue to be paid by the employee to maintain coverage, how should this be done—

through advance payment or reimbursement to the employer, directly to the insurance provider, or through some other means? If the employee fails to make such payments, when and under what circumstances could coverage be terminated by the employer or the insurance carrier?

On the other hand, if all or a portion of the life insurance premiums were paid by the employer, would coverage have to be continued during FMLA leave? Would it be permissible for a plan to provide that an employee's benefits terminate upon non-payment of premiums, and that an employee cannot resume participation in the plan upon return to work? Could a life insurance plan require a new physical? Could an employer recover any premiums paid for group life insurance during FMLA leave when an employee is restored after leave? Would the answers to the above questions differ for other similar employer-provided benefits (e.g., profit-sharing and stock option plans, etc.)?

What obligations does an employer have to provide benefits to employees on unpaid FMLA leave when new benefit plans or programs are initiated or implemented during the period of leave? Who must pay the premiums for any benefit plans other than "group health plans," and can employer-paid premiums for benefits other than health insurance be recovered from employees? If an employer grants a pay increase to all employees during the leave, is an employee on FMLA leave at the time of the pay increase entitled to that pay increase immediately on return from FMLA leave?

3. An employer is permitted to have a uniformly applied policy of requiring employees to obtain certification of their ability to resume work, provided that this provision cannot supersede valid State or local law or a collective bargaining agreement provision. In addition, an employer is permitted to require an employee to "report periodically" as to his or her status and intention to return to work.

What regulatory guidance should be included to interpret "periodically" in this context? What is the effect, if any, of an employee working for another employer while on FMLA leave in order to mitigate the loss of wages—for example, an employee on leave in a distant city to care for a parent takes a part-time job; an employee ordinarily maintains two jobs but takes FMLA leave from only one?

4. Section 104(b) of the Act contains a narrow exception from the restoration requirements, allowing an employer to deny restoration to certain highly compensated employees. Such an employee must be both salaried and among the highest paid 10 percent of employees (salaried and unsalaried) employed by the employer within 75 miles of the worksite where the employee is employed.

What, if any, regulatory guidance should be included on the implementation of this exemption?

In defining those employees who are "salaried," should the Department of Labor use its regulations at 29 CFR 541.118, defining payment "on a salary basis" for purposes of exemption from the FLSA for bona fide executive, administrative and professional employees; its regulations at 29 CFR 778.114 concerning determination of the regular rate of pay for overtime purposes with respect to non-exempt employees who are paid on a salary basis; or, some other definition?

Restoration for such employees may be denied only if: "such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer * * *."

Furthermore, an employer is required to notify the employee of its intent to deny restoration as soon as the employer determines that such injury would occur.

An employer is required to notify the employee after the leave is requested but before leave is taken if the economic injury is foreseen at that time. Then, if the employee is on leave when notice is given, the employee must be given an opportunity to return to work—in a reasonable amount of time, according to the legislative history.

Thus, an employer may deny restoration for the specified reasons to certain employees, but may not deny the opportunity to take leave. The legislative history makes clear that if the employee takes, or continues leave, after notification, the employee continues to be entitled to maintenance of health benefits, and the cost of those benefits cannot be recovered from the employee if at the end of the leave period the employee seeks reinstatement and reinstatement is denied.

What obligation, if any, should an employer have to provide advance notification to an employee that the employee is a key employee to whom reinstatement would be denied if leave were requested? When should an employer designate "key employees" who would be subject to being denied restoration under this provision?

Should the Department's regulations establish criteria or standards defining "substantial and grievous economic injury to the operations of the employer" and, if so, how?

The literal language of the provision is that it is the denial of restoration which is necessary to prevent the grievous injury.

Should standards be specified to implement this test and, if so, what should they be? Is an employer's "reasonable belief" sufficient? If the employer reasonably believes the requisite injury will occur, but circumstances do not occur as envisioned, must the employee be restored? What are the employer's obligations if the employee's position has been filled (for example, because grievous economic injury would occur if a permanent replacement were not found), but an equivalent position is available? Must the employee be restored to the equivalent position?

5. Employers are required to maintain coverage under any group health plan that may apply to the employees during the period of the leave "under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave."

In other words, an employer is only required to pay the employer's share of any contributions to the health plan. The employer may recover the premiums paid, however, if the employee fails to return from leave for reasons other than the continuation or onset of a serious health condition, or other circumstances beyond the control of the employee. The employer may require a claim that an employee is unable to return to work for medical reasons be supported by certification by the health care provider.

As discussed above, questions arise concerning the method under which employees would make their share of contributions to the health plan, and whether coverage legally could be terminated under FMLA for late or nonpayment.

*Section 105 Prohibited Acts*

Section 105 makes it unlawful for an employer to interfere with, restrain or deny an employee's exercise of rights under FMLA, or to discriminate against an employee for filing charges, giving information, or testifying in a proceeding under the Act. In addition, it is unlawful for an employer to discharge or discriminate against an individual "for opposing any practice made unlawful by this title."

The legislative history links these provisions with title VII of the Civil Rights Act. For example, an employee need only have a reasonable belief that a practice is unlawful under FMLA.

*Section 106 Investigative Authority*

Section 106 is modeled on the FLSA, and gives the Secretary authority to conduct investigations, require an employer to keep records, and subpoena documents and witnesses. In this connection, comments are specifically sought on the nature of the records which should be required under this Act.

In addition, the Secretary cannot require an employer or a plan to submit records to the Secretary more than once during any 12-month period unless the Secretary has reason to believe a violation exists, or is investigating complaint of violations.

*Section 107 Enforcement*

1. Section 107 is also modeled on the enforcement structure of the FLSA. A violating employer is liable for: (1) Damages equal to the wages and benefits lost; (2) interest thereon; (3) liquidated damages equal to the wages and benefits lost; and, (4) appropriate equitable relief, including employment, reinstatement and promotion. Like section 16 of the FLSA, liquidated damages can be reduced in the discretion of the court if an employer establishes that it acted in good faith and with reasonable grounds for believing the act or omission was not a violation of the Act. Where wages and benefits have not been lost, such as where an employer denies leave to which an employee is entitled, damages may include actual monetary losses sustained as a direct result of the violation, such as the cost of providing care for a family member, up to an amount equal to 12 weeks of wages.

Employees have the right to file suit in any Federal or State court on their own behalf, or on behalf of themselves and other similarly situated employees. However, an employee's right to file suit, like under the FLSA, is terminated upon the filing of a complaint by the Secretary in which the Secretary seeks monetary relief with respect to the employee. Costs and fees are to be paid by the defendant in any successful action.

2. As under the FLSA, the Secretary has the authority to investigate and attempt to resolve complaints, to file suit for damages, or to file suit for injunctive relief. The statute of limitations for filing suit, also modeled on the FLSA, is two years after the last event constituting the alleged violation, or three years in the case of a willful violation. The Department solicits comments and suggestions for streamlined investigative processes that could be applied under the Act, particularly when resolving complaints in cases where the need for denied leave is urgent because of medical necessity.

*Section 108 Special Rules Concerning Employees of Local Educational Agencies*

1. Special provisions address the circumstances of employees of local educational agencies (public boards of education or other public authorities administering public elementary and secondary schools) or of private elementary or secondary schools. If an eligible employee is employed principally in an instructional capacity and takes intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment which would total more than 20 percent of the working days in the period over which the leave extends, the agency may require the employee to elect either to take leave for a specific block of time (not to exceed the period of the medical treatment), or to transfer temporarily to an alternative position. In addition, an employer may require an employee employed principally in an instructional capacity to continue leave until the end of the term if the employee begins leave more than five weeks prior to the end of the academic term, the leave is of at least three weeks duration, and the return to employment would occur during the last three weeks in the term. The legislative history explains that the term "employed principally in an instructional capacity" includes teachers and others "whose principal function is directly providing educational services," as distinguished from teacher assistants, cafeteria workers, and bus drivers.

2. For purposes of restoration to an equivalent position under section 104, section 108 provides that: "Such determination shall be made on the basis of established school board policies and practices, private school policies and practices, and collective bargaining agreements."

Comments are invited on the relationship between sections 108 and 104.

*Section 109 Notice*

Employers are required to post notices of the pertinent provisions of the Act which have been prepared or approved by the Secretary.

What, if any, obligation does an employer have to advise employees or respond to requests for information about their rights and responsibilities under FMLA, for example, after leave has been requested?

Civil money penalties of up to $100 for each separate offense may be assessed for willful violations of this posting of notices provision. Procedural regulations regarding such assessments will be prepared. The Department will prepare and make posters available to employers and will also set forth the text of the required notices to employees in the regulations for employers' use.

**Title IV—Miscellaneous Provisions**

*Section 401 Effect on Other Laws*

Nothing in FMLA shall modify or affect any Federal or State law prohibiting discrimination, nor shall the Act supersede any provision of State or local law providing greater family or medical leave rights than those under FMLA. Thus, the FMLA does not override Federal laws such as the Pregnancy Disability Act, the Rehabilitation Act, or the Americans with Disabilities Act. In this regard, the Department is reviewing these statutes as well as provisions of Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act (ERISA), and the Consolidated Omnibus Budget Reconciliation Act (COBRA), to determine potential relationships with FMLA, and solicits comments in this area. Questions arise concerning the relationship between FMLA and State or local laws, especially where some provisions are more generous and some provisions are more restrictive.

Should the regulations define or interpret these statutory terms? For example, if a State law requires *paid* leave to be used first, would this provision be *more* or *less* generous? If a State law limits the types or amount of medical information that can be requested from an employee because of privacy interests or the confidentiality of the doctor-patient relationship, would FMLA's certification provisions be subject to the same limitations (see sections 103, 104(a)(4), and 104(c)(3))?

*Section 402 Effect on Existing Employment Benefits*

Nothing in FMLA shall diminish the obligation of an employer to comply with a collective bargaining agreement or benefit program providing greater family or medical leave rights than those established under FMLA. On the other hand, the rights under FMLA cannot be diminished by a collective bargaining agreement or employment benefits program.

*Section 403 Encouragement of More Generous Leave Policies*

Nothing in FMLA shall be construed to discourage the adoption of more generous leave policies than those required under FMLA.

*Section 405 Effective Dates*

Title I of the FMLA is effective six months after the date of enactment, or on August 5, 1993, except where a collective bargaining agreement (CBA) is in effect on that date, in which event the leave provisions take effect on the date of termination of such CBA or 12 months after the date of enactment, whichever is earlier.

How should leave which has commenced when the law becomes effective be treated?

The questions set forth above are by no means intended to be an exhaustive list of issues arising from the FMLA that may need to be addressed in the Department's implementing regulations, nor are they intended to limit public comments regarding such other matters. Commenters are strongly encouraged to submit any ideas, comments, or concerns which they believe should be considered in the course of the Department's subsequent rulemaking, and identify any other issues which they perceive need to be addressed in the implementing regulations and, as appropriate, offer their views, with supporting rationale, as to how such issues should be addressed by the regulations.

**List of Subjects in 29 CFR Part 825**

Employee benefit plans, Health, Health insurance, Hours of work, Labor, Labor management relations, Maternal and child health, Teachers.

Signed in Washington, DC, this 5th day of March, 1993.

**Robert B. Reich,**

*Secretary of Labor.*

**John R. Fraser,**

*Acting Assistant Secretary for Employment Standards.*

[FR Doc. 93–5575 Filed 3–9–93; 8:45 am]

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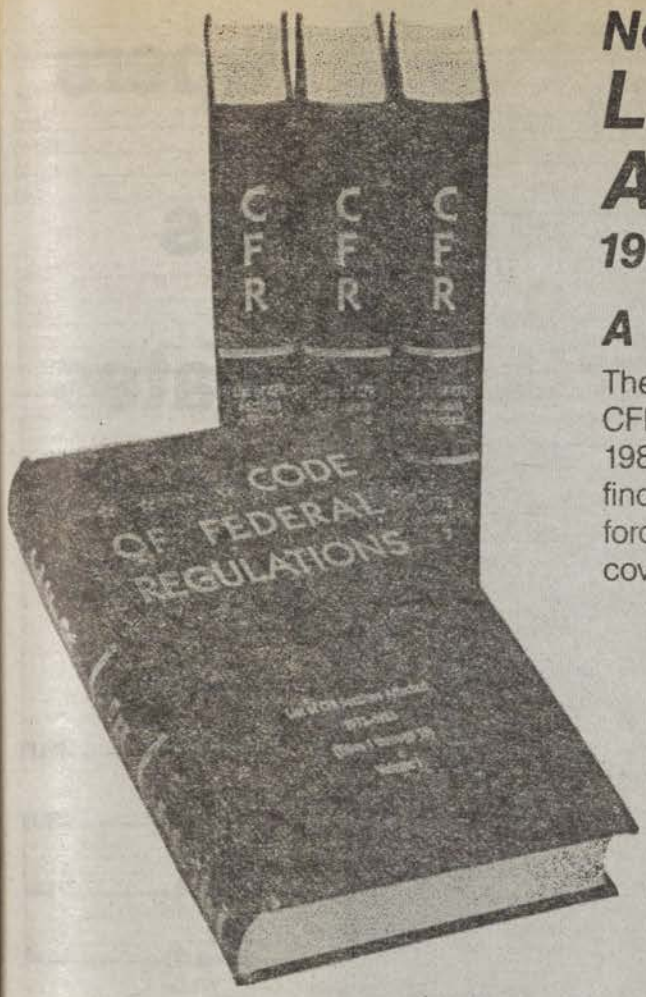

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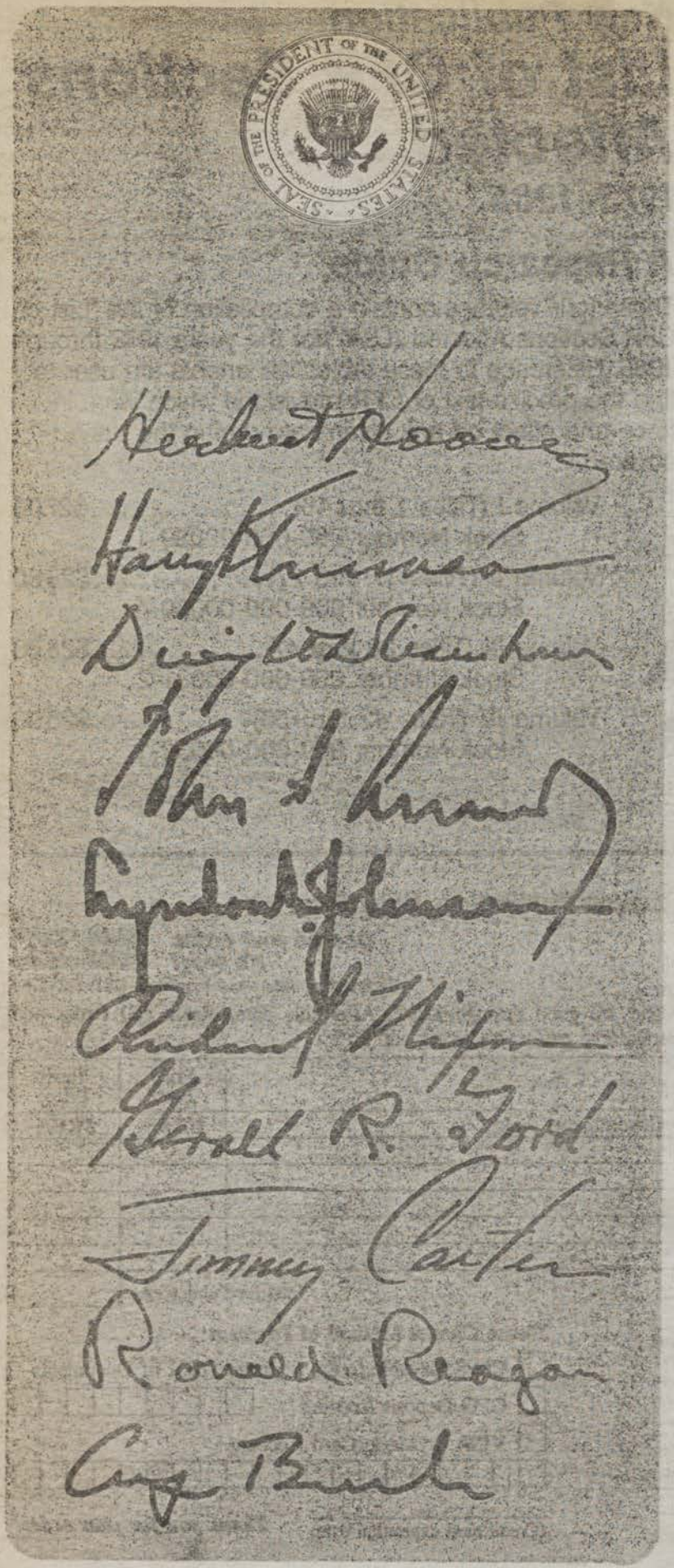
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